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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19. The implementation of grant contracts - A users' guide

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19.1. Introduction

This users' guide is designed to support staff of the European Commission when implementing grant 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 **not legally binding, nor can it be relied upon to challenge a contracting authority's decision, judicially or otherwise.**

The general conditions contain the basic essential articles governing the implementation phase for grants contracts.

They are complemented and may be subject to modification by the special conditions that are part of the grant contract (hereinafter referred to as the 'contract') and that 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 annexes to the contract, are the legally binding documents that govern the parties' rights and obligations under the contract. The special conditions prevail over the general conditions.

The information contained in this users' guide is of general guidance; specific rules may be set for each call for proposals and will have to be respected.

This users' guide does not deal with each and every article of the general conditions and does not cover all the provisions in the articles of the contract. Nor does it cover all of the call documents and contract annexes. It deals with issues that are considered essential or complex and that may require some further explanations.

For reference made in this users' guide, the following documents are annexed to the special conditions and form an integral part of the contract:

Annex I: Description of the action (Section 2.1 of Part B of Annex e3b), including the logical framework (Annex e3d) and the concept note (Section 1 of Part A of Annex e3b)

Annex II: General conditions applicable to European Union-financed grant contracts for external actions (Annex e3h2)

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

Annex IV: Contract-award rules (Annex e3h3)

Annex V: Standard request for payment and financial identification form (Annex e3h4 and Annex e3f)

Annex VI: Model narrative and financial reports (Annex e3h5, Annex e3h6, Annex e3h7)

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 (Annex e3h8)

Annex VIII: Model financial guarantee (Annex e3h9)

Annex IX: Standard template for transfer of asset ownership (Annex e3h10)
NB: In this Users' Guide, 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, the European Anti-Fraud Office (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

19.2.1.1. General principles

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 indirect management with partner countries, where the contracting authority is not the European Commission but instead, for instance, the national authorising officer or the regional authorising officers or a line ministry of the partner country. This provision is also relevant where this standard grant contract is signed by a contracting authority from a partner country 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.	Third parties may not receive funds directly from the contracting authority under the contract instead of the beneficiaries and/or affiliated entities without the prior written consent of the contracting authority. Article 1(2) does not restrict the internal division of labour between several beneficiaries or the payments provided for in the contract (i.e. the payments by the coordinator to co-beneficiaries or affiliated entities or payments to contractors or recipients of financial support).

19.2.1.2. 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(ies) must process personal data under this contract in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).The beneficiary(ies) 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.	

19.2.1.3. Role of the beneficiary(ies)

Text of the article	Guidelines
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	This standard grant contract is used for: (i) all modalities of action grants: mono-beneficiary with/without affiliated entities and multi-beneficiary with/without affiliated entities, (ii) in case of operating grants.

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 requests made to the contracting authority are sent via the coordinator; e) agree upon appropriate internal arrangements for the internal coordination and representation of the beneficiary(ies) vis-à-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). 1(5) bis. Grant beneficiaries and contractors must ensure that there is no detection of subcontractors, natural persons, including participants to workshops and/or trainings and recipients of financial support to third parties, in the lists of EU restrictive measures.	Note that operating grants may cover a maximum period of one year. By nature operating grants are always mono-beneficiary, supporting the Work Programme of only one beneficiary. Furthermore, the participation of affiliated entities is not possible under operating grants. As of 2015 this standard grant contract is not used where the coordinator (or the only beneficiary) is an organisation (in particular international organisation or EU Member State agency) whose pillars have been positively assessed by the Commission. The organisation will instead sign a Contribution Agreement (previously Pillar Assessment Grant Agreement based on the PAGoDA template). For EU external actions, this applies both to direct awards and grants awarded through calls for proposals. Note that the Contribution Agreement only caters for action grants. Operating grants are generally not awarded to pillar-assessed organisations. For further information on grants with pillar assessed organisations, see Chapter 5 of the DEVCO Companion. The term 'beneficiaries' refers collectively to all beneficiaries of the action, i.e. all entities signatory to the contract (either because they signed the contract directly or because the coordinator signed the contract also on their behalf, as provided in the mandate attached to the application form. By default, the coordinator signs on behalf of all beneficiaries. However, the contract may instead be signed by all beneficiaries if they request so (without the need for a derogation). This has no impact whatsoever on the rights and obligations of the beneficiaries under the contract. All beneficiaries must be listed in the special

	conditions (Annex e3h1). a) All beneficiaries are jointly responsible 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 contract (operational responsibility). However, vis-à-vis the contracting authority, the financial responsibility for the implementation of the entire action including the parts implemented by co-beneficiaries and affiliated entities rests with the coordinator (see Article 1(6)(g)). This means that the contracting authority will, where necessary, recover funds only from the coordinator. Definition of sound financial management is provided in the DEVCO Companion. e) This provision does not refer to the mandate conferred to the coordinator included in the application form (Annex e3b) that needs to be submitted to the contracting authority during the application phase. These arrangements are an internal agreement between the beneficiaries and, as such, do not need to be submitted to the contracting authority. The European Commission does not provide a template for such internal arrangements. 1(5) bis. For the purpose of the verification of the EU restrictive measures, the evaluation committee before the signature of the contract must verify that no detection of a recommended grant applicant, co-applicants, affiliated entities in the list of EU restrictive measures by checking the composition of the CEO, or the executive board of the company.

19.2.1.4. 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 narrative reports and 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	Where there is only one beneficiary, this beneficiary will assume - by nature - the role of the coordinator. h) Given that the financial responsibility vis-à-vis the contracting authority is on the coordinator, any eventual financial guarantee must therefore be made on the name of the coordinator. k) This only relates to the obligations vis-à-vis the contracting authority and is without prejudice to the internal arrangements between the beneficiaries.

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 or subcontract any, or part of, these tasks to the beneficiary(ies) or other entities.	

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 describe the implementation of the action according to the activities envisaged , difficulties encountered and measures taken to overcome problems, eventual changes introduced, as well as the degree of achievement of its results (impact, outcomes or outputs) as measured by corresponding indicators. The report shall be laid out in such a way as to allow monitoring of the objective(s), the means	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 beneficiaries agree that any information given, as well as any request made by the coordinator to the contracting authority, must be deemed in agreement with all beneficiaries. The

envisaged or employed 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; 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) include the current results within an updated table based on the logical framework matrix including the results achieved by the action (impact, outcomes or outputs) as measured by their corresponding indicators; agreed baselines and targets, and relevant sources of verification; e) determine if the intervention logic is still valid and propose any relevant modification including regarding the logical framework matrix; f) be drafted in the currency and language of this contract; g) include any update on the communication plan as provided by Article 6(2); h) include any relevant reports, publications, press releases and updates related to the action.	coordinator may not justify shortcomings in reporting by invoking mistakes of co-beneficiaries and has full responsibility for the reports or information submitted to the contracting authority (ref. Article (1)(6)(c)). The reporting templates (narrative & financial, interim & final) attached to the contract as Annex VI have to be used. The period covered by the narrative report must match with the period covered by the financial report. The period must be clearly stated in the reports. These reports, both narrative and financial, (as well as audits, expenditure verifications and detailed breakdown of expenditure, where applicable) must cover the whole action as it was presented in the application and accepted by the contracting authority, not only the share financed by the EU contribution. The final agreed and binding version of the action is described in Annexes I and III that form an integral part of 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 (possibly subject to an amendment in accordance with Article 9) as compared to the initial proposal with regards to results and to means and costs. Each narrative report has to include an updated logical framework matrix. The following definitions are included in Annex e3d (logical framework to be submitted with full application):

	'Impact' means the primary and secondary, long term effects produced by the action. 'Outcome' means the likely or achieved short-term and medium-term effects of an action's outputs. 'Output' means the products, capital goods and services that result from an action's activities. 'Indicator' is the quantitative and/or qualitative factor or variable that provides simple and reliable means to measure the achievement of the results of an action. 'Baseline' means the starting point or current value of the indicators. 'Target' (or results goal) means the quantitatively or qualitatively measurable level of expected output, outcome or impact of an action. A 'logical framework matrix' (or 'logframe matrix') is a matrix in which results, assumptions, indicators, targets, baselines, and sources of verification related to an action are presented. The results chain tells how, in a given context, the activities will lead to the outputs, the outputs to the outcome(s) and the outcome(s) to the expected impact. The most significant assumptions developed in this thinking process are to be included in the logframe matrix. The logframe matrix presented for the description of an action will be updated for reporting purpose by adding one column providing the actual value of the results indicators for each relevant level of the chain of the results. Any necessary update/modification of the targets, baselines, sources of verification related to these indicators should be made in the

	same logframe matrix with due consideration to the rules for amendments. If it is not clear to the contracting authority that results have been achieved or how the activities reported are related to the results of the action, additional information and clarification may 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 (example: 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 must 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 beneficiaries must be able to justify them upon request. The financial reports must be consistent with the records, accounts, and ledgers of the beneficiaries and affiliated entities. A detailed breakdown of expenditure (for example a nominal ledger) or an expenditure verification report has to be attached, where

	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 Commission headquarters 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 (i.e. the language in which the contract was drawn up), 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 beneficiaries or improves the readability of the report or document. No originals or copies of invoices, contracts or order forms have to be attached to the reports. The only exceptions are 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 assessing 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 may be 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 a whole for all its duration. The final report must always include a detailed breakdown of expenditure covering the whole action and, in addition, an expenditure verification report if requested in accordance with Article 15(7). The information on transfers of ownership (where applicable) has to be provided using the template in Annex IX. The copies of the proofs of transfers have to be attached according to Article 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. If the different reporting requirements are already known at an earlier stage, the relevant requirements should be included in the special conditions template published with the guidelines for applicants.
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 execution period. Following receipt of 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 another 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 has to be provided upon request of the contracting authority, globally in an annex or in the documents, whichever is more convenient for the beneficiaries and improves the readability of the document. Article 2(4) should not be used to impose additional reporting obligations on beneficiaries. Those are covered by Article (2)(3).
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 rules 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 Article 15 for more details and specific

	cases. The special conditions may 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 (via the contracting authority from the partner country in indirect management) is financially supporting the action does not transfer any responsibility for circumstances resulting from the implementation of the action to the EU or the contracting authority (where the EU is not the contracting authority). This responsibility rests entirely on the beneficiaries. Where a beneficiary is an international organisation, the liability under Article 3 is subject to the rules governing the organisation's privileges and immunities (see annex e3h11). Beneficiaries have to ensure that Articles 3(1) and 3(2) also apply to affiliated entities (see Article 14(12)).
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. For the purpose of this Article 3 employees of the beneficiary(ies) shall be considered third parties.	The beneficiaries must indemnify and hold harmless the contracting authority against claims, damages, losses and expenses arising out of or resulting from the negligence or misconduct of the beneficiaries in the context of the implementation of the action. Where the rights of employees of the beneficiaries are violated the beneficiaries must be obliged to discharge the contracting authority as well.

19.2.4. Article 4 - Conflict of interests and Code of Conduct

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 61 of the EU budget Financial Regulation (FR)[1] 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, including national authorities at any level or an internal auditor, is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other direct or indirect interest with the beneficiaries. In other words, a conflict of interest arises where the beneficiary(ies) has the opportunity to put private interests before his professional duties, or merely any event influencing the capacity of the beneficiaries 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. Beneficiaries have to ensure that Articles 4(1) to 4(11) also apply to affiliated entities (see Article 14(12)). Regarding the applicability of this article to contractors see also Article 10(2).
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.	During the performance of the contract, the beneficiary(ies) must immediately inform the contracting authority of any arising conflict of interests and measures should be adopted to address situations that may objectively be perceived as a conflict of interest. These measures may include the termination of the

	contract.
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.	Where a co-beneficiary is an international organisation whose pillars have been positively assessed, Articles 4(3) and 4(4) must be applied according to the organisation's rules and regulations positively assessed in the pillar assessment (see Annex e3h11).
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.	
4(5) The beneficiary(ies) shall at all-time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the action or the services without the prior approval of the contracting authority. It shall not commit the contracting authority in any way whatsoever without its prior consent, and shall make this obligation clear to third parties.	
4(6) Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The beneficiary(ies) shall also inform the contracting authority of any breach of ethical standards or code of conduct as set in the present article. In case the beneficiary(ies) is aware of any violations of the abovementioned standards it shall report in writing within 30 days to the contracting authority.	The European Commission applies a zero tolerance policy regarding all forms of misconduct including sexual exploitation, abuse and harassment by its staff and those of partner organisations receiving EU funds. In this respect, Article 4(6) covers any form of physical, sexual and psychological conduct as well as any form of verbal and no-verbal abuse and intimidation, including harassment and sexual harassment.

	Beneficiary(ies) must immediately report to the contracting authority any allegation of misconduct involving sexual exploitation, abuse and harassment. If the contracting authority is an EU delegation, it must also inform the relevant 'Finance and Contracts' unit as well as the central contact point in Headquarters (DG DEVCO Director R. Security Coordinator). As a minimum this notification should include the following information about the report/allegation e.g. misconduct category, type and short description. It is for the contracting authority to assess the gravity of the misconduct, taking into account possible remedial measures taken. These remedial measures may include for instance: - the active collaboration with the investigating authorities; - the implementation of safeguarding procedures to prevent, respond and manage the harassment/sexual harassment and sexual exploitation and abuse situations, such as: creating internal procedures to address the risk of sexual exploitation and abuse in the beneficiary staff programme, developing a code of conduct with standards that include the sexual exploitation and abuse principles, developing complaints procedures for the staff and other personnel to report incidents, developing internal investigation procedures, ensuring disciplinary actions and sanctions, establishing and implementing a victim assistance mechanism; - the evidence of appropriate staff reorganisation measures following the misconduct, such as the dismissal of the employee responsible of the infringement.

	Investigations should be completed within an acceptable time frame and the contracting authority should update DG DEVCO Directorate R and the appropriate geographical directorate on outcomes and actions taken. If the contracting authority considers the remedial measures to be not sufficient, it must inform the beneficiary. These procedures should take into consideration all relevant data protection and confidentiality related requirements. The contracting authorities must treat the related information as 'special categories of personal data' and in doing so ensure appropriate confidential storage and handling. To this end, the contracting authorities must have in place appropriate safeguards for the rights of the data subjects concerned, in particular adequate technical and organisational measures to ensure the security and confidentiality of such categories of data, to prevent accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted stored or otherwise processed. Where the contracting authority is a EU Delegation the measures may, among other, take the form of secure transmission of data via Secure Electronic Mail (SECEM), definition of access rights strictly on a need to know basis, secure storage of paper files in locked cupboards, restricted access to relevant Ares files, secured electronic documents stored in common drives.
4(7) The beneficiary(ies) and its/their staff shall respect human rights and environmental legislation applicable in the country(ies) where the action is taking place and internationally agreed core labour standards, e.g. the International Labour Organisation core labour standards, conventions on freedom of	Beneficiaries must respect 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

association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.	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.
4(8) The beneficiary(ies) or any related person shall not abuse of its entrusted power for private gain. The beneficiary(ies) or any of its subcontractors, agents or staff shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from performing any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The beneficiary(ies) shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.	
4(9) The payments to the beneficiary(ies) under the contract shall constitute the only income or benefit it may derive in connection with the contract, with the exception of revenue generating activities. The beneficiary(ies) and its/their staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.	
4(10) The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every	The contracting authority could declare ineligible any abnormal high price charged to the action while buying goods or contracting services. In this situation, the overprice paid could be considered ineligible if the beneficiaries does not provide a justified reason.

appearance of being a front company. The contracting authority and the European Commission may carry out documentary or on-the-spot checks they deem necessary to find evidence in case of suspected unusual commercial expenses.	
4(11) The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 12 of the general conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.	The grave professional misconduct covers not only the misconduct related to offensive behaviours as defined in the 'zero tolerance' clause (Article 4(6)), but also any wrongful conduct that has an impact on the professional credibility of the contractor and denoting a wrongful intent or gross negligence. In practical terms, the contracting authority may invoke the grave professional misconduct for all wrongful conduct that implies a breach of the obligations stated in the code of conduct/ethical obligations by contractors that the contracting authority can demonstrate with any means. In this respect, the grave professional misconduct may lead to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures. Article 136 (1)(c) FR provides a non-exhaustive list of cases, such as: - fraudulently or negligently misrepresenting information required for the verification of absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment; - entering into agreement with other persons or entities with the aim of distorting competition; - violating intellectual property rights; - attempting to influence the decision-making of the authorising officer responsible during the award procedure;

	- attempting to obtain confidential information that may confer upon it undue advantages in the award procedure.

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.	Beneficiaries have to ensure that articles 5(1) to 5(3) also apply to affiliated entities (see Article 14(12)).
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

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1).

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 Requirements for European Union External Actions laid down and published by the European Commission, that can be found at: https://ec.europa.eu/europeaid/sites/devco/files/communication-visibility-requirements-2018_en.pdf or with any other guidelines agreed between the European Commission and the beneficiary(ies).	The general purpose of these Communication and Visibility Requirements is to ensure that any communication on EU-funded external actions is consistent with the Union's values and political priorities and with other EU-related communication activities and events. This document describes the partners' legal obligations and the mandatory elements of the communication and visibility measures that must accompany all EU-financed external actions. Unless the agreements and contracts concerned explicitly provide otherwise, it therefore constitutes a contractually binding framework applicable to all contracts (including those concluded with subcontractors) that refer to the Requirements, irrespective of the contracting authority. The text includes links to accompanying documents that provide additional guidance Beneficiaries must make sure to publicise the fact that the EU has funded the Action. Beneficiaries 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 must be agreed with the contracting authority in the special conditions and included in the communication plan. For indirect management: In order to apply a derogation the contracting authority has to obtain the European Commission's prior authorisation. This authorisation is generally granted by endorsing the respective contract including the special conditions with the modifications.

	Different guidelines have, for example, been agreed with the UN and the World Bank. Failure to follow the contractual provisions on visibility may be a ground for termination according to Article 12, suspension of the period for payments in accordance with Article 15(5)(g) or reduction of the grant in accordance with Article 17(2). Where a beneficiary is an international organisation, additional rules on the use of logos and emblems apply (see Annex e3h11). Beneficiaries have to ensure that Articles 6(1) to 6(5) also apply to affiliated entities (see Article 14(12)).
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 at the latest during the inception phase. Guidance can be found in Section 2(3) of the Communication and Visibility Requirements or, where applicable, in other guidelines agreed upon between the beneficiaries and the European Commission. The communication plan has to contain a budget for the visibility, even for small projects. A section 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) must 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 provided by third parties. The logo information can be found at the Communication and Visibility Requirements website: https://ec.europa.eu/europeaid/sites/devco/files/communication-visibility-requirements-2018_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 must contain the standard disclaimer set out in Article 6(4). More details can be found in Section 5.3 of the Communication and Visibility Requirements or, where applicable, in other guidelines agreed upon between the beneficiaries and the European Commission.
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 a derogation from the publication of this information, the coordinator must submit a justified written request 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).	By default, the beneficiaries own any intellectual or industrial right developed in the course of the action such as patents, trademarks, copyright etc. However, the contracting authority and the Commission must be granted a non-exclusive right to use, free of charge, all of the results, reports and other documents produced in the course of 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.	Where material includes existing rights of third parties that might limit the contracting authority's (and, where applicable, the European Commission's) right to use the material, the coordinator must inform the contracting authority without delay. Notwithstanding the foregoing, beneficiaries have to ensure that they have the necessary rights to implement the action (see Article 7(3) below).
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) Unless otherwise clearly specified in the description of the action in Annex I, the equipment, vehicles and supplies paid for by the budget for the action shall be transferred to the	The principle to keep in mind is to transfer the items procured with the budget of the action (and therefore also with co-financing funds) to the entities that are in the best position to use

final beneficiaries of the action, at the latest when submitting the final report. If there are no final beneficiaries of the action to whom the equipment, vehicles and supplies can be transferred, the beneficiary(ies) may transfer these items to: - local authorities - local beneficiary(ies) - local affiliated entiy(ies) - another action funded by the European Union - or, exceptionally, retain ownership of these items. In such cases, the coordinator shall submit a justified written request for authorisation to the contracting authority, with an inventory listing the items concerned and a proposal concerning their use, in due time and at the latest with the submission of the final report. In no event may the end use jeopardize the sustainability of the action or result in a profit for the beneficiary(ies).	them efficiently for the sustainability of the action once it ends, or for any other purpose agreed with the contracting authority. The preferred option is a transfer to the final beneficiaries of the action who, as a requisite, must be identifiable and have legal personality (as for example a school or a hospital). If the above option is not feasible, the items may be transferred to the other entities mentioned in the second paragraph of Article 7(5) or to another action funded by the EU. There is no order of preference in this regard. The transfer must occur at the latest when submitting the final report. Only where none of the aforementioned options is available, may the items exceptionally be kept by non-local beneficiaries or non-local affiliated entities themselves. Any item that is not transferred by the beneficiaries before the end of the action must be considered as ineligible expenditure. The information on transferring ownership of the aforementioned items must be provided in accordance with the templates provided for in Annex IX of the special conditions. Where the items are transferred to another action funded by the EU the beneficiaries must provide the relevant information in the final report. If a transfer of the items is not possible or feasible and the further use of the items by the concerned beneficiary does not help to achieve a EU policy objective, the eligible expenses to be reimbursed must be reduced pro rata taking into account the depreciation of the items in the course of the implementation of the action (see also Article 14(2)(d)). If the beneficiaries and the contracting authority

	agree to transfer the items to another action supported by EU funds the beneficiaries must be reimbursed all costs incurred for the transfer. When the equipment is transferred to another project financed by the EU, two options are possible in terms of costs: 1) The full cost is supported by the 1st project and no cost of purchase can be charged on the 2nd project; 2) The cost for the purchase is reduced under the 1st project (depreciation cost only) and the residual is charged on the 2nd project. Where the description of the action already foresees that items will be transferred to other entities than final beneficiaries or may be kept by the beneficiaries/affiliated entities the contracting authority has approved this approach by signing the contract and a separate written request is not necessary. In this case also, if the further use of the items does not help to achieve a EU policy objective, the eligible expenses to be reimbursed must be reduced pro rata taking into account the depreciation of the items in the course of the implementation of the action. If the need for modification arises later (i.e. after the signature of the contract it turns out that a transfer to the final beneficiaries is not feasible), a justified written request for prior authorisation has to be submitted to the contracting authority. An amendment to the contract is not necessary in this case. Where a beneficiary is an international organisation, and the action funded by the EU contributes to a larger action, the organisation may transfer the equipment, vehicles and supplies paid by the budget of the action to this larger action. In such case, the organisation must submit an inventory listing the items

	concerned and their use with the submission of the final report. The visibility requirements regarding the equipment, vehicles and supplies must continue to apply at least until the end of the larger action (see Annex e3h11). Where a beneficiary is an international organisation, proofs of transfer of any equipment and goods transferred by the organisation must not be attached to the final report but kept for verification according to Article 16 (see Annex e3h11). Where a beneficiary may retain ownership of the items, the beneficiary must apply the visibility obligations under the contract as long as the items are used.
7(6) Copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was more than EUR 5 000 per item, shall be attached to the final report. Proofs of transfer of equipment and vehicles whose purchase cost was less than EUR 5 000 per item shall be kept by the beneficiary(ies) for control purposes.	

19.2.8. Article 8 - Monitoring and evaluation of the action

Text of the article	Guidelines
8(1) Annex I shall describe in detail the monitoring and evaluation arrangements that the beneficiary(ies) will put in place.	The beneficiary has to include all the monitoring and evaluation arrangements in Annex I: Description of the action.
8(2) If the European Commission carries out an interim or *ex post* evaluation or a monitoring exercise, the coordinator shall undertake to provide it and/or the persons authorised by it with the documents or information necessary for the evaluation or monitoring exercise.	The beneficiaries must 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.

Representatives of the European Commission shall be invited to participate in the main monitoring and in the evaluation exercises relating to the performance of the action performed by the beneficiary(ies). The European Commission shall be invited to comment the evaluation(s) terms of reference before the exercise is launched as well as the draft report(s) before they are finalised.	
8(3) If either the beneficiary(ies) or the European Commission carries out or commissions an evaluation or monitoring exercise in the course of the action, it shall provide the other with a copy of the related report. All the evaluation and monitoring reports, including final values for each of the indicators in the logical framework, shall be submitted to the European Commission with the final narrative report (annex VI).	All mid-term and final evaluation reports produced by the beneficiaries 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 must be done in writing according to the procedures provided for in Articles 9(3) and 9(4). Oral arrangements or an exchange of emails must never legally bind the parties in this regard. In case of exchanges of emails having contractual implications, staff of the contracting authority should use systematically a disclaimer indicating that the contract can only be modified through an addendum duly signed by both parties. Execution period as set forth in Article 2(4) of the special conditions means the period during

	which the contract is legally valid i.e. from contract signature until final payment, and in no event later than 18 months after the end of the implementation period (unless postponed in accordance with Article 12(5) of the general conditions). Implementation period means the period during which the action is implemented (as defined in Article 2(3) of the special conditions).
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 shall 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) that are in the same situation. For this reason, the conditions of the call for proposals must be strictly followed 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.	Amendment by addendum Contracts cannot be amended after the end of the execution period. Note that the execution period of the contract is longer than the implementation period. In exceptional circumstances, the amendment may have a retroactive effect provided the execution period has not expired. The beneficiary bears the financial risk of any costs incurred before the addendum has been issued, because the contracting authority has the right to refuse to sign the addendum. Only once

	the addendum enters into force may the beneficiary claim payment for the costs. An amendment request must be duly substantiated and, in particular, must include all information necessary for the contracting authority to take 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 must 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 must 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 recommended to send a request for amendment as early as possible. The amendment to the contract must be signed by the same parties who signed the initial contract, i.e. the coordinator and the contracting authority. Extension of the implementation period (see Article 11(1)) This applies when the duration of the Action is extended. A request extending the implementation period of the action may not entail an increase of the EU contribution (no cost extension) and always requires an addendum in accordance with Article 9(1). and a proper justification, which must not be limited to using the unspent budget balance.
9(4) Where the amendment to the budget does	Unilateral amendments

not affect the expected results of the action (i.e. impact, outcomes, outputs), 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 must inform the contracting authority accordingly, in writing and at the latest in the next report. 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 defined in the contract. Changes in description of the action and the logical framework that affect the expected results (impact, outcomes, outputs) shall be agreed with the contracting authority before the modification takes place. Approved changes must be explained in the next report .	The coordinator must inform in writing the contracting authority of any amendment according to Article 9(4) in writing and at the latest in the next report. However, it is in the interest of the coordinator who bears the financial responsibility for changes that the contracting authority might refuse (see below paragraph) to inform the contracting authority as soon as the need for amendment is identified and if possible prior to any intended changes taking effect to avoid incurring ineligible costs. Where the amendment to the budget 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. A specific approval from the Contracting Authority is therefore not necessary. However, if the contracting authority finds that the conditions listed in Article 9(4) have not been respected, it must 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 must have no effect and any cost relating to this amendment must be considered as ineligible. There are generally two kinds of unilateral amendments: 1) Unilateral amendment: budget amendment The budget attached to the contract must be respected. However, beneficiaries can benefit from a certain flexibility within the budget, as long as the 'expected results of the action' are not affected and the change does not call into question the initial award of the grant or the

	equal treatment of applicants. The term 'results' includes: overall objective (impact), specific objective (outcome), other outcomes and outputs. In case of doubt, it is strongly recommended to check beforehand with the contracting authority that the proposed modifications do not impact the expected results of the action. As long as the expected results of the action is not affected, beneficiaries can: - make transfers between items or cancel or introduce new items within the same main budget heading. The term 'main budget heading' has to be understood as the numbered budget headings, i.e. the headings number 1 (human resources), 2 (travel), 3 (equipment and supplies), 4 (local offices), 5 (other costs, services) and 6 (other). - transfer part of the budget from one main budget 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 amendments 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. If a main budget heading has a provision of 100, and it is sought to transfer the maximum allowed amount to another heading, i.e. 25, this will only

	be possible if the other heading had also a provision of 100 or more. If this other heading had only a provision of 90, it cannot receive a transfer of 25 as this would constitute an increase of more than 25%. In other words, the limit of 25% applies not only to the heading where the money is taken from, but also to the heading intended to receive the transferred amount. - successive unilateral modifications to the budget must 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)). Without such addendum (to regularize the modification that leads to exceeding the 25%) all costs exceeding the threshold related to that modification would be ineligible. When informing the contracting authority, a comparative version of the budget with the cumulative changes already made must also be submitted. Caution should always be used in making any modification to the human resources allocated to the action. In this case and in all doubtful cases, it is advisable to discuss and, if possible, agree in writing with the contracting authority beforehand.

	2) Unilateral amendment: changes in the description of the action Again, unilateral changes in the description of the action and the logical framework that do not affect the expected results (impact, outcomes, outputs) are allowed as long as they do not call into question the initial award of the grant or the equal treatment of applicants. Unilateral amendments affecting the Description of the Action and the Logical Framework that affect the expected results (impact, outcomes, outputs) are not possible and may lead to a termination of the contract by the contracting authority in accordance with Article 12(2). To avoid termination on this ground an amendment can be agreed on, but only as long as such amendment would not call into question the award decision or violate the principle of equal treatment (see above).
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 must 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 implementation of the action requires the beneficiary(ies) to procure goods, works or services, it shall respect the contract-award rules and rules of nationality and origin set out in Annex IV of this contract.	Annex IV describes the principles to be observed by beneficiaries and affiliated entities 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 the contract (as stated in the introduction of the Practical Guide), unless a beneficiary explicitly and voluntarily decides to apply them along with PRAG's templates. The general principles mentioned in section 1 of Annex IV have to be respected in the award and conclusion of any procurement contract within a grant contract. The *ex post* checks to be carried out by the contracting authority (and the European Commission where it is not the contracting authority) are a very useful tool to see whether procurement rules are being applied properly by the beneficiaries. 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. Beneficiaries are of course expected to contribute to these checks by providing all the necessary information as per Article 16(4). The existing methodology on the monitoring of projects (with emphasis on the procurement on the basis of Annex IV) may be followed. Beneficiaries may use a central buying office as service provider or a humanitarian procurement centre recognised as such by the European Commission. In this case the relevant office or

	centre will have to comply with the requirements set forth in Annex IV. Rules of nationality and origin The rules of nationality and origin (section 2 of Annex IV) have to be respected rigorously by beneficiaries. Annex IV makes reference to Annex a2a to the Practical Guide that contains detailed information on eligible countries for actions funded by both the EU budget and the EDF. Even if the basic principles described in section 1 of Annex IV have 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 works contractors. It applies to all service, works, and supply contracts to be concluded within the grant contract. 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. The rule of origin refers to the origin of goods and equipment. It applies to supplies and works contracts. For further information on the rules on nationality and origin, see section 2.3.1 of the PRAG. Under the Common Implementing Rules (CIR)[2] (i.e. not Instrument for Pre-accession Assistance I) and the European Development Fund, supplies may originate from any country if the amount of the supplies to be procured is below EUR 100 000 per purchase. Where several categories of items are purchased under the same call for tenders and consequently lots are used, the threshold of EUR 100 000 applies per lot. In the same tender, we can therefore have

	lots above EUR 100 000 following the rule of origin and lots below this amount free of it. No artificial splitting of the market is allowed to circumvent the rule of origin. The procurement plan within the contract and the division into lots of a tender must be legitimate. For further details on the application of the EUR 100 000 free of origin in supplies and works contracts, please refer to Section 2.3.1 of the PRAG. If the basic act or the other instruments applicable to the programme under which the grant is financed contain rules of origin for supplies acquired by the beneficiary in the context of the grant, the tenderer must be requested to state the origin of the supplies, and the selected contractor will always have to prove the origin of the supplies. For equipment and vehicles of a unit cost on purchase of more than EUR 5 000, contractors must present proof of origin to the beneficiary(ies) at the latest when the first invoice is presented The certificate of origin must be made out by the competent authorities of the country of origin of the supplies and must comply with the rules laid down by the relevant Union legislation. Failure to comply with this condition may result in the termination of the contract and/or suspension of payment. The certificate of origin must be issued by the competent authorities of the country of declared origin of the supplies or supplier (for example the chambers of commerce). However, the certificate of origin should not be regarded as a legal proof of the origin, but as useful element for determination of the origin, which may, in case of doubts, facilitate further checks. In this case the contracting authority may request,

	additional documentation on the origin of goods (including a cost breakdown prepared by the beneficiary for each item in question), including on-the-spot checks at the place of declared origin if the origin could not be proved successfully by other means. 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).Where the contracting authority is not the European Commission, it must obtain the prior authorisation of the Commission before agreeing on such derogation. For actions within the scope of the CIR: where a beneficiary is an international organisation or a Member State agency and the organisation/agency provides co-financing to the action, participation in procedures for the award of procurement contracts must be open to all natural and legal persons eligible according to the rules of the authorisation/agency in addition to the countries eligible under the applicable CIR. The same rules apply to supplies and materials. Where no co-financing is provided, only the rules on nationality and origin included in the CIR apply.

	For actions funded under the EDF: Where a beneficiary is an international organisation or a member state agency, participation in procedures for the award of procurement contracts must be open to all natural and legal persons eligible according to the rules of the organisation/agency in addition to the rules of Annex IV to the Cotonou Agreement[3]. The same rules apply to supplies and materials. Where no co-financing is provided, only the rules on nationality and origin included in Annex IV to the Cotonou Agreement apply. In all cases, beneficiaries must keep all documents related to procurement (procurement notices, tender dossiers, bids received, any derogation obtained, evaluation/negotiation reports, proofs of origin provided by contractors, etc.) in order to prove compliance with Annex IV.
10(2) To the extent relevant, the beneficiary(ies) shall ensure that the conditions applicable to them under Articles 3, 4, 6 and 16 of the general conditions are also applicable to the contractors awarded an implementation contract.	In all the implementation contracts awarded, it is important for beneficiaries to insert the relevant clauses to ensure the respect of the obligations stemming from these articles (liability, conflict of interest and code of conduct, confidentiality, visibility, accounts and technical and financial checks). These obligations for the contractors concerns only the implementation contracts concluded with beneficiaries in the context of the grant contract. The 'visibility obligation' is to be intended as a reminder for the 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 beneficiary has to require that they display the appropriate visibility.*

	'To the extent relevant' means that not all of the listed articles of the general conditions will be transferred to the contracts with the contractors. Article 3 applies in full, which means that the contractor must indemnify and hold harmless the contracting authority against claims, damages, losses and expenses arising out of or resulting from the contractor's involvement in the action. Article 4 applies in full. Where the contractor has to provide information it will provide this information to the beneficiaries who must then forward it to the contracting authority. For contractors, Article 6(1) means that they have to comply with the rules applicable to contractors as stipulated in the Communication and Visibility Requirements for European Union External Actions. https://ec.europa.eu/europeaid/sites/devco/files/communication-visibility-requirements-2018_en.pdf Article 6(2): the contractors do not have to provide a communication plan but they have to assist - where this forms part of the services to be provided - the beneficiary to produce its communication plan. Article 6(3) applies in full. Article 6(4) only applies to contracts for services and supplies. Article 6(5) applies except for the references to the purpose and amount of the grant. Articles 16(1) to 16(9) apply in full.
10(3) The coordinator shall provide in its report to the contracting authority a comprehensive and detailed report on the award and	In each interim narrative report (Article 2(4)) and in the final narrative report (Article 2(10)), beneficiaries have to list all contracts (works,

implementation of the contracts awarded under Article 10(1), in accordance with the reporting requirements in Section 2 of Annex VI.	supplies, services) above EUR 60 000 awarded for the implementation of the action during the reporting period, giving for each contract the amount, the name of the contractor and a brief description on how the contractor was selected.

19.2.10.2. Subcontracting

Text of the article	Guidelines
10(4) Beneficiary(ies) may subcontract tasks forming part of the action. If it does so, it must ensure that, in addition to the conditions specified in Article 10(1), 10(2) and 10(3), the following conditions are also complied with: - subcontracting does not cover core tasks of the action; - recourse to subcontracting is justified because of the nature of the action and what is necessary for its implementation; - the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III; - [any recourse to subcontracting, if not provided for in Annex I, is communicated by the beneficiary and approved by the contracting authority].	

19.2.10.3. Financial support to third parties

[2] Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (OJ L 77, 15.3.2014, p. 95).

[3] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, 15.12.2000, p. 3).

Text of the article	Guidelines
10(5) 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 beneficiaries of financial support to third parties (FSTP). FSTP may be a 'grant in cascade' not necessarily following a call for proposals, or a financial contribution of a different nature (see further details below). The persons/entities receiving FSTP are the final recipients of the EU funds. This is allowed provided that the objectives or results to be obtained are clearly detailed in the description of the action and that all 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 action, the contracting authority exclusively turns to the coordinator, who then may be asked to reimburse amounts that beneficiaries or affiliated entities have unduly transferred as FSTP. A thorough assessment of the coordinator's financial capacity is therefore recommended prior to awarding a contract involving FSTP. 2) Beneficiaries may not exercise any discretionary power in granting FS to third parties. In order to ensure this, the guidelines for applicants require that the proposals include: - a fixed and exhaustive list of the different types of activities for which a third party may receive FS, - the definition of the persons or categories of persons that may receive FS, - the criteria for awarding FS,

	- the maximum amount to be granted to each third party and the criteria for determining it. In all events, these elements have to be specified in the contract (notably in the description of the action). For further information on FS to third parties see section 6.9.2 of the Practical Guide. 3) Beneficiaries must ensure that recipients of FS 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 in the recipient's premises (see Article 10(9)). For FSTP, the beneficiaries are fully responsible for the implementation of the action in compliance with the contract. This does not mean however that the beneficiaries must recover funds unduly paid to a third party recipient. Nor does it mean that the FS to third parties must take the form of reimbursement of certain costs (with associated eligibility conditions). It is possible, but not compulsory. It only means that if the conditions set out in the contract for FSTP are not fulfilled, the corresponding costs incurred by the beneficiaries will not be eligible. *Example: FS is, in accordance with the contract, to be given to local NGOs for teaching activities. The funds received as FS are used by local NGOs for their own promotion. The FS given by the beneficiary is ineligible, the funds incorrectly used will be recovered by the contracting authority from the coordinator (regardless of who is at fault and of whether the coordinator decides to recover that money from the local NGOs or not).*

	Finally, beneficiaries cannot be exempted from their responsibility on the basis of the argument that the action was not properly implemented due to a failure by the recipients of FS.
10(6) The maximum amount of financial support shall be limited to EUR 60 000 per each third party, except where achieving the objectives of the actions would otherwise be impossible or overly difficult.	In former Financial Regulation[4], the maximum amount of financial support must be limited to EUR 60 000 per each third party, except where the main purpose of the action is to redistribute the grant. With the new 2018 FR, this threshold may be exceeded where achieving the objectives of the actions would otherwise be impossible or overly difficult. FSTP 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 FS to third parties under the same conditions as beneficiaries (i.e. on the condition that all the minimum elements required in the Description of the Action are respected). When a beneficiary pays FS on the basis of a 'global amount' this amount is not to be considered as simplified cost options in the contract (for the beneficiaries vis-à-vis the contracting authority it is just like any other actual cost incurred - see Article 10(6)). The guidelines for applicants of the call for proposals may further restrict the conditions for providing FSTP, for instance setting a lower maximum amount. The guidelines may also foresee limitations or requirements (such as principles for the award

	procedures for FSTP) that will apply to FSTP under the specific call. For further information, see Section 6.9.2 of the PRAG.
10(7) 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.	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 with any conditions or restrictions set out regarding: (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/entities or categories of persons/entities that may receive financial support (iv) the criteria for selecting these persons/entities and giving the financial support (v) the criteria for determining the exact amount of financial support for each third party, and (vi) the maximum amount that may be given. The eligible categories of persons/entities are not necessarily those eligible under the call for proposals with regard to beneficiaries and affiliated entities: usually the basic acts do not impose any specific nationality rule on recipients of FS. In fact it is the guidelines for a specific call for proposals 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. The modalities through which the FSTP is granted (e.g. following a call for proposals, direct award, etc.) must also be specified.

	It is advised to agree with the beneficiaries 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 FSTP (e.g. where the financial support targets a specific activity to be implemented by the third party). The FSTP may take the form of 'unconditional cash transfer' where no specific activities are supported: this should be set forth in the guidelines for applicants. 'Unconditional', means that FSTP 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. FSTP 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 beneficiaries can prove payment (for example a paper from the 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. 'Conditional' transfers are also possible (e.g. seed money to a micro-enterprise subject to establishment of favourable working conditions or recruitment of women).
10(8) The coordinator shall provide in its report to the contracting authority a comprehensive and detailed report on the award and	Keep in mind that the FSTP is justified if given to support the achievement of the objectives of the action.

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. .	The FSTP has to be necessary for the implementation of the action, and embedded in its design. Refer to Article 16(9) on supporting documents. The FSTP must be clearly identifiable in the budget under Heading 6 'Other'.
10(9) To the extent relevant, the beneficiary(ies) shall ensure that the conditions applicable to them under Articles 3, 4(1)-4(4), 6 and 16 of these general conditions are also applicable to third parties awarded financial support.	The third parties receiving financial support from the beneficiaries are not subject to the same eligibility criteria as those applicable to beneficiaries and affiliated entities under the call for proposals. Likewise, the FS 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). FSTP 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 or entities who may receive FS from the beneficiaries and the maximum amount of FS together with the way the exact amount is calculated (see above Article 10(5)). 'To the extent relevant' in Article 10(9) means that not all of the listed Articles of the general conditions will be transferred exactly to the contracts with all recipients. As a general rule, recipients of FS that implement part of the project and manage the funds in a similar way as the beneficiaries will have to comply with all provisions that have to be 'forwarded' by the

	beneficiaries: Article 3 applies in full, which means that the recipients must indemnify and hold harmless the contracting authority against claims, damages, losses and expenses arising out of or resulting from the recipient's involvement in the action. Articles 4(1) to 4(4) apply in full. Where the recipient has to provide information it will provide this information to the beneficiaries who must then forward it to the contracting authority. However, Article 4(5) does not apply to recipients of FS. Article 6(1) applies in full. Article 6(2): The recipients do not have to provide a communication plan but they have to assist - where necessary - the beneficiary to produce its communication plan. Articles 6(3) and 6(4) apply in full. Article 6(5) applies except for the reference to Article 3. Articles 16(1) to 16(2) must not apply to recipients unless expressly required in the relevant guidelines for applicants and/or the contract. Articles 16(3) to 16(6) apply in full. Articles 16(7) to 16(9) apply to the extent that the relevant documents need to be kept for the period stipulated in Article 16(7). However, only those documents need to be kept that are necessary to verify that the funds have been used for the purpose and in line with the contract. For further information on the documents to be kept see Article 16(9). On the other hand, for example refugees who receive a general support to their living do not

	have to comply with the aforementioned provisions.

19.2.11. Article 11 - Extension and suspension

19.2.11.1. Extension

[4] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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 with Article 9. The request shall be accompanied by all the supporting evidence needed for its appraisal.	The implementation period of an action is defined in the special conditions. Any extension of the implementation period must be requested during the implementation period, it must be the object of a contract addendum according to Article 9(3) and it must not entail any increase in the EU contribution. This extension may also exceed the maximum planned duration as allowed by the guidelines for applicants: The coordinator may request an extension of the implementation period in accordance with Article 9. In Article 9(2) it is stated that the amendment may not have the purpose or the effect of making changes to the contract that would call into question the grant award decision or be contrary to the equal treatment of applicants. A violation of the principle that such an extension/amendment may not affect the award decision could only be assumed if the applicant was already aware of the circumstances that necessitated the extension when she/he submitted the application, i.e. she/he submitted the application with a shorter implementation period (to be compliant with the guidelines) - knowing that an extension (beyond the allowed maximum duration) would then be necessary at a later stage.

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	The implementation of the action may become temporarily impossible or undesirable due to

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.	exceptional circumstances, most notably of force majeure. In order to qualify as exceptional the event or situation in question must not be part of or be attributable to the usual risks accompanying the beneficiaries' activities. What is considered as exceptional circumstances depends on a case by case assessment: however, it is likely that the vast majority of cases qualifying as exceptional circumstances according to Article 11(2) fall within the broader concept of force majeure. A definition of force majeure is provided in Article 11(8). Under exceptional / force majeure circumstances, the coordinator is entitled to suspend the implementation of the action or parts thereof unilaterally. The suspension of the implementation of the action implies that the beneficiaries stop carrying out the action for a specific period of time. During the suspension period the beneficiaries may only request the reimbursement of the minimum costs necessary for a possible resumption of the action. The coordinator and the contracting authority must agree in writing on such costs, including the reimbursement of legal commitments entered into for implementing the contract before the notification of the suspension was received that the beneficiaries cannot reasonably suspend, reallocate or terminate on legal grounds. This is without prejudice to any amendments to the contract that may be necessary to adapt the action to the new implementing conditions, including, if possible, the extension of the implementation period. The coordinator must inform the contracting authority as soon as possible without unjustified delays in case it intends to suspend the

	implementation of the action or a part hereof. The coordinator must provide to the contracting authority all information necessary 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 should 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 beneficiaries are entitled to incur eligible costs. In case of doubts, the contracting authority must request any proof deemed necessary to show that such exceptional / force majeure circumstances indeed exist. 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, beneficiaries must take all possible measures for minimising the damage due to the exceptional/force majeure circumstances. When an exceptional / force majeure circumstance stops hindering the implementation of the action, and therefore it is possible for the beneficiaries to resume implementation, the coordinator must 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 must be explored. In this assessment, it must be carefully checked to what extent an amendment of the 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 contract should be terminated. If the implementation can no longer be resumed or it cannot be resumed effectively or appropriately, then the contract should be terminated in accordance with Article 12(1).

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 must decide whether to request the coordinator to suspend the implementation of the action. The suspension of the implementation of the action implies that the beneficiaries will stop carrying out the action for a specific period of time. Regarding the eligibility of costs incurred during the suspension period, see comments on Article 11(2).
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	During the suspension, the beneficiaries must take all possible measures for minimising the damage due to exceptional/force majeure circumstances.

suspension and any possible damage and shall resume implementation once circumstances allow and after having obtained the approval of the contracting authority	Beneficiaries must resume timely the implementation of the action, as soon as the exceptional/force majeure circumstances allow it. The coordinator must, 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 must be explored. In this assessment, it must be carefully checked to what extent an amendment of the contract is possible without putting into question the award decision or the equality of treatment. If an amendment goes against these main principles for amendments, the contract should be terminated. If the implementation can no longer be resumed or it cannot be resumed effectively or appropriately, then the contract should be terminated in accordance with Article 12(1).
11(6) The contracting authority may also suspend this contract or the participation of a beneficiary(ies) in this contract if the contracting authority has evidence that, or if, for objective and well justified reasons, the contracting authority deems necessary to verify whether presumably: a) the grant award procedure or the implementation of the action have been subject to breach of obligations, irregularities or fraud; b) the beneficiary(ies) have breached any substantial obligation under this contract.	The contracting authority may suspend the contract or the participation of a beneficiary in the contract if it has evidence that the circumstances in points a) or b) have occurred. In addition, the contracting authority may suspend the contract if, 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 must 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 must 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 must 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 contract. The means of communication used must 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). Costs incurred during a suspension in accordance with Article 11(6) are not eligible. However, if after verification the contracting authority finds out that the circumstances in a) and b) have not occurred, the costs incurred during the suspension and for the resumption of the action will become eligible.
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 prove to have been subject to breach of obligations, irregularities, fraud, or breach of obligations, then the contracting authority may terminate this contract according to Article 12(2)(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 partner country is considered to be a case of force majeure when it implies suspending funding under this contract.	This article defines the elements necessary for circumstances to be considered as 'force majeure': i.e. the event 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 must also have an impact on the implementation of the action by preventing, at least for a given period of time, the beneficiaries 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, must not qualify as relevant for the suspension of the implementation. Defects in equipment or material or delays in making them available, or financial difficulties cannot be invoked as force majeure. Strikes or labour disputes may be invoked if they are beyond the control of the party concerned. E.g. if the employees of a party go on strike that will in most cases not be considered as force majeure as this strike is

	directly linked to the party. However, if e.g. the employees of the national railway agency go on strike and this strike hinders the implementation of the action, such strike could be invoked as a force majeure event.
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 beneficiaries will not be considered in breach of their 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 beneficiaries must 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 must 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. This Article 11(10) does not apply in case of an operating grant.	Suspension according to Articles 11(2), 11(4), and 11(6), must 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 indemnity.	The exceptional circumstances (including but not limited to force majeure events) can make it impossible to continue with 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 must 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 contract by serving two months written notice, without being required to pay indemnity. In this case, as stated in Article 11(9), neither the beneficiaries nor the contracting authority are responsible for not finalising the implementation of the action and therefore must not be considered in breach of their contractual obligations under the contract. In case the action is only partially implemented, the contracting authority will reduce the grant in line with its actual implementation and the costs incurred by the beneficiaries.

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; b) a beneficiary(ies) or any person that assumes unlimited liability for the debts of the beneficiary(ies) is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to the beneficiary(ies); c) a beneficiary(ies), or any related entity or person, have been found guilty of grave professional misconduct proven by any means which the contracting authority can justify; d) it has been established by a final judgment or a final administrative decision or by proof in possession of the contracting authority that the beneficiary(ies) has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose;	The contracting authority will terminate the contract or the participation of a beneficiary in any of the cases foreseen in Article 12(2). However, whenever possible, the termination of the contract should be preceded by an adversarial procedure. In such a case, the contracting authority must first send a pre-information letter explaining its intention to terminate the contract and the specific grounds and reasons for the termination and must leave the coordinator a reasonable time to react and present its comments/objections to the termination (30 days). The contracting authority must use a method of communication that provides clear evidence of the fact that the coordinator was informed and the date of receipt of the information (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 must be given a thorough consideration before taking the final decision on termination. In light of the impact of the termination of a contract, the contracting authority must 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 contract or only the participation of certain beneficiaries, the contracting authority must make a case by case analysis, taking into account the specific role of the beneficiaries involved, the gravity/extent of the circumstances/behaviour, 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 beneficiaries.

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 fail to supply - or fail to supply within the deadlines set under this contract - any information related to the action required by the contracting authority; 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 breach of obligations, 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); 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 beneficiary(ies) under similar conditions, provided that those errors, irregularities, fraud or serious breach of	a) A breach of the contract is committed where beneficiaries individually or collectively fail to properly discharge any substantial obligations under the contract. As a general rule, the contracting authority should first give notice - through a pre-information letter - to the coordinator indicating the reasons why it believes that the beneficiaries have failed to carry out their tasks in accordance with the contract and must leave the beneficiaries (via the coordinator) a reasonable time to react and present comments/objections or to correct this neglect or failure. If the beneficiaries (via the coordinator) still fail to comply or to furnish a satisfactory explanation within 30 days of receipt of the letter, the contracting authority will terminate the contract or the participation of the relevant beneficiaries in the contract. A breach of the visibility obligations under Article 6 will generally be considered a substantial breach of the contract and trigger the right to terminate in accordance with point a).

obligations have a material impact on this grant. The cases of termination under points (b), (c), (d), (h), (j) and (k) may refer also to persons who are members of the administrative, management or supervisory body of the beneficiary(ies) and/or to persons having powers of representation, decision or control with regard to the beneficiary(ies).	
12(3) In the cases referred to in points (c), (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
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 must be very well justified, and the contracting authority must 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. In circumstances where such termination is requested, due account should be taken to ensure the full and timely implementation of the action as outlined in the description of the action, as well as the respect of the principles of proportionality and sound financial management, the respect of the award decision, and the equality of treatment of beneficiaries.

	If the contracting authority agrees to the coordinator's request, then an amendment to the contract according to Article 9(3) introducing the necessary modifications must be made in order to officialise the termination of the participation of the beneficiaries concerned. The general limitations to amendments as set forth in Article 9(2) apply. Any termination of a beneficiary's participation in the contract by the coordinator without the prior consent of the contracting authority constitutes a breach of the contract and may result in the termination by the contracting authority of the whole contract according to Article 12(2)(a).

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 postpone this end date, so as to be able to fulfil its payment obligations, in all cases where the coordinator has submitted a payment request in accordance with contractual provisions or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 13. 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) Upon termination of this contract the coordinator shall take all immediate steps to bring the action to a close in a prompt and orderly manner and to reduce further expenditure to a minimum. Without prejudice to Article 14, 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 due to be executed 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 event of termination according to Article 12(1), the contracting authority may agree to reimburse the unavoidable residual expenditures incurred during the notice period, provided, the first paragraph of this Article 12(7) has been properly executed. 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 unduly paid for the action.	In case of termination in accordance with Article 12(1), provided the first paragraph of Article 12(7) has been properly executed, the contracting authority will in principle accept to reimburse the unavoidable residual expenditures (i.e. costs related to the closure of the action) incurred during the notice period, meaning the costs necessary for the closure of the activities financed under the contract claimed by the beneficiaries.

19.2.12.6. Administrative sanctions

Text of the article	Guidelines

12(8) Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the EU, may be imposed, after an adversarial procedure in line with the applicable Financial Regulation, upon the beneficiary(ies) who, in particular, a) is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years; b) is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years; 12(9) In the situations mentioned in Article 12(8), in addition or in alternative to the sanction of exclusion, the beneficiary(ies) may also be subject to financial penalties up to 10% of the contract value. 12(10) Where the contracting authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the beneficiary(ies) or call on the appropriate guarantee. 12(11) The decision to impose administrative sanctions may be published on a dedicated	In addition to the remedies that have their origin in the contract, the European Commission may also impose statutory sanctions on beneficiaries 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 5 years, - financial penalties: fines representing up to 10% of the total value of the contract. Contract value in this context means the maximum amount of EU contribution set forth under Article 3(2) of the special conditions. 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 powers of the European 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 affected beneficiaries in which they are allowed to present their observations vis-à-vis the alleged facts and intended penalty. The authorising officer by delegation must 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.

internet-site, explicitly naming the beneficiary(ies).	In contracts under indirect management, where the commission is not the contracting authority, the contracting authority must inform the European Commission when a beneficiary 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 European Commission to exclude an entity from participation in procurement procedures or calls for proposals according to Articles 131(4), 109 of the budget Financial Regulation or the corresponding EDF provisions. Without prejudice to the European Commission's right to impose the aforementioned penalties, financial penalties may also be imposed on beneficiaries by the contracting authority if this is allowed by its national law. For international organisations, the application of Articles 12(8) and 12(11) is subject to the privileges and immunities of the organisation (see Annex e3h11).

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 applicable European Union law complemented where necessary by the law of Belgium. 13(2) The parties to this contract shall do everything possible to settle amicably any dispute arising between them during the	In cases where disputes between the beneficiaries and the contracting authority cannot be settled amicably, they may be brought to court. Where the contracting authority is the EC headquarters in Brussels or an EU delegation, the dispute has to be settled before the Brussels courts in Belgium. On the other hand, where the contracting

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.	authority is the national authorising officer (for instance in case of EDF funds) or another entity from the partner country the case has to be brought to court in the country of the contracting authority and is governed by the laws of that country. However, before bringing the case to court, the Commission should do its utmost to settle amicably any dispute that arises between it and beneficiaries of a grant contract, including by holding meetings with the beneficiaries, if they so request. The Commission should also reply to requests for meetings, made with a view to settling disputes, promptly, according to the procedure provided for in Article 13(2). Other available legal remedies in the context of contracts are listed in Section 2.12 of the Practical Guide. Where the beneficiary concerned is an international organisation, Article 13 does not apply. Instead, in default of amicable settlement, the parties may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of conclusion of the Agreement. The appointing authority must be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The arbitrator's decision must be binding on all parties and there must be no appeal (see Annex e3h11).
13(3) In the event of failure to reach an amicable agreement, the dispute may by common agreement of the coordinator and the contracting authority be submitted for conciliation by the European Commission if it is not the contracting authority. If no settlement is	

reached within 120 days of the opening of the conciliation procedure, each party may notify the other that it considers the procedure to have failed.	
13(4) In the event of failure of the above procedures, each party to this contract may submit the dispute to the courts of the country of the contracting authority, or to the Brussels courts where the contracting authority is the European Commission.	

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 beneficiaries, which meet all the eligibility criteria at the same time, and do not fall under the category of ineligible costs in Article 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 Article 2 of the special conditions) and in accordance with the contract. To be considered eligible, costs must be actually

	incurred by the beneficiaries, and must have generated a debt to be paid directly by an entity, which is party to the contract with the contracting authority (i.e. the coordinator or a co-beneficiary). Costs incurred by affiliated entities that are identified in the special conditions will also be accepted as eligible. In this case, the affiliated entities concerned have to abide by the same rules applicable to the beneficiaries 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 the coordinator should also make sure that the conditions for the eligibility of costs are met, through accurate supervision of the co-beneficiaries and the affiliated entities, 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 ineligible following an audit or verification carried out according to Article 16. The coordinator should keep in mind that it bears the ultimate responsibility (including financial) for the entire action and must reimburse to the contracting authority any cost declared ineligible (see Article 18(4)).
a) they are incurred during the implementation of the action as specified in Article 2 of the special conditions. In particular: (i) costs relating to services and works shall relate to activities performed during the	As a 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:

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. Cash transfers between the coordinator and/or the other beneficiary(ies) and/or affiliated entity(ies) may not be considered as costs incurred; (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; (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.	- 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.). NB. Any amount above EUR 500 that is unpaid on the date of 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?). (iii) Costs related to the submission of final reports (including the costs of the staff preparing the final report) 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 possible. (iv) Contract-award procedures may be initiated before the start of the implementation period, in accordance with the rules set forth in Annex IV. This allows for instance for the signature of a procurement contract before the start of the action in order to be already operational when the action starts. However, the respective costs will have to be generated (i.e. incurred) 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, but the contract can be signed beforehand. Stocks are not eligible costs as such. Any procurement under the contract must follow Annex IV and costs must be in line with Article 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 beneficiaries bear the risk for any contract signed or commitment entered into before the signature of the contract (exceptional case), or during the implementation period. This means that they will not be entitled to any compensation or indemnity if - for whatever reason - the contract does not materialise.
b) they are indicated in the estimated overall	In principle, only those cost items that have

budget for the action;	been approved in the budget and the 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 Article 9. Caution should always be used in making any modification to increase the human resources allocated to the action. 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 accounting standards and the usual cost accounting practices applicable to 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 beneficiaries or, as the case may be, of the affiliated entities. 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 other beneficiaries and affiliated entities 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 are available, correct, and duly filed and recorded. The coordinator should keep in mind that it bears the ultimate responsibility (especially financial) for the entire action and must reimburse to the contracting authority any cost declared ineligible. (see Article 18(4)) The 'accounting standards and the usual cost accounting practices applicable to the beneficiaries' refer either to International accounting standards or to the rules to which the beneficiaries or affiliated entities are subject to by law. If the concerned beneficiary or affiliated entity is not governed by any national accounting rules, the usual accounting practices of the beneficiary are to be respected provided that they conform to international accounting standards.
e) they comply with the requirements of applicable tax and social legislation;	The beneficiaries and the affiliated entities are fully responsible for the coordination and execution of all activities and have to ensure compliance with local, national and other applicable legislation.
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 not easily justifiable because, for instance, they

	are especially high (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 description of the action and the reports to understand their relationship with the results/activities of the action.

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, without prejudice to the general criteria set out in Article 14(1). The eligibility of costs is also determined by compliance with the procurement principles set out in Annex IV. If the beneficiaries or the affiliated entities do not follow these principles, the EU will not approve 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 beneficiaries 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 (excluding bonuses); salaries and costs shall not exceed those normally borne by the beneficiary(ies), unless it is justified by showing that it is	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

essential to carry out the action;	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 organisation 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 Article 14(1)(a) ii) for the requirement of costs not yet paid at the submission of the final report). They should be traceable to payroll records (e.g. salary slips), and to human resources records (e.g. employment contracts). NB. An apportionment (pro-rata system based on calculation/apportionment keys) can be used to declare direct costs, since such a system represents actual costs shared based on a reasonable and justifiable method described in an extra sheet of the Budget. See Companion Users guide on Article 14.2 j) Headquarters staff As a starting point, costs of Headquarters staff should be covered by indirect costs. However, with due consideration to the description and the functional organisation of the action and of the beneficiaries, 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; and/or - they cover the actual presence of Headquarters staff in the field (e.g. specific monitoring missions, needs assessment, etc.). - They relate to staff performing the tasks listed in the description of the action directly assigned to the operation of the project office in Headquarters if any. They must be well justified in the framework of the action and accepted by the contracting authority. In all other cases, the related Headquarters staff costs cannot be charged to the action as direct costs either in whole or on a pro rata basis. 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 (Article 10). Consequently, beneficiaries must award these contracts 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 a beneficiary's 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) a beneficiary has a contract to engage the consultant to work for it and (some of) that work involves tasks to be carried out under the action funded by the grant; (b) the consultant must work under the instructions/supervision of the beneficiary; (c) the consultant must work in the premises of the beneficiary as a member of the project team; (d) the output of the work belongs to the beneficiary; (e) the costs of employing the consultant are reasonable, are in accordance with the normal practices of the beneficiary and are not significantly different from the personnel costs of employees of the same category working under a labour contract for the beneficiary; (f) travel and subsistence costs related to such consultants' participation in project meetings or other travel relating to the action 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 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 contracts may be assimilated to staff costs in the budget and for all useful purposes (for instance procurement principles 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 rules. 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) according to its rules and regulations. In addition, the rates published by the European Commission at the time of contract signature may never be exceeded;	Travel and subsistence costs of any person taking part in the action are eligible, including staff of the beneficiaries, associates, affiliated entities and the final beneficiary(ies). Per diem rates published by the European Commission cover accommodation, meals, tips, local travel, and sundry expenses. The ceiling is normally fixed according to the number of nights spent on the event. 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 beneficiaries' 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 beneficiaries. 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). Neither can they exceed those in force at the time of contract signature and published by the European Commission at: https://ec.europa.eu/europeaid/diem-rates-applicable-eu-funded-external-aid-contracts-17032017_en Beneficiaries may reimburse these costs (accommodation, meals, tips, local travel, and sundry expenses) to their staff on the basis of real costs incurred by their staff or on the basis of per diems (daily allowances), according to their own human resources procedures.

	'Per diems' are not considered a simplified cost option for the purposes of EU financing when a beneficiary reimburses a fixed amount to its staff in accordance with its staff rules and requests the reimbursement of that same amount in the budget of the action. Such per diems are considered actual costs, as any other. Where a 'per diem' is agreed, not all supporting documents are required (restaurant's bills, taxi sli ps…), but only those to prove that the travel actually took place, for instance. The contracting authority will reimburse the unit rates established in the budget of the action, according to procedures and conditions set out in the contract.

Example:

Expenses	**Unit**	**# of units**	**Unit cost (in EUR)**	**Cost (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 dedicated to the purposes of the action, provided that ownership is transferred at the end of the action when required in Article 7(5);	
d) depreciation, rental or leasing costs for equipment (new or used) and supplies specifically dedicated to the purposes of the action;	Where the beneficiaries' 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. The cost of use (in the form of depreciation) can 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 beneficiaries, local beneficiaries or local affiliated entities at the end of the action is foreseen: the equipment is not necessary for the sustainability of the action or the transfer will not be possible. - 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 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 rules of Annex IV. Only the portion of the equipment's depreciation, rental or lease costs corresponding to the implementation period and the rate of actual use for the purposes of the action may be taken into account. 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.
e) costs of consumables specifically dedicated to the action;	
f) costs of service, supply and work contracts awarded by the beneficiary(ies) for the purposes of the action referred to in Article 10; this includes the costs for mobilising expertise to improve the quality of the logical framework (e.g. accuracy of baselines, monitoring systems, etc.), both at the beginning and during the implementation of the action.	This refers to the costs of supply, service or work contracts awarded in line with the procurement rules set out in Annex IV. Financial support given to third parties does not have to follow the rules of Annex IV.
g) 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);	
h) duties, taxes and charges, including VAT, related to the purposes of the action, paid and not recoverable by the beneficiary(ies), unless otherwise provided in the special conditions:	**As a general rule beneficiaries have 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 entities as well as to the beneficiaries. The call for proposals, notably in the guidelines for applicants and its Annex J (Annex e3a1 of the PRAG), state the eligibility of taxes. Charging of VAT or taxes is a frequent source of cost ineligibility; therefore particular attention has to be paid to understand the correct treatment of taxes.

	When duties, taxes and charges are eligible under a call for proposals (refer to the guidelines for applicants and its Annex J, Annex e3a1 to the PRAG) 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. Specific rules stemming from applicable basic acts and other regulations may apply, but in this case this information has to be provided by the contracting authority in the call for proposals or directly to the organisation, and must be reflected in the special conditions. Accepted cost system As concerns taxes, the call for proposals might state the non-eligibility of taxes, particularly when basic acts or other regulations or financing agreements with partner countries exclude the financing of taxes (including VAT), even if the 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 beneficiaries 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 beneficiaries' 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 beneficiaries. If the amount of co-financing 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(s). Refer to worksheet 3 of Annex e3c (budget) for the calculation of the two co-financing rates (eligible costs and accepted costs). 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 beneficiaries. The taxes can only be considered to fall within the share of co-financing of the beneficiaries if they have been clearly identified in the budget of the action following the submission of the proposal

	and if the beneficiaries can prove that they cannot recover them, unless one of the exceptions in Annex J/e3a1 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 a beneficiary fails to show that it cannot reclaim such taxes, these taxes will be declared simple ineligible costs, which are ignored when checking the co-financing by the beneficiary. Evidence that taxes may not be recovered 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/e3a1 'Information on the tax regime applicable to grant contracts' for guidelines on the evidence that the beneficiaries and affiliated entities are not tax-exempt and cannot recover taxes. Additionally, Annex J sets out clearly situations in which 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 a specific action. In some countries the tax authorities do not operate efficiently or simply do not reply to correspondence. In such cases, 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.

i) overheads, in the case of an operating grant.	In fact, the purpose of an operating grant is to cover the running costs of the beneficiary based on an approved work programme, including its general administrative costs.
j) Project office costs: Costs actually incurred in relation to a project office used for the action or a portion of these costs may be accepted as eligible direct costs if: 1. the need for setting up or using a project office is recognised by the Contracting Authority in the Special Conditions; 2. the description of the project office, the services or resources it makes available, its overall capacity and (where applicable) the distribution key are provided in the Description of the Action and the Budget; 3. (where applicable) the distribution key reasonably reflects the portion of the resources or services needed by and actually used for the Action; 4. the costs concerned comply with the cost eligibility criteria referred to in Article 14.1; 5. they fall within one of the following categories: i) costs of staff directly assigned to the operations of the project office; ii) travel and subsistence costs for staff and other persons directly assigned to the operations of the project office; iii) depreciation costs, rental costs or lease of building, equipment and assets; iv) costs of maintenance and repair contracts; v) costs of consumables and supplies;	Eligible direct costs for a project office can be shared actual costs for an input to the Action. The input concerned is necessary for carrying out the Action. Shared actual costs: a) Actual costs booked in accordance with their actual use - The amount corresponding to the actual use of the input concerned is booked to the Action; - The actual use of the input concerned is backed up by supporting evidence (e.g. timesheets); - An exact amount that includes the costs for the input booked to the Action is backed by supporting evidence. b) Apportioned actual costs - The portion of the costs for the input concerned is determined by a distribution key indicated in the Budget and used in the financial reports; - It is not possible or not cost-effective to generate supporting evidence that backs up the portion of the amount that is used by the Action. NB. Shared costs are not necessarily considered as indirect costs. Depending on the link they have with the action, they may be direct or indirect.

vi) costs of IT and telecommunication services; vii) costs of facility management contracts including security fees and insurance costs; viii) duties, taxes and charges, including VAT, related to the purposes of the action, paid and not recoverable by the beneficiary(ies), unless otherwise provided in the special conditions.	

19.3.1.3. Performance-based financing

Text of the article	Guidelines
14.3. The payment of the EU contribution may be partly or entirely linked to the achievement of results measured by reference to previously set milestones or through performance indicators. Such performance-based financing is not subject to other sub-articles of Article 14. The relevant results and the means to measure their achievement shall be clearly described in Annex I. The amount to be paid per achieved result shall be set out in Annex III. The method to determine the amount to be paid per achieved result shall be clearly described in Annex I, take into account the principle of sound financial management and avoid double-financing of costs. The organisation shall not be obliged to report on costs linked to the achievement of results. However the organisation shall submit any necessary supporting documents, including where relevant accounting documents, to prove that the results triggering the payment as defined in Annex I and III have been achieved.	Guidelines will be published in the coming months.

Articles 15(1) (schedule of payment), 15(7) (expenditure verification), 17(3) (no profit) do not apply to the part of the action supported by way of result-based financing.	

19.3.1.4. Simplified cost options

Text of the article	Guidelines
14(4) In accordance with the detailed provisions in Annex III and Annex K, 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 / Annex e3a2 for further information on simplified cost options.
14(5) The methods used by the beneficiary(ies) to determine unit costs, lump sums, flat-rates shall be clearly described and substantiated in Annex III and shall ensure compliance with the principle of co-financing and no double funding. The information used can be based on the beneficiary(ies)'s historical and/or actual accounting and cost accounting data, external information where available and appropriate, statistical data or expert judgment (provided by internally available experts or procured) or other objective information. Where possible and appropriate, lump sums, unit costs or flat rates shall be determined in such a way as to allow their payment upon achievement of concrete outputs and/or results. If a result entails several outputs or sub-results, it should be broken down into sub budget lines and each output or sub-result should be	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).

attributed a portion of the amount stated for the result to allow partial payments in case the result is not achieved. 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, III and K. 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.	
14(6) Simplified cost options that are not result based shall not be authorized unless they have been *ex ante* assessed in accordance with Annex K.	A new decision providing the procedure to for authorisation of recurrent unit cost and flat-rate financing, together with the terms of reference (ToR) for the assessment, will be adopted in 2019. The procedure will apply to entities receiving EU funds under grant contracts and contribution agreements that intend to make systematic use of unit costs and flat-rate financing. The procedure will have two steps: 1. *Ex ante* approval. Entities that intend to use such recurrent unit costs and flat rate financing must request the Commission's *ex ante* approval of methods for their determination and use. Requests have to be sent to the dedicated Commission service and must contain for each

	unit cost and flat rate intended to be used a description of the method. The dedicated Commission service must perform a completeness and opportunity check of requests received, leading for each of the presented unit costs and flat rates to a decision to either be ready to consider its authorisation based on a positive assessment by an independent auditor. In case of rejections, notifications will present the reasons based on the outcome of the completeness and opportunity checks and clarify that for the costs concerned provisions governing the reporting on actual eligible costs incurred must apply. 2. Assessment by an independent auditor. For each unit cost and flat rate, which is not rejected, the requesting entity must solicit an assessment by an independent auditor based on the terms of reference provided. This assessment will provide for each presented unit cost and flat rate an opinion regarding the compliance of the method. The dedicated Commission service must perform a final assessment of each of the submitted unit costs and flat rates, taking into account the assessment by the independent auditor. In addition, this service must, for each of the unit cost and flat rate methods presented by the requesting entity, take a decision on whether or not to authorise its use to report costs incurred for supported actions. These decisions must be documented, published internally on a central Intranet page, and notified to the requesting entities.

19.3.1.5. Contingency reserve

Text of the article	Guidelines
14(7) 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 contingencies and/or exchange rate fluctuations not exceeding 5% of the direct eligible costs may be included in the budget for EU External Actions given the specificity and the higher level of unpredictability of external actions. As a consequence, the contingency reserve should only be included in the initial total budget, and not budgeted in the requests for pre-financing. 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 authorisation of the contracting authority, who will make an evaluation and take a decision on a case-by-case basis. The budget template has been modified following the logic that in normal conditions the reserve is not used and stands aside of the total estimated cost of the action. When the use of the reserve is authorised, the corresponding amount will be split and allocated to the concerned budget headings according to the specific needs of the action. As the total amount of direct costs will be higher, the indirect costs will also consequently increase. This should be kept into consideration when using the contingency reserve because in any case the maximum amount of the grant as set in Article 3 of the special conditions cannot be changed. Exchange rate fluctuation

	This case would just be one of the possible reasons justifying the use of the contingency reserve, for which the beneficiaries are not responsible and have already adopted all the possible risk mitigating measures according to the best practices in the sector. There is no clear-cut definition of 'unforeseeable' 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 beneficiaries may not be accepted as a reason to justify the use of the contingency reserve.** An exchange rate fluctuation (that 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). 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) 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 beneficiaries 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 that 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. Beneficiaries should - as a rule - or are at least strongly advised to submit requests to use the contingency reserve in advance to avoid the risk that its use will be considered as non-eligible by the contracting authority. However, especially in cases where sudden, unforeseeable events lead to an increase in costs beneficiaries may not be able to first formally request. However, if they act and incur extra costs they do so at their own risk. Furthermore, the fact that beneficiaries incur additional costs does not imply a 'use' of the contingency reserve. The contingency reserve may only be 'used', i.e. the relevant funds may be used to cover the additional costs after the

	contracting authority has issued a respective authorisation.

19.3.1.6. Indirect costs

Text of the article	Guidelines
14(8) 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. To the extent that it would not generate a profit within the framework of the action, 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. 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 European Union budget during the period in question. This Article 14(7) does not apply in the case of an operating grant.	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 that 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 Article 14(1): the listed criteria have to be respected at all times for all costs. - Indirect eligible costs: these are not identifiable as specific costs directly linked to the performance of 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 that 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 action is only one part of the beneficiary's activities. *Example: costs connected with infrastructure*

	and the general operation of the beneficiary at headquarter level and costs such as administrative and financial management, 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 flat rate basis or on a real costs basis**. Note 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 beneficiaries 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 applicants may (unless otherwise stated in the call for proposals) decide to consider a portion of these indirect costs as 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 applicants 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, i.e. 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). 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, Headquarters 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 beneficiaries' 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 a beneficiary of an action grant is also 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 beneficiaries or affiliated

	entities in receipt of the operating grant. The other beneficiaries and affiliated entities may still claim indirect costs on their incurred costs under the same contract. Shared costs If the beneficiary shares out certain costs to different actions according to a cost allocation system, the related costs may be eligible provided that they are linked to the action and comply with Article 14. In terms of allocation of staff, the 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. The implementation of the action may require significant deployment of staff to manage operations in the field or set up an office at another location. Reimbursement of those costs may be justified. Where an office is used for several projects in parallel, shared office costs (such as cost of staff working on different projects, rent, electricity, security etc.) can be declared as following: a) Costs that can be directly attributed to an action (e.g. local staff working part time on a project and providing time sheets or shared office costs) can be declared as costs actually incurred without invoking a simplified cost option by applying the apportionment for office costs.

	b) As part of the indirect costs (7%)

19.3.1.7. In kind contributions

	Guidelines
14(9) 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 beneficiaries or affiliated entities free of charge by a third party. Contributions in kind do not involve any expenditure for the beneficiaries during the implementation of the Action and are not entered in their accounts as a cost for reporting purposes related to the action. Consequently, contributions in kind can never appear in the budget of the action as an eligible cost, except in the case of volunteers' work. Example: medicines or a car donated to an action by another donor. However they may be accepted as co-financing when considered necessary or appropriate (e.g.: small grants targeted for community based organisations that 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. In such a case, the call for proposals will have to provide for the 'accepted cost system', in order to take into account the co-financing provided in kind or adapt accordingly the co-financing percentage of eligible costs, except in the case of volunteers 'work that are considered eligible cost.

	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 stablished for 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 beneficiaries 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 Article 14). These costs can therefore be entered in the budget of the action. *Example: the fuel and maintenance costs for a car given as an in-kind contribution for use in an action.*

19.3.1.8. Volunteers' work

Text of the article	Guidelines
14(10) The value of the work provided by	Where the relevant call for proposals allows for

volunteers can be recognised as eligible cost of the action and may be treated as co-financing by the beneficiary(ies). Where the estimated eligible costs include costs for volunteers' work, the EC contribution shall not exceed the estimated eligible costs other than the costs for volunteers' work. Beneficiaries shall declare personnel costs for the work carried out by volunteers on the basis of unit costs authorised in accordance with Article 14(4) and following. Volunteers' work may comprise up to 50% of the co-financing.	the work performed by volunteers to be considered as acceptable co-financing, such co-financing must be considered as eligible personnel costs in accordance with articles 181, 186 and 190 FR, and must take the form of unit costs. These unit costs will be fixed by the contracting authority and provided in the call for proposal. As volunteers' work is a work provided by third parties without a remuneration being paid to them by the beneficiary, the limitation avoids reimbursing costs that the beneficiary did not incur. In addition, the value of the volunteers' work may comprise up to 50% of the co-financing, the latter corresponding to the part not financed by the EU contribution. This type of costs must be presented separately from other eligible costs in the estimated budget. The value of the volunteer's work must always be excluded from the calculation of indirect costs. This will not have an adverse impact on the beneficiary since the unit costs are not reimbursing costs incurred. Any eligible costs incurred by the beneficiary linked to the work of the volunteer, for example travel and accommodation, may be claimed separately as eligible costs.

19.3.1.9. Non-eligible costs

Text of the article	Guidelines
14(11) The following costs shall not be considered eligible: a) debts and debt service charges (interest);	This article identifies the costs that, even if satisfying the above mentioned criteria, cannot be considered eligible.

b) provisions for losses, debts or potential future liabilities; c) costs declared by the beneficiary(ies) and financed by another action or work programme receiving a European Union grant (including through the European Development Fund); d) purchases of land or buildings, except where necessary for the direct implementation of the action and according to the conditions specified in the special conditions; in all cases the ownership shall be transferred in accordance with Article 7.5, at the latest at the end of the action; e) currency exchange losses; f) credits to third parties, unless otherwise specified in the special conditions; g) in kind contributions; h) salary costs of the personnel of national administrations, unless otherwise specified in the special conditions and only to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the action were not undertaken; i) bonuses included in costs of staff.	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 they 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 Article 15(9)). h) Salary costs of personnel of national administrations may only be considered as eligible costs, to the extent that they relate to the cost of activities that the relevant public authority would not carry out if the action was not undertaken. However, EU funding of salary costs corresponding to activities that the public administration had already undertaken before the launching of the action, is not possible. Indeed, it would generate a profit for the beneficiary since these costs are already funded by the budget of the member state/partner country (or the regional or local authorities) in the framework of their normal activities. Salary costs of personnel of national administrations cannot be considered an in-kind contribution since they are not provided by a third party to the beneficiary free of charge (see comments to Article 14(8)). i) For the avoidance of doubt, a bonus is to be understood as a payment of an amount triggered by the participation of a staff member in the EU funded Action or that is in any way linked to the performance of the person in the Action or the performance of the Action itself; as such it is not an eligible cost. However, there are payments that might be called in a similar way and which could still be considered as a part of

	the normal salary package and therefore eligible (i.e. variable parts of the salary). Those payments have to be paid independently of the participation of the staff member in the EU funded Action and have to be part of the general salary policy of the beneficiary irrespective of the source of funding.
Affiliated entities 14(12) Where the special conditions contain a provision on entities affiliated to a beneficiary, costs incurred by such entity may be eligible, provided that they satisfy the same conditions under Articles 14 and 16, and that the beneficiary ensures that articles 3, 4, 5, 6, 8, 10 and 16 are also applicable to the entity.	Only the lead applicant and co-applicants will become beneficiaries and parties to the contract. Their affiliated entities are neither beneficiaries of the action nor parties to the contract. However, they participate in the design and in the implementation of the action and the costs they incur (including those incurred for implementation contracts and financial support to third parties) may be eligible, provided they comply with all the relevant rules already applicable to the beneficiaries under the contract. Affiliated entities must satisfy the same eligibility criteria as the coordinator and the co-beneficiaries. For further information on the notion of affiliated entities see Section 6.1.2 of the Practical Guide. 'Family organisations' Family organisations comprise a network of entities operating within a confederation, federation or alliance, such as an international NGO family, with shared systems, structure and expertise and an integrated operational presence (field offices/ country offices). Examples are PLAN International, WWF or CARE. Whether or not the members of the relevant network have a link that would allow them to apply as affiliated entities has to be assessed on a case by case basis. Whereas the field offices of some family organisations lack legal personality (that means that the field office

	could neither participate in an action as affiliated entity nor as beneficiary) organisations such as Médecins Sans Frontiers (where 24 associations are members of MSF International) have a structure that would allow for their members to participate as affiliated entities.

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. 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 frequency with which pre-financing payments are made depends on the duration of the action and on the total amount of the grant. The option applicable to the action in question will therefore be stated in Article 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. This means that it should not be budgeted in the requests for pre-financing. Once approved it will be reflected in the budget lines (headings 1 to 6) and therefore treated like the other budgeted/eligible costs. Option 2 For actions that 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 prepared in parallel with the Contract signature and it should be processed as soon as the contract is signed by both parties (and after a

the part of the estimated budget financed by the contracting authority for the following reporting period (excluding not authorised contingencies): - 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; - 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 prefinancing payment and the part of the expenditure actually incurred which is financed by the contracting authority; - 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 eligible costs approved is at least equal to the total amount	financial guarantee has been submitted, if required). This payment will cover 100% of the EU contribution to budgeted costs for the first year. For the payment of the first pre-financing it is not necessary to receive a request for payment as the signed contract serves as payment request. *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, after deduction of 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, presented using the Forecast Budget and Follow-up template in Annex VI (financial reporting formats). The contracting authority's percentage contribution to the forecast budget corresponds to its percentage contribution to the eligible costs as set out in Article 3(2) of the special conditions. Note that for actions where the 'accepted cost system' is used, the contracting authority's percentage contribution to total 'accepted costs' and total 'eligible costs' will be different. The adjustment to ensure co-financing will be done at the end of the action, with the final payment, in accordance with Article 17. *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*

of all the previous payments excluding the last one; - 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 final amount of the grant.	*285 000. The EU is contributing EUR 240 000 to the project, which is 80% of total accepted costs but 84.21% of total eligible costs. If for instance, the total second year budget estimate is EUR 112 000, including EUR 4 480 (4%) indirect taxes, which are not an eligible cost, the EU will pay 84.21% of eligible costs i.e. EUR 112 000 - EUR 4 480 = EUR 107 520 x 84.21% = EUR 90 543. The adjustment to ensure co-financing will be done at the end of the action. At this moment, the EU contribution will be limited to the lowest amount obtained by respectively applying the percentages to the final total eligible and accepted costs.* 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). If at the end of the reporting period eligible costs incurred are less than 70% of the last payment (and 100% of the preceding payments), the further pre-financing payment may not be paid in full. If the coordinator presents a payment request, the payment is reduced by the amount corresponding to the difference between the 70% of the last pre-financing payment (and 100% of the preceding payments) and the part of the eligible costs incurred that 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. For grants of more than EUR 5 000 000, there is an additional condition (beyond the 70% rule) to be respected to be able to make a further pre-financing payment: The part of the total amount of eligible costs approved that 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. In the substance, it is therefore a precautionary clause for exceptional extreme situations that 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 the implementation period, when the final report together with a request for payment has been approved by the contracting authority (refer to Article 15(4) for payment delays). As a reminder, in case a beneficiary needs to borrow money, the interest on the pending balance is not eligible for EU funding (see Article 14(9)(a)); therefore the beneficiary must be able to pre-finance it or will have to bear the costs for the advance. If total final approved 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 Article 4 of the special conditions, as the contracting authority's contribution is limited to the percentage of eligible or accepted costs, as stated in Article 3 of the special conditions (see also Article 7(1) of the special conditions and Article 17(1) of the general conditions). The maximum EU contribution and percentage of eligible or accepted costs financed by the contracting authority may never be increased, i.e. a new grant contract would have to be signed instead. Option 3. The final amount of the grant is paid at the end of the implementation period in one single final payment. This option is used for very short actions fully pre-financed by the beneficiary.

19.3.2.2. Submission of final reports

Text of the article	Guidelines
15(2) The coordinator shall submit the final	In multi-country/regional actions managed by a

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	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 should be agreed at the contracting phase or, as a general rule, at the latest 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 the 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 must 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 Article 18).

19.3.2.4. Payment deadlines

Text of the article	Guidelines

15(4) The initial pre-financing payment 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 party 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. No especial payment request is demanded for the first pre-financing. 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 Article 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 time-limits for payments may be suspended by notifying the coordinator that: a) the amount indicated in its request of payments is not due, or; b) proper supporting documents have not been supplied, 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) clarifications, modifications or additional information to the narrative or financial reports are needed, or; d) there are doubts on the eligibility of expenditure and it is necessary to carry out additional checks, including on-the-spot checks or an audit to make sure that the expenditure is eligible, or; e) it is necessary to verify, including through an OLAF investigation, whether presumed breach of obligations, irregularities or fraud have occurred in the grant award procedure or the implementation of the action, or; f) it is necessary to verify whether the beneficiary(ies) have breached any substantial obligations under this contract, or; g) the visibility obligations set out in Article 6 are not complied with. The suspension of the time-limits for payments starts when the above notification is sent 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 irregularities, fraud, or breach of obligations, then the contracting may suspend payments, and in the cases foreseen in Article 12, terminate accordingly this contract. In addition, the contracting authority may also suspend payments as a precautionary measure	The suspension by the contracting authority and the submission of new clarifications/documents can be done via exchange of e-mails (no formal exchange of letters is necessary in the majority of the cases). Note that since 2014 it is clarified that a breach of the visibility obligations under Article 6 constitutes a substantial breach of the contract allowing for a suspension in accordance with Article 15(5). Note that the last two paragraphs of Article 15(5) refer to the suspension of payments and not to the suspension of the time-limit for a specific payment.

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; c) 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. 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	Interest on late payment is paid usually by default by the contracting authority, if it amounts to more than EUR 200. Where the contracting authority is not the European Commission but from a partner country (i.e. under indirect management), the coordinator has to submit a claim within two months of receiving late payment. 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.

name and on behalf of the Member State for the purpose of the contract.	

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. 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 with requests for pre-financing payments, 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).	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, where 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 beneficiaries' 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. For the avoidance of doubt, 'grant' refers to the amount of the EU contribution and not to the total eligible costs of the action. As a general rule, it is up to the Coordinator to contract the audit firm (in accordance with 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 Article 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, who reserves the right to oppose this change (see Article 9(5)). Therefore the name of the auditor

The detailed breakdown of expenditure shall 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.

The final report shall in all cases include a detailed breakdown of expenditure covering the whole action.

When the grant takes the form of reimbursement of eligible costs actually incurred and is only expressed in terms of an absolute value (and not as a percentage of the EU contribution to the total eligible costs), verification can be limited to the amount paid by the Commission for the action concerned (i.e. it does not need to cover 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 should be communicated prior to contract signature, during contract preparation stage.

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 conformance with the applicable procurement rules. If this is the case, specific instructions are inserted in Section 2.1.5 of the guidelines for applicants (e.g. name or list of auditors, pre-negotiated prices, details for the verification etc.).

When the expenditure verification is required by the contract, the related expenditure constitutes an eligible cost of the action.

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 Section 2.1.5 of the guidelines for applicants 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 beneficiary's contributions) is only required to be submitted along with the final report but a

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.	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 information should be presented enough detailed for the underlying transaction to be easily understood. In addition it should be classified per budget line and allow an easy traceability of the related documents (audit trail). The addition of the amounts for each line should be equal to the related amount in the financial report presented. The total addition of the transaction list should be equal to the total direct cost claimed. The coordinator has the obligation to provide a transaction list unified. She/he must present a single transaction list in cases where each co-beneficiary keep the accounts for the expenditures related to the actions or activities under their responsibility. This information 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. When the amounts are expressed in a currency other than EUR the exchange rate has to be specified. It must 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 6 000 000: the DBE has to be presented with every payment request.* Where a co-beneficiary is an international organisation that has successfully passed a pillar assessment it may decide to substitute the expenditure verification report and/or the detailed breakdown of expenditure for the part of incurred expenditure of the action that is implemented by it by a management declaration that during the period covered by the report the contribution has been used and accounted for in compliance with the systems and rules positively assessed in the pillar assessment and with the obligations laid down in the contract (see Annex e3h11). The coordinator retains full financial responsibility for ensuring that the action is implemented in accordance with the contract. This means that she/he remains indeed responsible for the implementation and reporting but within the limits set in the contract. If a co-beneficiary is entitled to provide a management declaration instead of an EVR or a detailed breakdown of expenditure, the coordinator's responsibility does not go beyond collecting such document.

	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. The guarantee shall be provided by an approved bank or financial institution established in one of the Member States of the European Union. Where the coordinator is established in a third country, the contracting authority may agree that a bank or financial institution established in that third country may provide the guarantee if the contracting authority considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State 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. During the execution of the contract, if the natural or legal person providing the guarantee (i) is not able or willing to abide by its commitments, (ii) is not authorised to issue guarantees to contracting authorities, or (iii) appears not to be financially reliable, or the financial guarantee ceases to be valid, and the coordinator fails to replace it, either a deduction equal to the amount of the pre-financing may be made by the contracting authority from future payments due to the coordinator under the contract, or the contracting authority shall give formal notice to the coordinator to provide a new guarantee on the same terms as the previous one. Should the coordinator fail to provide a new guarantee, the contracting authority may terminate the contract. This provision shall not apply if the coordinator	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. In such a case, when the guarantee is not required in the call for proposals, and it is requested only before signature of the 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 applicants). 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 or 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 (in addition to the exceptions mentioned in Article 15(8) paragraph 3) for grants up to EUR 60 000. When the financial guarantee is required by the contract, the related expenditure constitutes an eligible cost of the action. The cost for issuing

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.	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 the currency set in the special conditions. 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 each contracting authority's contribution was recorded in the beneficiary(ies)'s accounts, unless otherwise provided for in the special conditions. If at the end of the action, a part of the expenses is pre-financed by the beneficiary(ies) (or by other donors), the conversion rate to be applied to this balance is the one set in the special condition according to the beneficiary(ies)'s usual	The coordinator 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 and the EDF, nor to report on or repay any interest earned. See guidance for exchange rates. Exchange rate for reporting NB. This provision applies only to beneficiaries having their accounting in a currency different from the one of the contract (usually EUR, but not in all cases: refer to the 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

accounting practice. If no specific provision is foreseen in the special conditions, the exchange rate of the last instalment received from the contracting authority will be applied. 15(10) Unless otherwise provided for in the special conditions, costs incurred in other currencies than the one used in the beneficiary(ies)'s accounts for the action shall be converted according to its usual accounting practices, provided they respect the following basic requirements: (i) they are written down as an accounting rule, i.e. they are a standard practice of the beneficiary, (ii) they are applied consistently, (iii) they give equal treatment to all types of transactions and funding sources, (iv) the system can be demonstrated and the exchange rates are easily accessible for verifications. 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.	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 each of the contracting authority's pre-financing payment was recorded in the beneficiary's(ies') accounts. This means that when the EU's contribution is paid in several pre-financing payments, the expenditure incurred will be reported using the exchange rate at which each pre-financing payment was recorded, using the First In First Out (FIFO) method. There are cases in which the beneficiary, working with a local currency, holds two accounts: one in the currency of the pre-financing (into which the payment of the pre-financing instalment is executed) and one in local currency Throughout the general conditions, the term 'beneficiary(ies)' refers to the coordinator, the co-beneficiaries and the affiliated entities. The same approach should thus apply when interpreting Article 15(9). - The logic that applies when the coordinator receives funds from the EU also applies to the co-beneficiaries and the affiliated entities when they receive funds from the coordinator. In case where the coordinator and the co-beneficiaries use different currencies, there will be a double conversion using the same rule. For example: 1) EUR are converted in e.g. USD by the coordinator's bank, and reported back in EUR using the rate of exchange at which the EUR transfer was recorded in the coordinator's account; 2) USD are converted in e.g. RUB or DKK by the co-beneficiaries' bank, and reported back using the rate of exchange at which the USD

	transfer was recorded in the bank accounts. For 2) there are two possibilities for reporting, with exactly the same effect: - Co-beneficiaries report back to the coordinator in their own accounting currency (RUB or DKK) and the coordinator converts them in USD using the rate at which the funds initially transferred by the coordinator were recorded in the co-beneficiaries accounts. Co-beneficiaries report back to the coordinator in the coordinator accounting currency (USD) after having converted in USD their expenditure incurred in their own accounting currency (RUB or DKK), using the rate at which the USD received from the coordinator were recorded in their accounts. The coordinator remains responsible for the financial report and must ensure that conversions are done according to the rules. Article 15(10) does not oblige the beneficiaries to convert the whole amount of pre-financing received in one go into the local currency account. Therefore, as long as this can be regarded as the beneficiary's normal practice (and as long as it would not contradict any applicable legislation), the beneficiary could transfer the amount received and recorded in the EUR account to the account held in local currency in bits, in relation to the level of implementation of the action. Where the local currency is volatile, proceeding this way could be, in fact, considered more appropriate. When the pre-financing instalments are converted in bits into local currency, FIFO remains the method to be used for reporting in EUR. The rate of exchange at which each bit of

	contribution was converted into local currency will have to be used for the application of the FIFO method. In the case described, there will be several different exchange rates, corresponding to the exchange rate of conversion of each bit of the EUR pre-financing into local currency. The reporting for the expenditure incurred in local currency should thus use those successive different exchange rates following the FIFO method. In other terms, more flexibility for coping with e.g. volatility of currencies is 'paid' by a more complex financial reporting due to several successive exchange rates. 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 EUR 100 000 recorded as USD 120 000 in the beneficiary's 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. Toward the end of the action it often happens that the beneficiary(ies) incurs costs with its own money i.e. not related to any of the instalment of pre-financing received by the EC (that have been already fully used). When converting this amount (amount pre-financed by the beneficiary(ies)) into EUR for reporting, the beneficiary(ies) will use a conversion rate previously established in the special conditions according to its accounting practice. If no specific provision has been established, the exchange rate of the last instalment received from the contracting authority will be applied also to the amount pre-financed by the beneficiary(ies). Exchange rate for accounting This rule has to be applied to convert costs incurred in other currencies than the one used in the beneficiaries' or affiliated entities' accounts for the action. In order to further reduce exchange rate differences and to align as much as possible to the beneficiaries and/or affiliated entity(ies)'s accounting practices, they may use their usual accounting practices, provided they respect the conditions listed in Article 15(10). As a general rule, the accounting practices of the beneficiaries 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 beneficiaries or affiliated entities - 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 beneficiaries must be able to demonstrate it and the accounting system allow for easy verification of the rates used and how the conversion is operated. In case the accounting practices of any of the beneficiaries or affiliated entities do not comply with the above conditions (Article 15(10)), a conversion rate has to be established using the specific clause in the special conditions. 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 Article 14(7) for the use of the contingency reserve.

19.3.3. Article 16 - Accounts and technical and financial checks

19.3.3.1. Accounts

<table>
<tr><th>Text of the article</th><th>Guidelines</th></tr>
<tr><td>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 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.</td><td rowspan="2">The beneficiaries 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.

There is no obligation to translate all the supporting documents in the language of the contract or in any European Union language (see Article 2(4) 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 beneficiaries' accounting and bookkeeping systems. For old grant contracts (pre-2013 grant contracts), 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 co-beneficiaries and/or affiliated entities 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 book-keeping systems and to the underlying accounting and other relevant records. For this purpose the coordinator, in cooperation with the co-beneficiaries and the affiliated entities must prepare and keep appropriate</td></tr>
<tr><td>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 book-keeping 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.</td></tr>
</table>

	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 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 Please note: the toolkit is not part of the contract and has no legal value. It merely provides general guidance and may in some details differ from the signed contract. In order to ensure compliance with their contractual obligations beneficiaries and affiliated entities should not exclusively rely on the toolkit but always consult their individual contract documents.

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 beneficiaries, affiliated entities, 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 action to personnel from the European Commission, the OLAF, the European Court of Auditors and any external auditor carrying out verifications/audits of the action. They will require access to documents in the country where the action is operational, and at the head office, as appropriate. The coordinator, co-beneficiaries, affiliated

	entities, contractors and third parties receiving financial support have 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 European 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	The information provided to the Commission, OLAF, the Court of Auditors or authorized external auditor will be treated confidentially and not shared openly with other organisations, without prejudice to the obligations of public law to which the agents are subject to.

subject.	

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 the grant amount is up to EUR 60 000) years after the payment of the balance, the repayment (Article 18(4)), or the offsetting (Article 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 beneficiaries, affiliated entities, contractors, and recipients of financial support that participate in the action or receive funds from the EU-funded action. The beneficiaries have to ensure that affiliated entities, contractors, and recipients of financial support are made aware of this obligation by including in the relevant agreements provisions for the record-keeping which also authorise audits and verifications in accordance with Article 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-beneficiaries, affiliated entities, contractors, and/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 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 beneficiaries, affiliated entities, contractors, or recipients of financial support to retain original documentation on their premises, the coordinator must 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(s). If necessary, the contracting authority may request the coordinator to make the above mentioned systems and 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 either in the original form, including in electronic form, or as a copy.	The beneficiaries must maintain information systems and accounts and accounting records, and keep all supporting documents, both financial and technical, relating to the action. 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: - the documentation was first received or created (e.g. an order form or confirmation) by the beneficiaries in electronic form; or - the auditor is satisfied that the beneficiary uses an electronic archiving system which meets established standards (e.g. a certified system that complies with national law).
16(9) In addition to the reports mentioned in Article 2, the documents referred to in this	This article provides the minimum requirements and examples of the types of documents that

article include:

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;

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;

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;

k) Staff and payroll records such as contracts, salary statements and time sheets. For local staff recruited on fixed-term contracts, details of need to be kept. However, it is the responsibility of the beneficiaries 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 beneficiaries (related laws and contracts, authorisation of signatures, minutes of board meetings, accounting and staff policies etc.) may also be requested for inspection.

It is strongly advised that the coordinator verifies the compliance and completeness of these documents continuously during the implementation of the action, and keeps 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.

Procurement

All paperwork related to procurement undertaken for all work, supply and service contracts (Article 10) have to be available to verify that all the purchases have been done following the applicable procurement rules.

The beneficiaries must keep sufficient and appropriate documentation with regard to the procedures applied and that justify the decision on the pre-selection of tenderers (where an open tender procedure is not used) and the award decision.

Staff costs

Make sure that clear records of all local staff and expatriate staff costs that relate to the action are kept. Information that should be kept includes the labour contract and the 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.	calculation from gross salary to net salary including relevant social security and insurance contributions. All these costs must be documented for the beneficiaries and affiliated entities. Lack of documentation and/or access to payroll information is a frequent source of cost ineligibility. Note that for expatriate (based in country) or Headquarters-based staff, and in addition to the above information, a more detailed record of how much time the person has spent working on the action 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 action, the contract should give all the relevant information concerning their participation in the action. 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 Article 14(2)(a) for further guidance). Taxes In all cases (whether taxes are eligible or ineligible), beneficiaries (and their affiliated entities 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 declares not to have been refunded by any other means of this expense. Financial support to third parties (including sub-granting) The supporting documents for FS depend on the purpose of the FS, the type of FS 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 have been received and that the activity for which the FS is given (in cases where the FS is linked to a specific activity) has been implemented. 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 beneficiaries do not necessarily apply (this is also why it is better to make use of the correct terminology of 'financial support' instead of sub-granting, when the FS does not take the form of

	a sub-grant). The contracting authority and the beneficiaries 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 and affiliated entities, 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 FS 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, the accomplishment of the event or the settling back to the place of origin may be proved other than with invoices.* ---- 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.
16(10) Failure to comply with the obligations set forth in Article 16(1) to 16(9) constitutes a case of breach of a substantial obligation under this contract. In this case, the contracting authority may in particular suspend the contract, payments or the time-limit for a payment, terminate the contract and/or reduce the grant.	

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 (in absolute terms) that can never be exceeded, and a contribution (in percentage) to the eligible costs (as well as to the 'accepted costs' when the accepted cost system has been introduced in the guidelines for applicants and in the special conditions. The percentage 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 beneficiaries' or affiliated entities' 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 EU 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 undertaken 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 mainly on the basis of Article 14, but also taking into account other provisions set out in the call for proposals, the special conditions or other relevant annexes to the contract. If applicable, for eligible costs reimbursed on the basis of simplified cost options defined in the contract, 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 contract (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 conflicts and 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 the actual implementation of the action, as provided by the contract, and notably in Annex I. In addition, regardless of the costs incurred, the grant may be reduced in case of non-implementation or poor, partial or late execution (Article 17(2)). The provisional final amount of EU funding is calculated by application of the set percentage of co-financing of eligible costs specified in Article 3(2) of the special conditions to the eligible costs declared with the request for payment of the balance and approved by the contracting authority. If a clause in the special conditions (Article 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 percentage of eligible costs (i.e. the smaller of the two values obtained by application of both percentages apply). The maximum amount of the grant might also be limited to the maximum EU contribution expressed in terms of the absolute value in Article 3(2) of the special conditions. If the approved eligible costs exceed the estimated costs as referred to in Article 3(1) of the special conditions, the beneficiaries will have to bear the exceeding costs. Example: If the total final expenditure is less than originally foreseen, the final payment could be less than the amount stated in Article 4 of the special conditions, as the contracting authority contribution will be limited to the percentage of

	eligible costs (and accepted costs if applicable) stated in Article 3(2) of the special conditions (see also Article 17(2) of the general conditions). *Example: total budgeted costs are EUR 500 000 of which the contracting authority has agreed to contribute to 80% - i.e. EUR 400 000 in absolute value. 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 action, total reported expenditure is only EUR 475 000. The maximum EU contribution will be 80% of this, i.e. EUR 380 000. The beneficiaries have 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 implemented poorly or partially - and therefore not in accordance with the description of the action in Annex I - or late, the contracting authority may, by a duly reasoned decision and after allowing the beneficiary(ies) 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 applies as well with regards to the visibility obligations set out in Article 6. In case of breach of obligations, fraud or irregularities the contracting authority may also reduce the grant in proportion of the seriousness of breach of obligations, fraud or irregularities.	If only part of the action has been implemented, the contracting authority may reduce the grant proportionally and taking into due consideration the observations of the beneficiaries. 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. 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 that 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.). Note that a breach of the visibility obligations under Article 6 may also justify a reduction of the grant.

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 non-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 which fall within one of the two following categories: a) EU grant;	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

b) income generated by the action; unless otherwise specified in the special conditions.	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 state otherwise, i.e. where the purpose of the action is to generate an income or where the action is implemented by beneficiaries who are non-profit organisations, see Article 17(7)). NB. If revenue is generated by the action, it is not deducted from the approved eligible costs, but it is considered on the side of receipts for the purposes of the application of the non-profit rule. Therefore, the following sources are not taken into account for the purposes of the no-profit rule: - the beneficiaries' or affiliated entities' own resources, without prejudice to any provision in the call for proposals (usually deriving from the basic act) requiring a minimum financial contribution from the beneficiaries; - the revenue generated by the action after the date of the request for payment of the balance; - financial contributions specifically assigned by the donors to the financing of the same eligible costs declared as actual costs and financed by the contract or which the donors allow for the reassignment to similar actions or other activities in the case of surplus or non-consumption after the implementation of the initial action; - any interest generated by pre-financing paid to the beneficiaries as well as any interest paid to the beneficiaries as a result of late payment of

	amounts owed by the contracting authority; - exchange rate gains; - in the case of operating grants, the amounts allocated to the establishment of reserves (see Article 17(5)); - in-kind contributions. Financial contributions of other donors are not 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 the income generated by 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. Beneficiaries' own contributions In the absence of specific provisions imposing a minimum contribution from the beneficiary'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 no-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 Programme, part of its normal operation and performance of its statutory duties. To reduce the risk of dependence vis-à-vis the EU funds it is advisable to adopt a restrictive approach to the concept of 'revenue generated by the programme of work' and to take into account only the revenues directly attributable to activities specifically listed in the Work Programme (e.g. 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 no-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 European Union contribution to the eligible costs actually incurred approved by the contracting authority.	When the subsidised action generates a surplus (profit), the contracting authority recovers the surplus pro rata of the final EU contribution to the financing of the eligible costs actually incurred approved by the contracting authority (thus excluding other eligible costs declared on a Simplified Cost Option basis). In fact, given that the amounts used in the Simplified Cost Option should be determined on the basis of the respect a-priori of the no profit principle, they should be neutralized in the formula for calculating profit (see at this regard Chapter 7(4) of the Vademecum on Grants of DG BUDG).

	The amount to be deducted from the contracting authority contribution (established according to Article 17(1)) is calculated by applying the actual rate of reimbursement of eligible costs actually incurred to the surplus, as determined at the time of payment of the balance. The rate of recovery of the 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) actions implemented by non-profit organisations; d) study, research or training scholarships paid to natural persons; e) 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; f) grants of EUR 60 000 or less.	The exemptions stated in letter a) b) and e) of Article 17(7) are only applicable if clearly stated in Article 7 of the special conditions. In the event of a non-profit organisation holding a grant contract with a for-profit entity as co-beneficiary, the exemption stated in letter c) would only apply to the non-profit organisation and, therefore, the profit made by for-profit organisations will be taken into account for applying the no-profit rule. 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).

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 entire contract. The coordinator is liable for any undue funds received, even if the ineligible costs were incurred by other beneficiaries or by affiliated entities. The contracting authority will also recover from the coordinator funds that have been unduly paid to or incorrectly used by contractors and/or third parties receiving financial support irrespective of the fact that the coordinator and/or beneficiary(ies) recovered the funds from the third party recipient or not.
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 will be deemed ineligible, including after the final payment. In such cases the contracting authority will reduce the final amount of the grant and 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, the contracting authority shall be entitled to reduce the final amount of the grant 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	If the amount of the pre-financing payments and/or of the balance exceeds the final amount of the grant (as calculated on the basis of

the issuing of the debit note, the latter being the letter by which the contracting authority requests the amount owed by the coordinator.	approved eligible costs according to Article 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 (see Article 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 Article 15(6).

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 must 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(6) 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 the total pre-financed by the contracting authority is higher than the amount due, the coordinator bears the cost for returning these undue funds to the contracting authority.
18(9) The guarantee securing the pre-financing 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 mean to recover undue funds paid to the coordinator, even if the ineligible costs were incurred by co-beneficiaries or affiliated entities.
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.	The EU reserves the right to substitute the contacting authority if it does not take action to recover amounts unduly paid.

20. The implementation of service contracts - A users' guide

[The content of this chapter is under the responsibility of Unit DEVCO.R.3. The latest update was made in May 2019.]

20.1. Introduction

The user 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 service 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 service contracts but only with those articles that are considered essential or so complex as to require further explanation. Other provisions of the general conditions speak for themselves.

20.2. Article 3 - Assignment

Contractors sometimes need to assign rights under the contract for the benefit of their creditors or insurers: for instance, when the contractor insures herself/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 that 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 3(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 33(1) and 33(2) of the general conditions.
In all the other cases a prior authorisation 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 internal organisational change in the group of which the contractor forms part (e.g. 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 to 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 addition, and depending on the scope of the assignment, the contracting authority might need to check if the assignee fulfils the relevant selection criteria.
For the same reason, the assignment must not alter the fee-based prices and 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 will 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 pre-financing guarantee 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 3(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 Article 3(4) of the general conditions, the assignment of a contract by the contractor without authorisation by the contracting authority, is a valid cause for the sanctions for breach of contract (Article 34 of the general conditions) and for termination of the contract (Article 36(2)(d) of the general conditions).

20.3. Article 4 - Subcontracting

The subcontracting of certain specialised parts of the services may be necessary in the implementation of a contract. Although the contracting authority may wish to have the contract carried out by the service provider that has been selected, it is recognized that other persons or firms may be able to carry out particular services more efficiently than the contractor.
Although implementation of certain services may be subcontracted, the contractor remains fully responsible for the execution of the contract in accordance with the terms of the contract (Article 4(4)). Subcontracting is different from assignment in that, in the latter, rights and responsibilities vis-à-vis the contracting authority are transferred to another party, the assignee.
A tenderer may in his tender have stated the services that it proposes to subcontract and the name of the proposed sub- contractors. If it has already been foreseen in the technical offer, the award decision means approval of the proposed subcontractors by the contracting authority and no further authorisation is necessary, unless the subcontracted services or subcontractors change in the course of the implementation of the contract.
In other cases, the services to be subcontracted and the names of the subcontractors must be notified

to the contracting authority. The contracting authority then notifies the contractor of its decision authorising or refusing to authorise the proposed subcontract within 30 days. Where the contracting authority refuses authorisation, the reason for the refusal should be stated (Article 4(2)). If the contracting authority fails to provide notification of his decision within the 30 days, the proposed sub-contractors are deemed approved. The use of subcontracting without prior authorisation of the contracting authority is valid cause for the sanctions for breach of contract (Article 34 general conditions) and for termination of the contract (Article 36(2)(d) of the general conditions).
Before authorising a subcontract, the contracting authority should examine the contractor's evidence that the subcontractor it proposes satisfies the same eligibility criteria as those applicable for the award of the contract, does not fall under the exclusion criteria described in the tender dossier and is not subject to EU restrictive measures (Article 4(6)).
For European Development Fund (EDF) financed contracts, where subcontracting is envisaged, preference must be given by the contractor to subcontractors of African, Caribbean and Pacific (ACP) States capable of implementing the tasks required on the same terms (Article 26(1)(d) of Annex IV of the Cotonou Agreement[5]). This requirement is contained in Article 4(9) of the special conditions.
Point 18(8) of Annex I to the Financial Regulation (FR)[6] foresees the possibility for the contracting authority to require 'critical tasks' to be performed by the tenderer itself and not subcontractors, in the case of some contracts (works contracts, service contracts and siting and installation operations in the context of a supply contract). This provision should be used with extreme caution since it could be a restriction on the freedom of enterprise and there is yet no court case on its interpretation. The contracting authority may announce in the tender specifications that it may require that certain critical tasks be performed directly by the contractor itself, be it a sole entity, or by a participant in the group, in case of consortium. This assumes that all tasks are very well defined and that one or two of them are identified as critical for the contracting authority. In this case, there must be a direct contractual link between the contracting authority and the entity performing these tasks, i.e. they cannot be performed by a subcontractor. This provision is not to be understood as the possibility to cap subcontracting.
For more details on subcontracting, please refer to point 18 of Annex I to the FR.

20.4. Article 8 - 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 8(1)). It must abstain from partaking in any activity or receiving any benefit that are in conflict with its obligations towards the contracting authority (Article 8(5)).

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[5] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, 15.12.2000, p. 3).

[6] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1).

The requirement that the contractor be independent is further developed in Article 8(4), which also concerns its sub-contractors, agents, and personnel. The European Commission applies a zero tolerance policy regarding all forms of misconduct including sexual exploitation, abuse and harassment by its staff and those of partner organisations receiving EU funds.
In this respect, Article 8(2) covers any form of physical, sexual and psychological conduct as well as any form of verbal and non-verbal abuse and intimidation, including harassment and sexual harassment.
Contractors must immediately report to the contracting authority any allegation of misconduct involving sexual exploitation, abuse and harassment. If the contracting authority is an EU delegation, it must also inform the relevant 'Finance and Contracts' unit as well as the central contact point in Headquarters (DG DEVCO Director R. Security Coordinator).
As a minimum this notification should include the following information about the report/allegation e.g. misconduct category, type and short description. It is for the contracting authority to assess the gravity of the misconduct, taking into account possible remedial measures taken.
These remedial measures may include for instance:
- the active collaboration with the investigating authorities;
- the implementation of safeguarding procedures to prevent, respond and manage the harassment / sexual harassment and sexual exploitation and abuse situations, such as: creating internal procedures to address the risk of sexual exploitation and abuse in the contractor staff programme, developing a code of conduct with standards that include the sexual exploitation and abuse principles, developing complaints procedures for the staff and other personnel to report incidents, developing internal investigation procedures, ensuring disciplinary actions and sanctions, establishing and implementing a victim assistance mechanism;
- the evidence of appropriate staff reorganisation measures following the misconduct, such as the dismissal of the employee responsible of the infringement.
Investigations should be completed within an acceptable time frame and the contracting authority should update DG DEVCO Directorate R and the appropriate geographical directorate on outcomes and actions taken.
If the contracting authority considers the remedial measures to be not sufficient, it must inform the contractor.
These procedures should take into consideration all relevant data protection and confidentiality related requirements. The contracting authorities must treat the related information as 'special categories of personal data' and in doing so ensure appropriate confidential storage and handling. To this end, the contracting authorities must have in place appropriate safeguards for the rights of the data subjects concerned, in particular adequate technical and organisational measures to ensure the security and confidentiality of such categories of data, to prevent accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted stored or otherwise processed. Where the contracting authority is a EU delegation the measures may, among other, take the form of secure transmission of data via Secure Electronic Mail (SECEM), definition of access rights strictly on a need to know basis, secure storage of paper files in locked cupboards, restricted access to relevant Ares files, secured electronic documents stored in common drives.
The respect of the code of conduct set out in Article 8 constitutes a contractual obligation. Failure to

comply with the code of conduct is always deemed to be a breach of the contract under Article 34 of the general conditions. In addition, failure to comply with the provision set out in Article 8 can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.
The grave professional misconduct covers not only the misconduct related to offensive behaviours as defined in the 'zero tolerance' clause (Article 8(2)), but also any wrongful conduct that has an impact on the professional credibility of the contractor and denoting a wrongful intent or gross negligence. In practical terms, the contracting authority may invoke the grave professional misconduct for all wrongful conduct that implies a breach of the obligations stated in the code of conduct/ethical obligations by contractors that the contracting authority can demonstrate with any means. In this respect, the grave professional misconduct may lead to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.
Article 136(1)(c) FR provides a no-exhaustive list of cases, such as:
- fraudulently or negligently misrepresenting information required for the verification of absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;
- entering into agreement with other persons or entities with the aim of distorting competition;
- violating intellectual property rights;
- attempting to influence the decision-making of the authorising officer responsible during the award procedure.

20.5. Article 9 - Conflicts of interest

The contractor must take all necessary measures to prevent or put an end to any situation of conflict of interest that 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 its subcontractors, agents, and personnel.
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 13 - Medical, insurance and security arrangements

The contractor maintains full responsibility for the health and security conditions of all persons working for him/her. Article 13 of the general conditions stipulates therefore that the contractor takes all necessary medical and professional insurances, as well as insurance covering its liabilities as laid down in Article 12 of the general conditions. The insurance content is specified in Article 13(3) of the general conditions.
If not submitted before by the contractor, proof of the insurance coverage can be requested within the letter accompanying the transmission of the contract signed by the contracting authority (Annex A9 to

the PRAG) using the field <Add any special instructions as appropriate>. According to Article 13(2) of the general conditions, proof of the insurance coverage (cover notes and/or certificates of insurance) must be provided at the latest with the return of the contract signed by the contractor.
Notwithstanding the primary responsibility of the contractor, in the absence of adequate insurance the contracting authority may bear the health-related expenses mentioned in Article 13(3)(b) of the general conditions. If this is the case, the bearing of costs is subsidiary and the contracting authority can then claim the reimbursement of the costs incurred, as well as compensation for possibly resulting damage, from the person who failed to take the insurance.
The contractor has to ensure adequate security arrangements corresponding to the level of risk of the country were the contract has to be performed. The cost of these measures is generally part of the incidental expenditures under a fee-based contract and is described in Section 6(5) of the terms of reference for fee-based contracts.

20.7. Article 14 - Intellectual and industrial property rights

The rights and obligations of the contractor and the contracting authority as regards intellectual and industrial property rights are often a source of misunderstandings and disputes.
The minimum level of protection guaranteed to the contracting authority is set out in Article 14, which provides that copyright and other intellectual and industrial property rights, and all technological solutions and information therein, which are obtained in implementation of the contract, must be irrevocably and fully vested to the contracting authority from the moment these results or rights are delivered to it and accepted by it, unless the parties agree otherwise.
The terms of reference indicate that no equipment can be purchased under a service contract, therefore the ownership of equipment cannot also be granted to the contracting authority. So, for example, if the terms of reference indicate that a car and/or certain hardware should be provided to an expert, these items will not be considered to be the property of the contracting authority at the end of the contract because their cost has already been taken into account for the calculation of the fees. Similarly, no procurement procedure is imposed on the contractor for the purchase of such equipment.

20.8. Article 15 - The scope of the services

Global price contract concerns in particular studies that touch on the identification and definition of projects, pre-feasibility studies, economic and market studies, technical projects, and the preparation of tender documents, evaluation and audits. These contracts must never have the implementation of incidental expenditure as their principal goal.
Fee-based service contracts are used in the case where the contractor is responsible for fulfilling an advisory role for all the technical aspects of projects, as well as where the contractor is required to assume the management and/or the supervision of the implementation of a project (Article 15(3)).

20.9. Article 16 - Staff

When the contract concerns the provision of technical assistance personnel, the contractor is under an obligation to provide the personnel specified in the contract. This specification may take different

forms.

Firstly, the contract identifies and designates the key experts that the contractor must provide under the contract. These are the experts that the contractor proposed in his tender, in the offer it made before the conclusion of the contract. The offer of the contractor must contain the detailed curriculum vitae of these experts. Secondly, Article 16(1) states that the contractor must also specify the categories of staff other than the key experts that he/she intends to use to implement the tasks. The terms of reference also set out the level of training, qualification, experience, and specialisation necessary for the non-key experts.

All of these factors must be taken into account in a situation where the contractor must replace staff after signing the contract or during its implementation.

The contracting authority may object to the contractor's selection of any categories of staff proposed to work under the contract.

However, for the appointment of non-key experts the contractor needs to submit to the project manager a request for approval in advance (Article 16(4)). No minimum number of CVs is required: the contractor may propose the non-key experts of its choice, provided he/she respects the provisions included in Section 6.1.2 of the terms of reference. The nationality rule does not apply to experts.

All staff working on the project must reside close to the normal place of work, unless there are exceptions specified in the contract, which is the case for example with contracts that are implemented in different locations. The terms of reference may provide for missions that require staff to relocate outside of the normal place of work. These missions, provided that they are accepted by the contracting authority, are the only situation where a per diem reimbursement may be permitted. A mission lasting more than 28 days is considered a long term mission. For such missions, the contracting authority may reduce daily allowances up to 75%. For ongoing contracts, this option can be activated when setting the per diem rate at the beginning of each mission. For contracts still to be awarded, it is advisable to announce this possibility in the tender dossier. In order to facilitate the proper implementation of the project by the contractor 's personnel, certain types of equipment may be requested (such as computers, vehicles, etc.). However such equipment should not be confused with incidental expenditure. It should be kept in mind that no piece of equipment may be purchased under a service contract. This means that all the costs of equipment that is necessary for the contractor's personnel should be covered by the fees. At the end of the contract, this equipment remains the property of the contractor. Indeed nothing in the general conditions provides that equipment that is purchased under a service contract should be transferred to the contracting authority/partner country. It should be noted that there is no obligation on the contractor to respect PRAG procurement procedures for the purchase of such equipment.

The provision for incidental expenditure covers the ancillary and exceptional expenses that are authorised and incurred under a service contract. The allowed expenses are specified in each contract. The most recurrent expenses concern travel related to experts' missions; other examples relate to the organisation of seminars and security measures in hostile places, where those are not treated as a lump-sum component of the contract. By no means can incidentals be used for the costs that should be covered by the contractor under its fees. The prior authorisation for the use of incidental expenditures must remain exceptional.

Be aware that neither the contracting authority nor the European Commission have contractual

relations with any of the staff employed by the contractor under the contract. This means that if one of the personnel appeal to the contracting authority or the European Commission to resolve disputes with the contractor, the contracting authority or the Commission are not able to respond favourably to such a request, if this is not related to the application of the general conditions.

20.10. Article 17 - Replacement of staff

The contractor must, on its own initiative or at the request of the contracting authority, propose the replacement of agreed staff in case of death, injury or illness of any personnel, or when it is necessary to replace a person for any other reason beyond the control of the contractor, for example in case of resignation or when the contracting authority considers that a member of staff is incompetent or not suitable for the performance of the relevant tasks under the contract.

These considerations of course only cover the agreed experts, but not the staff who must be provided as a result of the contract (note that these will not be individually identified in the contract). Indeed, for certain members of the staff who are not the agreed experts, the special conditions do not indicate either the required qualifications or experience, but give a general description of the tasks to be fulfilled, such as the tasks relating to the support structure provided in the framework of the contract.

When the contractor proposes to replace an agreed member of staff, the replacement must possess a level of qualification and experience that is at least equivalent to that of the person to be replaced according to the terms of reference, and his/her remuneration may not go beyond that of the person to be replaced.

Where the contractor is not able to provide a replacement of equivalent qualifications and experience, the contracting authority may decide to terminate the contract, or to accept an alternative proposed replacement provided that they meet at least the minimum qualifications indicated in the Terms of Reference, and on condition that the fees are negotiated downwards.

When the replacement of an expert is necessary, the contractor must propose a replacement within 15 days, starting from the first day of absence of the person to be replaced. Otherwise, the contracting authority may impose liquidated damages of up to 10% of the fees due for the expert.

When the contractor requests the agreement of the contracting authority for the proposed staff, the contracting authority may not unreasonably delay its agreement or objection. It has 30 days from the date on which the request was introduced to accept or reject the replacement.

If the contracting authority is the European Commission, the partner country must also give its agreement to the replacement of an expert. In this case, the partner country has 15 days to accept a replacement or to submit objections with justification.

The additional costs generated by the replacement of staff are normally the responsibility of the contractor. The fact that the contracting authority has given its agreement for the replacement, or that it has ordered the replacement for reasons of incompetence or inadequacy, does not give the contracting authority responsibility for paying these costs (Article 17(4)). In certain cases, these costs may be covered by the insurance that the contractor must take out under the contract. This is the case for costs relating to arrangements that must be taken for deceased members of staff (Article 13(3)(d)) or where staff is involved in an industrial accident (Article 13(3)(a)).

In order to formalize the replacement of an expert, a note to the file should be prepared confirming that the new expert meets at least the same criteria as the expert to be replaced, and that the fees

remain unchanged. The CVs of the expert to be replaced and of the new expert should be annexed to the note. If the contracting authority is the European Commission, this note must also be accompanied by a confirmation that the representative of the partner country accepts the new expert.

20.11. Article 18 - Trainees

In order to ensure the long-term viability of projects, the training of nationals of the partner country is an important element in the provision of technical assistance and should be encouraged.
Article 18 sets out the terms under which the contractor must provide this training. The contracting authority must, in accordance with the training schedule, make trainees who possess the basic knowledge required for this training available to the contractor. The details of the training requirements should be clearly defined in the Terms of Reference, which should also include mechanisms to monitor the training (evaluation reports, activities that are entrusted systematically to trainees, etc.) in order to ensure that the objectives are attained and to avoid future trainees or organizations having unrealistic expectations.
The idea is that the trainees chosen by the contracting authority to collaborate with the contractor are integrated into the team of experts with clearly defined responsibilities. The contractor expects every member of his team to be productive. The level of training that the trainees are expected to acquire must be clearly defined. In this regard, it should be noted that the contractor must have the possibility to request the contracting authority to replace a trainee that is judged incompetent or ill-suited on the basis of an evaluation of the trainee's work. The contracting authority must comply with such a request, unless it considers that the reasons given by the contractor are not valid.
Although the cost of the training is included in the contract amount, the remuneration of trainees, and their travel and accommodation expenses and other expenses incurred by them, are the responsibility of the contracting authority. The cost of the training should be included in the incidental expenditures.

20.12. Article 20 - Amendment to the contract

During its execution period, the parties might need to modify some elements of a contract. The procedure for amending a contract varies depending on the kind of modification. A number of modifications require going through a negotiated procedure, at the end of which a formal addendum is signed. For the exhaustive list of such situations, please refer to Section 3.2.4.1 of the PRAG.
Other modifications can be done via an addendum or administrative order without a negotiated procedure, and some others do not require any formality. For all modifications that do not require a negotiated procedure, and specifically for cases and conditions for amending a contract via an addendum, please refer to Section 2.11.2 of the PRAG.
It is not possible to modify the contract in order to reduce the 'provision for expenditure verification'.
For other modifications, it is necessary to distinguish three situations:

20.12.1. Changes that do not need a contractual modifications

Increases as regards the initial amount of the contract that are a result of the application of a provision contained in the contract, such as the application of a price revision clause, do not constitute a

modification of the contract and do not therefore require an administrative order or an addendum. The same applies to any changes of address, bank account or auditor by the contractor (Article 20(6)).

20.12.2. Administrative order

The project manager can, on his/her own initiative or at the request of the contractor, order any modification that he/she considers useful for the proper implementation of the contract, as long as it does not change its purpose or its scope. Article 20(2) of the general conditions outlines the modifications that he/she may make, and sets out the terms and criteria of their execution. These modifications can be implemented with an administrative order.

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/she 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 that must be considered by the donor.

c) The project manager notifies the contractor of his intention to request a modification and outlines its nature and its form. He/she also asks the contractor to submit all necessary proposals for changing the budget of the contract and the period 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 20(2). Whenever possible, appropriate rates and prices in the budget (such as fees when tasks are similar in nature and carried out by comparable experts) 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 that can be requested by the project manager are for example changes of non-key experts, budgetary reallocations between budget lines and within the heading “fees”, or from the heading 'fees' towards the heading 'incidental expenditure'. Reallocations from the heading 'incidental expenditure' towards the heading 'fees', or increases in the line 'verification of expenditure' are subject to the signature of an addendum, and cannot therefore be decided by the project manager.

Sometimes a modification is made necessary by a failure of the contractor or by a deficiency in implementation that is imputable to it. In this case, all the additional costs created by this modification are attributable to the contractor (Article 20(5)).

Exceptionally, if provided for in the terms of reference, an administrative order can, in certain cases, also be issued for the mobilisation of incidental expenditure (seminars, workshops etc.).

The project manager cannot issue an administrative order resulting in an increase or reduction in the initial amount of the contract, the replacement of a key expert, or a change in the implementation period of the contract. It should be noted that all modifications that result in an increase or reduction in the total value of the contract, the replacement of a key expert, or a change in the implementation period of the contract, require an addendum (see below), except in the case of the application of a

price revision clause.
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.

20.12.3. Addendum

In addition to the above changes, it may of course happen that the contracting parties mutually agree on a more substantial modification of the contract. In this case, such a modification must be formalised by way of an addendum (Article 20(1)).
In this regard, it is important to keep in mind that:

– it is necessary to proceed with an addendum when the proposed change results in an increase or decrease in the contract value as regards the initial contract price, or where the modification concerns budgetary reallocations from the line 'incidental expenditure' towards the line 'fees', or increases in the line 'provision for expenditure verification';
– an addendum is necessary in case of a replacement of a key expert or a change in the implementation period of the contract. When the replacement of a key expert is requested by the contracting authority the contractor must be asked to provide his own and the key expert's observations to such request;
– an addendum may also be necessary in case of substantial changes that affect the object or scope of the contract, resulting from budgetary reallocations between headings, even if these changes have no financial impact on the total contract value.

If the request for an addendum is made by the contractor, the contracting authority must respond to it within 30 days.
An addendum must be validated within the execution period of the contract. 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.

20.13. Article 26 - Interim and final reports

The contractor must report on the state of progress of the contract implementation. These reports are essential for the approval by the contracting authority of the services provided by the contractor, and they are a necessary condition for payment.
The subject and frequency of these reports must be specified in the terms of reference. The project manager notifies to the contractor on the format of such reports. Contractors are encouraged to submit invoices, reports and other documents (if any) related to a payment request in electronic version, if this is allowed by the national law of the contracting authority (under indirect management).
For fee-based contracts with a duration of more than 12 months, interim reports must be provided every 6 months. Every report must have a narrative section and a financial section. The financial section must contain detailed information on the time that experts have spent on the contract, on incidental expenditure, and on the provision for expenditure verification.
For global price contract with duration of more than 24 months for which interim payments are

foreseen annually, interim reports must also accompany the request for payment. These reports must indicate that specific objectives have been attained, and they must be approved by the contracting authority before the payment is made. Where global price contracts provide for interim payments, it is essential to define in the Terms of Reference the objectives that must be achieved, and the implementation period for each of these objectives. The budget should also be divided so that contractors estimate amounts related to each objective and confirm an implementation period for each one.

In accordance with Article 7(5) of the general conditions, the contractor must also make special reports if an unforeseen event, or an action, or an omission in the Terms of Reference, put the implementation of the contract directly or indirectly in peril, partially or totally. A report covering such a situation must include a description of the problem, an indication of the date on which the problem arose, and the actions taken by the contractor to fulfil its obligations under the contract. If circumstances such as these arise, the contractor should give priority to the resolution of the problem rather than to the allocation of liability.

When the contract is performed in phases, the contractor must give a report at the end of each phase (Article 26(5) and 27(4)).

Whatever the nature of the service contract, the final report must be communicated to the contracting authority by the latest 60 days after the completion of the provision of the services.

20.14. Article 27 - Approval of reports and documents

If the contracting authority does not approve the report, it must either indicate the changes that are deemed necessary, or reject the report with a justification for the rejection. If further changes are requested, the time period for the implementation of these changes should be specified. As the approval of reports must be given within the payment deadline, in case of rejection of a report the contracting authority may halt the countdown towards the payment deadline. See Article 29(2) of the general conditions.

Although the contractor is formally responsible to the contracting authority, in the case of a contract signed in indirect management with partner countries with *ex ante* control by the Commission, the Commission must be able to verify that the implementation of the projects is progressing as foreseen. This is the reason for which the contractor may be required, by virtue of Article 29(5) of the special conditions, to send to the Commission a copy of the invoices accompanied by the reports that it submits to the contracting authority. Contractors are encouraged to submit invoices, reports and other supporting documents (if any) related to a payment request in electronic version, if this is allowed by the national law of the contracting authority (under indirect management). For the same reason, the contractor may wish to inform the European Commission of difficulties that arise, if it considers that this may help to avoid complications or delays.

Also, where services contracts are signed in direct management, in accordance with standard practice, the partner country should be involved in the discussion and in the approval of reports. This must be specified in the terms of reference.

20.15. Article 29 - Payments and interests on late payment

The contractor has the right to payments at different stages of the implementation of the contract: pre-financing, interim payments, and final payment. These payments are made in the currency of the contract (Article 29(5)).

Pre-financing may be conditioned on the delivery of a financial guarantee by the contractor to the contracting authority.

Pre-financing should enable the contractor to deal with expenses resulting from the commencement of the implementation of the contract. However, the contractor cannot condition the beginning of the implementation of the project on the provision of pre-financing.

The pre-financing payments are made in the form of a lump sum, and their total amount may not exceed 20% of the contract price for fee-based service contracts, and 40% of the amount of the contract for global price contracts. The contract amount is understood to include all budget lines, thus including the reimbursable expenses that correspond to incidental expenses and to expenses that are linked to the expenditure verification in the case of fee-based contracts.

Pre-financing payments must be requested by the contractor and are therefore not paid automatically. The contractor may also decide the amount that it wishes to receive, within the limits specified above. It sometimes happens that contractors decide to reduce the amount of pre-financing to which they are entitled in order to avoid having to provide a financial guarantee, which is acceptable. In this case no addendum is required.

The pre-financing payments are cleared when 80% of the value of the contract has been paid. However, if the pre-financing is covered by a guarantee that stops being valid without the contractor renewing it, the contracting authority can deduct the amount of the advance payment from subsequent interim payments, or terminate the contract (Article 30(3)).

The interim payments are paid at regular intervals, in accordance with the nature and duration of the contract. In the case of fee-based contracts, the interim payments are paid after every 6 months of execution. In the case of global price contracts with a duration of less than one year, no interim payment is provided for. In the case of global price contracts with a duration of more than 1 year, it is possible to provide that interim payments be made at the end of each year of implementation, provided that the objectives clearly stated in the terms of reference have been attained.

In the case fee-based service contracts, the interim payments can cover four types of costs:

– The fees of key and non-key experts, on the basis of the timesheets that must be approved by the project manager, or the contracting authority or any person authorised by him/her. A minimum of 7 hours worked are deemed equivalent to a working day. Days of travel for experts for tasks that are exclusively for the contract and that are necessary (in general these will be missions provided for in the terms of reference) may be included in the number of days entered on the presence sheet. It is not the same for days of travel that are undertaken by experts for their mobilisation, demobilisation, or leave periods, whether these experts are key or non-key experts (see also Article 24(2)).
– Lump sum costs: these are determined by the contractor in the submission of the tender. They correspond to the objectives detailed in the terms of reference. If the objectives are attained, the lump sum costs must be paid in full.
– Incidental expenditure: a certain amount of funds is made available to the contractor by the contracting authority for carrying out a number of tasks that are defined in the terms of reference. The incidental expenditure covers the transports costs and per diems of the experts who are required

to go on missions for the purposes of the contract. These incidental expenses are reimbursable on the basis of the presentation of supporting documents that evidence actual costs incurred by the contractor. However, per diems are a subsistence allowance and have to be regarded as fixed amounts. Consequently, the contractor does not need to provide list of actual costs related to the per diems, but still needs to be able to prove that the mission took place by providing evidence (such as flight tickets and/or hotel invoices) and that the experts were provided with the agreed per diem.. It should be recalled that service contracts should never have the implementation of incidental expenditure as their principal goal, so the amount of incidental expenditure must stay at a reasonable proportion of the overall contract value.

– Costs for verification of expenditure: every request for payment presented by the contractor must be accompanied by an expenditure verification report carried out by an external auditor. The invoice for the work of this auditor must be reimbursed based on actual costs. See articles 28 and 29(2).

The total pre-financing and interim payments may not go above 90% of the value of the contract - the minimum final payment must correspond to 10%. The final payment is made after approval by the contracting authority of the final report. In accordance with the general conditions, the payment periods include the approval of reports, subject to what is specified in the special conditions.

The payments deadline for pre-financing is 30 days for contracts funded by the EU general budget, 60 days for the 11th EDF and 90 days for the 10th EDF (Article 29(1) of the special conditions derogating from the same article of the general conditions).

The payment deadlines for interim payments are 60 days in accordance with the general conditions. This payment deadline applies to the contracts in direct management. Article 29(1) provides a derogation for the contracts in indirect management with partner countries and for the contracts under the EDF. In this case, the payment deadline is 90 days. Indeed, for the budget, the contracts in indirect management are considered as 'complex' contracts, in the sense of the Financial Regulation, and for the EDF, the Financial Regulation sets a payment deadline of 90 days, regardless of what the mode of management may be.

Accordingly, in the special conditions, the applicable option has to be selected:

Contract in indirect management under the general budget of the European Union only: by derogation, the payments to the contractor of the amounts due under interim and final payments must be made within 90 days after receipt by the contracting authority of an invoice and of the reports, subject to approval of those reports in accordance with Article 27 of the general conditions;

Contract under 10th EDF only: by derogation, the pre-financing payment must be made within 90 days from the date on which an admissible invoice is registered by the contracting authority. The interim and final payments to the contractor of the amounts due must be made within 90 days following approval of the reports in accordance with Article 27 of the general conditions, after receipt by the contracting authority of an admissible invoice;

Contract in indirect management under 11th EDF only where the Commission executes payments: by derogation, the pre-financing payment must be made within 60 days from the date on which an admissible invoice is registered by the contracting authority. The interim and final payments to the contractor of the amounts due must be made within 90 days from the date on which an admissible invoice is registered by the contracting authority.

The payment deadlines for the final payments are 90 days in all cases.

If the payment deadlines are not respected, the contractor has the right to late-payment interest.

Article 29(3) of the general conditions states that the contractor receives them automatically, except if the amount of the interest is less than EUR 200, in which case the contractor has to make a demand within the two months following the late payment. As a result of a derogation from this article that is made in the special conditions, in indirect management the payment of interests is never automatic and the contractor must make a demand in all cases, while still respecting the two month deadline following the late payment.
Be aware that in accordance with Article 37(1)(a) of the general conditions, if payments are due for more than 120 days after the deadline, the contractor is permitted, after having given 14 days' notice to the contracting authority, to terminate the contract.

20.16. Article 30 - Financial guarantee

Before any pre-financing payment above EUR 300 000 a financial guarantee must be requested to cover the amount of the pre-financing, for an amount equal to the pre-financing, and denominated in the currency of payment. Subject to a risk analysis to be made by the contracting authority, a pre-financing guarantee may also be required below the amount of EUR 300 000 of pre-financing, (i) for contractors that have been listed in the Early Detection and Exclusion System at any moment during the last 3 years, and (ii) for contractors having relied on the capacity of another entity not part of the contract in order to meet the selection criteria.
The results of the overall risk analysis may be found in an annex to the DEVCO Companion (Annex I5). For instructions on financial guarantees please refer to Section 9.1. of the DEVCO Companion.
For service contracts of less than EUR 60 000, it is not possible to demand a guarantee to cover the pre-financing.
For fee-based contracts, the guarantee must be returned to the contractor when 80% of the value of the contract has been paid. For global price contracts, the guarantee should be retained by the contracting authority until payment of the final amount.

20.17. Article 34 - 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 a1a to the PRAG.
Liquidated damages are damages that 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 that it is due to pay to the contractor, or alternatively from an appropriate guarantee, the pre-financing guarantee.
Additional information can be found in Chapter 12 of the DEVCO Companion 'Roadmap for contractual sanctions'.

20.18. Article 36 - Termination by the contracting authority

The general conditions enumerate several grounds that entitle the contracting authority to terminate the contract, and also stipulate its rights upon termination.
The period of 7 days notice mentioned in Article 36(2) is not aimed at giving the contractor a final chance to remedy his failures, but instead to give him/her a chance to make the necessary preparations to achieve his tasks.
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. Some of those cases are also applicable to members of the administrative, management or supervisory body of the contractor and/or to persons having powers of representation, decision or control with regard to the contractor, to persons jointly and severally liable with the contractor for the performance of the contract, or to subcontractors. 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 (Article 36(2)(f)).
Of course, any modification that 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 that affect the rights of the contracting authority in a way that 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 is entitled to claim an indemnity for loss suffered, in addition to sums owed to him/her for services already rendered. Such a loss includes that of profit on the remaining part of the services to be implemented. 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 services that have been rendered by the contractor.
The net amount due to the contractor can be ascertained and paid only when all services have been rendered and the full value of contracts with third parties and other costs have been deducted from amounts due to the contractor (Article 36(6)).

20.19. Article 37 - Termination by the contractor

Unlike the contracting authority, the contractor can terminate the contract only on a few specific grounds listed in Article 37: the contracting authority has not paid him/her sums due for more than 120 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 90 days for reasons that are not specified in the contract and that 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, which can add to the recovery of overpayments, corresponding to the difference between what was paid and the total amount of the contract. This entitlement is limited to the contract price (Article 37(3)).

20.20. Article 38 - Force majeure

There is no default or breach of contract if implementation is prevented by force majeure (Article 38(1)). Because of the seriousness of the consequences that 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 lockouts 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'.
Another case of force majeure general conditions 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 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 the implementation of the contract. The contractor is entitled to any extra costs incurred as a result of the project manager's directions (Article 38(5)).
Both parties should monitor the evolution of the circumstances of force majeure especially when those are long-lasting. If the situation of force majeure continues for a period of 180 days, each party is encouraged to make recourse to the 30-day notice for termination provided for in Article 38(6) of the general conditions, in order to release all parties from their respective contractual obligations.

20.21. Article 40 - Settlement of disputes

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 that concerns an on-going contract, this does not relieve the contractor of its responsibility to continue complying with its contractual obligations with due diligence.

20.21.1. 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. A prior information letter issued in the view of a recovery order can also take the place of a formal request for amicable settlement, if so indicated in the letter itself. 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.
Unlike the attempt to reach an amicable settlement that is mandatorily foreseen in Article 40(2), Article 40(3) provides for the possible recourse to conciliation by a third person, and sets maximum time periods for reaching a settlement. See also 20.21.3. below.

20.21.2. Litigation

If the attempt to resolve the dispute through amicable settlement fails and, if so requested, the

conciliation procedure 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 indirectly managed 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 (the EDF Procedural Rules)[7].

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 chairperson 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 must be borne by the party requesting the arbitration. For more information on arbitration in EDF contracts, please see the rules of procedure for conciliation and arbitration of contracts financed by the EDF (Annex A12 to the PRAG):

[7] Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, general conditions and procedural rules on conciliation and arbitration for works, supply and service contracts financed by the European Development Fund (EDF) and concerning their application (OJ L 382, 31.12.1990, p. 1).

http://ec.europa.eu/europeaid/prag/annexes.do

20.21.3. Conciliation

Once the dispute has arisen, the parties may agree to have recourse to conciliation by a third party.
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 must 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 must 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 containing the 'underlying principles and procedures' that describes its steps and principles (and that should have been previously signed by the parties)[8].

[8] The hyperlink is only available for European Commission users.

21. The implementation of works contracts - A users' guide

[The content of this chapter is under the responsibility of Unit DEVCO.R.3. The latest update was made in May 2019.]

21.1. Introduction

The user's guide is designed 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 not intended to provide guidance to contractors or the public.

The general conditions contain the basic articles governing the post-contract-award phase for works contracts.
They may be subject to modification by the special conditions that are part of the contract and that also include the necessary additions to the general conditions. Through these additions and modifications, the special conditions 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 every article of the general conditions for works contracts but only with those articles that are considered essential or complex such as to require some further explanations. Furthermore, the standard tender documents and contracts contain several indications, references and proposals for modifying and completing the general conditions through the special conditions.

21.2. Role of the supervisor

The supervisor is employed/contracted by the contracting authority for controlling the progress and execution of the works.
The supervisor is not a party to the contract, and therefore cannot relieve the contractor of any of his obligations except as expressly provided for in the contract.
Depending on the type of contract and the practice in the partner country, the supervisor may be recruited from one of the following sources:
a) institutional, e.g., a ministry, department or agency of the government or contracting authority; or
b) a professional company, firm or natural person engaged under a separate service contract for supervising the works.
The supervisor is largely responsible for the day-to-day technical supervision of the contract. In this capacity, she/he is given the opportunity to exercise his independent professional judgment.
The duties and powers of the supervisor are described in several articles of the general conditions. She/he is responsible for keeping a works register of the progress of the works (Article 39 of the general conditions), and for inspecting and testing components and materials before incorporation in the works (Article 41 of the general conditions). She/he grants or refuses the contractor's request for extensions of the period of implementation of tasks (Article 35 of the general conditions), she/he can

order modifications to the works (Article 37 of the general conditions) and decide on suspension of the works (Article 38 of the general conditions).
The supervisor is required to consult with the contracting authority before reaching conclusions on certain specific matters having financial implications as, for example, extension of the period of implementation of tasks, modifications and claims for additional payment.
The supervisor, while retaining the ultimate responsibility for supervising the works, may appoint a representative and delegate responsibilities to her/him, as she/he considers necessary.
The duties, authority and identity of the supervisor's representative are determined in an administrative order that must be issued at the moment of the commencement order. The role of the supervisor's representative must be to supervise and inspect works and to test and examine the materials employed and the quality of workmanship. Under no circumstances will the supervisor's representative be empowered to relieve the contractor of its obligations under the contract or, save where express instructions to that effect are given in the contract, order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the contracting authority or introduce variants in the nature or scale of the works (Article 5(2) of the general conditions).
Without in any way diminishing the responsibility of the supervisor for the proper supervision of the works, the appointment of his representative should be subject to the approval of the contracting authority. The contracting authority should also have the power to request the removal/replacement of the supervisor's representative, should she/he prove unsuitable for the task. These powers of the contracting authority are not mentioned in the general conditions as they are a matter to be decided in the relation between the contracting authority and the supervisor (for example, in the context of a service contract) and not in that between the contracting authority and the contractor.
In order to give effect to the appointment of the supervisor's representative, the supervisor is required to notify the contractor (Article 5(2) of the general conditions). She/he should also be required to notify the contracting authority, although again this is not mentioned in the works contract. The supervisor must also inform the contractor of the responsibilities that she/he has delegated to the supervisor's representative and, where necessary, of any later modifications to these delegated powers. Within the scope of the delegated powers, all actions taken by the supervisor's representative are regarded as actions of the supervisor and will have the same effect. However, because she/he carries ultimate responsibility, the supervisor may reverse or vary at any time instructions given or actions taken by his representative (Article 5(3)(b) of the general conditions). Where the Supervisor reverses or varies orders issued by his representative, and the contractor has already taken some action on the order incurring some expense (for example, ordering materials), the contractor should normally be entitled to reimbursement of his costs. The supervisor may also rectify any failure on the part of his representative to take necessary actions. This sometimes happens when the supervisor's representative does not notice work that has been done incorrectly or work that contains defects. In such cases this failure of the supervisor's representative does not prevent the supervisor from rejecting the work at a later date. This should not entitle the contractor to reimbursement of costs, since she/he is responsible for the defect.
All instructions and orders issued by the supervisor or the supervisor's representative to the contractor must be in writing in the form of an administrative order. However, the general conditions provide

that, where the situation demands, instructions concerning modifications (Article 37(2) of the general conditions) may, in the first instance, be issued orally (Article 37(3) of the general conditions). Such situations usually arise in cases of urgency where it is important that the contractor be instructed as soon as possible. Oral instructions must be confirmed promptly by administrative order.
Administrative orders issued by the supervisor or his representative should be addressed to the contractor and not to the contractor's site representative. However, in order to facilitate the progress of the works, a copy should be delivered to the contractor's representative (Article 5(4) of the general conditions) who should have full authority to receive and carry out any administrative order issued by the supervisor.

21.3. Program of the implementation of tasks

A tenderer will normally have been required to submit with his tender a preliminary work program with a list of the major items of the equipment that she/he proposes to bring to the site, a forecast of labour and staff and a forecast of expenditure in various currencies (if applicable) during the contract period.
This information is required for evaluating the tenders and particularly for establishing that tenderers have correctly appreciated the activities required to ensure completion of the works within the specified timeframe. It is also required in order to ascertain how the phasing of operations affects other contracts and activities of the contracting authority on the site. However, on award, this information is usually not made part of the contract.
In addition to the work program given as part of the offer, the contractor is required to submit to the supervisor a detailed program of implementation of tasks, broken down by activity and by month. The programme should contain, at least, the order in which the contractor proposes to carry out the works, the time limits within which submission and approval of drawings are required, an organisation chart containing the names, qualifications and curricula vitae of the staff responsible for the site, a general description of the method including the sequence, by month and by nature, proposed by the contractor to carry out the works, a plan for the setting out and organisation of the site and any additional details that the supervisor may reasonably require (Article 17(1) of the general conditions).
The programme must be sent by the contractor to the supervisor within 30 days of the signature of the contract and will be subject to the approval of the supervisor within 10 days of receipt (save where the supervisor, within these 10 days notifies the contractor of his wish for a meeting in order to discuss the documents submitted). If the supervisor fails to notify its decision or remark within this time limit, the program is deemed approved (Article 17(3) of the general conditions). The programme has contractual significance for the actions taken by the contractor, the supervisor and the contracting authority. The program will enable the supervisor to take timely action in monitoring the progress of the works and to enable the contracting authority to make arrangements for the release of the site, the provision of drawings and instructions, and the coordination with other contractors engaged in the project.
The special conditions should give any additional information or specification about the manner in which the program should be presented. The special conditions may specify the format for the program.
The supervisor, on observing that the implementation of the works 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 supervisor considers appropriate (Article 17(5) of the 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 work within the time available. Proper management of the contract strongly relies on a realistic programme that reflects the actual progress already made.
Where the contractor is proceeding with the works in accordance with or in advance of the programme, it should not be necessary for the supervisor 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 supervisor.

21.4. Subcontracting (post award)

Sub-contracting should be distinguished from cases where the contracting authority enters into a separate direct contract with another contractor for work that is not part of the contract, but is part of the same project. Where a project is divided into a number of separate contracts, the supervisor will need to coordinate them, on behalf of the contracting authority. Whilst a contractor is fully responsible for his subcontractors, she/he is not responsible for other contractors working on the project but she/he may be responsible for liaising with them if she/he is required to do so in his contract.
The contractor remains fully responsible for implementing and completing the works in accordance with the contract (Article 7(5) of the general conditions). The work to be subcontracted and the names of the subcontractors must be notified to the contracting authority. The contracting authority then notifies the contractor of its decision authorising or refusing to authorise the proposed subcontract within 30 days or notifies the contractor that it needs a maximum of 15 additional days to study the request. Where the contracting authority refuses authorisation, the reason for the refusal should be stated (Article 7(2) of the general conditions). If the contracting authority fails to notify its decision within this time limit (with or without 15 days extra), the work to be subcontracted and/or the subcontractors are deemed to be approved at the end of the time limit. Subcontracting without the approval of the contracting authority can result in termination of the contract (Article 7(7) of the general conditions and 64(2)(d) of the general conditions).
Before approving a subcontract, the contracting authority must examine the contractor's evidence that the subcontractor she/he suggests 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. Also, the contractor must ensure that the subcontractor is not subject to EU restrictive measures. For European Development Fund (EDF) financed contracts, where subcontracting is envisaged, preference must be given by the contractor to subcontractors of African, Caribbean and Pacific (ACP) States capable of implementing the tasks required on similar terms (Article 7(3) of the special conditions).
If, at any time after the expiration of the defects liability period, there is still some unexpired guarantee or other obligation from a subcontractor to the contractor, the latter must transfer this right to the contracting authority if so requested (Article 7(6) of the general conditions). The contractor should always include a provision in his contract with the subcontractor so that she/he can fulfil his contractual obligations in this respect.

21.5. Assignment

Through an assignment, 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 part thereof. An assignment could become necessary, for instance, following an internal organisational modification in the group of which the contractor forms part.

On the one hand, such an assignment whereby the assignee takes over the 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 ensure that the assignment is not a way to circumvent that award procedure. For this reason, the assignment must, for instance, equally satisfy the eligibility and exclusion criteria as well as the selection criteria applicable for the award of the contract. For the same reason, the assignment cannot alter the unit prices and contract conditions of the initial contract. As a result, the addendum formalising the transfer of the contract should be limited to a mere modification of the contractor's identity and bank account details. While such an addendum is to be signed by the contracting authority, the assignor and the assignee will often lay down the arrangements between them in a separate deed to which the contracting authority is not be a party.

Before giving its prior written consent to the proposed assignment, the contracting authority should dispose of a report of the works performed at the moment of the contract transfer, as well as an inventory of the temporary structures, materials, plant and equipment and an overview of the interim payments executed and pre-financings received. It is recommended that the inventory and the survey be carried out jointly by the supervisor, assignor and assignee as these reports should also be accepted by all three.

Likewise, before giving its written consent, the contracting authority should receive the necessary bank guarantees from the assignee, e.g. the assignee will have to mobilise a full performance guarantee. In addition, Article 6(3) of the general conditions stipulates that the assignment does not relieve the assignor of his obligations for the part of the contract already performed or the part not assigned. After the assignment, no more payments will be made to the assignor for the assigned contract or part thereof: their pre-financing guarantee and retention guarantee should therefore also be fully replaced by new guarantees from the assignee's side.

Assigning the contract whereby the assignee takes over the further implementation of the contract, without the authorisation of the contracting authority, constitutes a valid reason for the contracting authority to terminate the contract under Article 64(2)(d) of the general conditions. Article 6(4) of the general conditions further confirms that if the contractor has assigned the contract without authorisation, the contracting authority may, without giving formal notice, apply the sanctions for breach of contract.

On the other hand, contractors are sometimes required to assign rights under the contract for the benefit of their creditors or insurers. For instance, when the contractor insures itself 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 person. Likewise, when granting credit, the contractor's bank can demand from the contractor that the

payments that the contractor receives under the works contract are directly paid to the bank. Such assignments for the benefit of the contractor's creditors or insurers, of course, do not imply that these bank or insurance companies will take over the further implementation of the contract. Consequently, Article 6(2) of the general conditions stipulates that for the cases 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 assignment to the contracting authority, as reflected in articles 54(1) and 54(2) of the general conditions.

21.6. Code of conduct - zero tolerance

The European Commission applies a zero tolerance policy regarding all forms of misconduct including sexual exploitation, abuse and harassment by its staff and those of partner organisations receiving EU funds.
In this respect, Article 12a(1) covers any form of physical, sexual and psychological conduct as well as any form of verbal and no-verbal abuse and intimidation, including harassment and sexual harassment.
Contractors must immediately report to the contracting authority any allegation of misconduct involving sexual exploitation, abuse and harassment. If the contracting authority is an EU delegation, it must also inform the relevant finance and contracts unit as well as the central contact point in Headquarters (DG DEVCO Director R. Security Coordinator). As a minimum this notification should include the following information about the report/allegation e.g. misconduct category, type and short description. It is for the contracting authority to assess the gravity of the misconduct, taking into account possible remedial measures taken.
These remedial measures may include for instance:
- the active collaboration with the investigating authorities;
- the implementation of safeguarding procedures to prevent, respond and manage the harassment/sexual harassment and sexual exploitation and abuse situations, such as: creating internal procedures to address the risk of sexual exploitation and abuse in the contractor staff programme, developing a code of conduct with standards that include the sexual exploitation and abuse principles, developing complaints procedures for the staff and other personnel to report incidents, developing internal investigation procedures, ensuring disciplinary actions and sanctions, establishing and implementing a victim assistance mechanism;
- the evidence of appropriate staff reorganisation measures following the misconduct, such as the dismissal of the employee responsible of the infringement.
Investigations should be completed within an acceptable time frame and the contracting authority should update DG DEVCO Directorate R and the appropriate geographical directorate on outcomes and actions taken.
If the contracting authority considers the remedial measures to be not sufficient, it must inform the contractor.
These procedures should take into consideration all relevant data protection and confidentiality related requirements. The contracting authorities must treat the related information as 'special categories of personal data' and in doing so ensure appropriate confidential storage and handling. To this end, the contracting authorities must have in place appropriate safeguards for the rights of the data subjects

concerned, in particular adequate technical and organisational measures to ensure the security and confidentiality of such categories of data, to prevent accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted stored or otherwise processed. Where the contracting authority is a EU delegation the measures may, among other, take the form of secure transmission of data via Secure Electronic Mail (SECEM), definition of access rights strictly on a need to know basis, secure storage of paper files in locked cupboards, restricted access to relevant Ares files, secured electronic documents stored in common drives.

The respect of the code of conduct set out in Article 12a constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 63 of the general conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.

The grave professional misconduct covers not only the misconduct related to offensive behaviours as defined in the 'zero tolerance' clause (Article 12a(1)), but also any wrongful conduct that has an impact on the professional credibility of the contractor and denoting a wrongful intent or gross negligence. In practical terms, the contracting authority may invoke the grave professional misconduct for all wrongful conduct that implies a breach of the obligations stated in the code of conduct/ethical obligations by contractors that the contracting authority can demonstrate with any means. In this respect, the grave professional misconduct may lead to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures. Article 136(1)(c) of the Financial Regulation[9] provides a no-exhaustive list of cases, such as:

- fraudulently or negligently misrepresenting information required for the verification of absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;
- entering into agreement with other persons or entities with the aim of distorting competition;
- violating intellectual property rights;
- attempting to influence the decision-making of the authorising officer responsible during the award procedure;
- attempting to obtain confidential information that may confer upon it undue advantages in the award procedure.

21.7. Modifications

Three situations are to be distinguished:

[9] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1).

21.7.1. No contract modification

In the overall majority of cases, the contract provides that it is paid by measurement: in such a case, the quantities indicated in the bill of quantities are estimates, as is the initial contract price derived from these estimated quantities.
Whenever an application for payment is submitted, the supervisor measures, for the respective items, the actual quantities of the works executed and certifies, by applying the unit rates, the amount due. **Increases vis-à-vis the initial contract price, which are the sole result of the measured actual quantity exceeding the stated bill of quantities or price schedule, do not represent a change of the contract and do not require an administrative order for modification nor a contract addendum.**
Likewise, it can occur that the application of the price revision clause of the contract will have the same effect. Again, **since the price revision formula is already agreed upon by the contracting parties in the initial contract, no modification of the contract is required to allow increases vis-à-vis the initial contract price to deal with their effect.**

21.7.2. Administrative order

The supervisor can order any modification to any part of the works that are necessary for the proper completion or functioning of the works, provided that such modification does not alter the subject matter of the contract. Articles 37(2) to 37(8) of the general conditions define these changes and the procedures and criteria for making, processing and pricing them. These procedures are based on two basic principles: firstly, that only the supervisor, and not the contracting authority, can order modifications and, secondly, that modifications are ordered in the form of 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 to the supervisor an oral order that has been given by the supervisor. This is deemed to be an administrative order unless immediately contradicted by the supervisor in writing (Article 37(3) of the general conditions).
Except in the case of an emergency when oral instructions are issued, the following procedure applies to orders for modifications:
a) Although the supervisor is not obliged to seek the contracting authority's authorisation before asking proposals from the contractor, it is advisable for her/him to consult with the contracting authority in order to make sure that the latter does not disagree. This is particularly important in the event of financial consequences to be borne by the contracting authority.
b) The supervisor notifies the contractor of his intention to order the modification and gives details of its nature and form. The contractor must then, without delay, submit to the supervisor a written proposal containing:

i. a description of the tasks to be implemented or the measures to be taken and a programme for execution;

ii. any necessary amendments to the programme of implementation of tasks or to any of the

contractor's obligations resulting from this contract; and

iii. any adjustment to the contract price in accordance with the rules set out in Article 37 general conditions.

c) If the supervisor is satisfied with the contractor's proposal and after due consultation with the contracting authority, the supervisor issues the administrative order for the modification that will state the technical details of the works to be undertaken, changes to the contract price, any changes to the programme of implementation and, if necessary, the manner in which the works are to be implemented.

d) If the supervisor is not satisfied with the contractor's proposal or it falls outside the authorisation given by the contracting authority, the supervisor may either:

- consult further with the contracting authority and the contractor; or
- issue the administrative order on the basis of his previous consultation with the contracting authority, stating how it is to be valued in accordance with Article 37(6) of the general conditions.

e) If the contractor disagrees with the changes to the contract price stated in the administrative order, she/he may claim for additional payment under Article 55 of the general conditions. If the contractor considers that the requirements of an administrative order go beyond the authority of the supervisor or of the scope of the contract, it must give notice, with reasons, to the supervisor (Article 12(4) of the general conditions). If the contractor considers that she/he is entitled to an extension to the period of implementation greater than any she/he may have been granted, she/he may submit a request under Article 35 of the general conditions. In any event, the contractor is required to carry out the variation without waiting for the outcome of his claim or request.

As mentioned, the procedure is different in urgent situations where oral instructions have to be issued. If in those situations, the cost estimate or the details of the modification could not be fully specified before the order, the contractor must keep records of the costs of undertaking the variation and of time spent on it. These records must be open to inspection by the supervisor at all reasonable times (Article 37(7) of the general conditions).

All variations are priced in accordance with the rules set out in Article 37(6) of the general conditions. Wherever possible, appropriate rates and prices in the bill of quantities or price schedule are to be used, at least as a basis. Only when there are no appropriate rate and prices that are applicable, should a 'reasonable and proper' rate be fixed. This consists of an estimate of actual cost together with overheads and profit.

Sometimes a modification is required by a default or a technical breach of contract by the contractor. In such a case, any additional cost attributable to that modification must be borne by the contractor.

The cumulative value of the modifications ordered by the supervisor through administrative orders as well as any modification concluded by addendum in accordance with indent c) of Section 20.6.3. below cannot exceed any of the following thresholds: EUR 5 000 000 and 15% of the initial contract value.

21.7.3. Addendum

The parties to the contract may also decide to conclude modifications through an addendum (Article 37(1) of the general conditions).

In this regard, a works contract can be modified by means of simple addendum, with no need to undertake a negotiated procedure, in the following cases, provided the modification does not alter the subject matter of the contract:

a) additional works by the original contractor that have become necessary, if the following cumulative conditions are fulfilled:

- they were not included in the initial procurement (i.e. not similar to the ones that were provided for in the initial contract);
- changing contractor is not feasible for technical reasons (e.g. compatibility with existing equipment, services or installations);
- changing contractor would cause substantial duplication of costs for the contracting authority;
- any increase in price, including the net cumulative value of successive modifications, does not exceed 50% of the initial contract value;

b) modification needed because of circumstances that a diligent contracting authority could not foresee, provided that any increase in price does not exceed 50% of the initial contract value;

c) where the value of the modification is below the following thresholds: EUR 5 000 000 and 15% of the initial contract value for works contracts (the net cumulative value of several successive modifications, **including modifications ordered by the supervisor through administrative orders,** cannot exceed these thresholds).

d) all other modifications that do not alter the minimum requirements of the initial procurement but the value of which is within the limits of point c) above, unless such modification of value results from the strict application of the procurement documents or contractual provisions.

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Increases vis-à-vis the initial contract price, which result from the strict application of the procurement documents or contractual provisions, such as the price revision or the measurement clauses, are not to be considered as contract modifications and are not subject to the limitations specified above under indents a), b) and c) of Section 21.6.3. of the present guide. Modifications under indents a) and b) of Section 21.6.3. of the present guide cannot be made by an administrative order issued by the supervisor but may only be concluded through an addendum.

21.8. Testing, acceptance and maintenance

21.8.1. Introduction

The contractor is required to provide the works and supply the various materials and components necessary for the works that conform to the specifications, samples, etc. laid down in the contract (Article 40(2) of the general conditions). The supervisor must be entitled to inspect, examine, measure and test the components, materials and workmanship, and verify the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. Specific arrangements regarding inspection and testing should be defined in the special conditions, Article 41.

In addition, if required in the special conditions (Article 40(3) of the general conditions), incorporation of components and materials in the works may be subject to preliminary technical acceptance.
The provisional acceptance intervenes when the works are complete and can be taken over by the contracting authority.
The final acceptance after the defects liability period is issued when all defects have been made good.
The contract may permit the provisional acceptance of the works in parts or sections (partial provisional acceptance).
The defects liability period stated in the contract commences on provisional acceptance. For defective items that have to be replaced or renewed, the defects liability period restarts at the time of replacement or renewal being made to the satisfaction of the supervisor.
The contractor is responsible for rectifying all defects that are observed in the works during the defects liability period. She/he will not, however, be liable for defects that, for example, are attributable to an abnormal use of the works by, or acts of, the contracting authority or the supervisor.

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

When the contractor considers that certain items are ready for preliminary technical acceptance, she/he takes the initiative by sending a request to the supervisor (Article 40(3) of the general conditions). If the supervisor finds them satisfactory, she/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 supervisor will proceed to inspection and testing. Inspection and testing may take place at the place of manufacture, the site or other places as may be specified in the contract (Article 41(2) of the general conditions).
In preparing his programme of implementation of tasks, the contractor should allow for inspection and testing by the supervisor and for the acceptance procedures. The contractor's tender price should include cover the costs to be borne by the contractor for testing and inspection as specified in the contract.
If the supervisor and the contractor disagree on the test results, 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 repeated test. The result of the retesting is final (Article 41(6) of the general conditions).
Components and materials that are not of the specified quality must be rejected. Article 42 of the general conditions describes the procedure to be followed in that case including the possibility for the contracting authority to employ another contractor to make good any defects (Article 42(4) of the general conditions).
It should be pointed out that the signing of a preliminary technical acceptance certificate is not final. It does not prevent the supervisor from rejecting components or materials if further examination reveals defects or faults (Article 40(4) of the general conditions).
In carrying out his duties, in particular during inspection and testing, the supervisor often gains access to information of a commercial nature regarding methods of manufacture and how an undertaking operates. She/he is required to respect the confidentiality of this information (Article 41(7) of the

general conditions).

21.8.3. Partial provisional acceptance

Partial provisional acceptance involves the acceptance, on a provisional basis, of parts or sections of the works that have been completed and can be used by the contracting authority (Article 59(2) of the general conditions).
In cases of urgency, the contracting authority may take over part of the works even though they have not been the subject of partial provisional acceptance. In those cases, the supervisor is required to prepare a list of outstanding work and obtain the contractor's prior agreement to it. The contractor is then permitted to complete the outstanding work as soon as practicable (Article 59(1) of the general conditions).

21.8.4. Provisional acceptance

The contractor is required to initiate the process of provisional acceptance of the works. She/he may apply for such provisional acceptance not earlier than 15 days before the works, in the contractor's opinion, are complete and ready for provisional acceptance. The supervisor 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 (Article 60(2) of the general conditions). If the supervisor fails either to issue the certificate of provisional acceptance or to reject the contractor's application within the period of 30 days, she/he is deemed to have issued the certificate on the last day of that period (Article 60(3) of the general conditions).
Upon provisional acceptance of the works, the contractor is required to dismantle and remove from the site all his remaining equipment, temporary structures and materials she/he no longer requires and any litter or obstructions and restore the site to the conditions specified in the contract (Article 60(4) of the general conditions). The obligation of the contractor to leave the site in proper condition is of utmost importance as it carries both cost and environmental consequences. Particular attention should be paid not only to the completed works 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 supervisor should ensure that this obligation is enforced.
After provisional acceptance and without prejudice to the defects liability period referred to below, the contractor must no longer be responsible for risks that may affect the works and that result from causes not attributable to her/him. However, the contractor must be responsible as from the date of provisional acceptance for the soundness of the construction for the period specified in the law of the country in which the works are executed, that also specifies the nature and extent of this liability (Article 61(8) of the general conditions).

21.8.5. Defects liability period and obligations

On the date of provisional acceptance a defects liability period commences, which is 365 days unless otherwise specified in the special conditions. Separate sections of the works may be assigned different defects liability periods, if need be.

The defects liability period for items that have been replaced or repaired commences only after the observed defects have been remedied by the contractor and certified by the supervisor.
The main purpose of the defects liability period is to demonstrate under operational conditions that the works have been carried out technically in accordance with the requirements of the contract. During this period, the contractor must not only complete any outstanding items of work as may be listed in the certificate of partial provisional acceptance. She/he should also remedy any defects that are revealed during the defects liability period (Article 61(1) of the general conditions).
The contract does not generally require the contractor to perform operational maintenance during the defects liability period, unless the special conditions provide otherwise (with corresponding provisions in the technical specifications) (Article 61(6) of the general conditions).
The contracting authority or the supervisor should notify the contractor if any defect appears or damage occurs for which the contractor is responsible during the defects liability period. If the contractor fails to remedy a defect 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 for carrying out the repairs are deducted from monies due to, or from guarantees held against, the contractor, or from both. Also, the contracting authority may terminate the contract (Article 61(3) of the general conditions).

21.8.6. Final acceptance

The supervisor must issue a final acceptance certificate to the contractor, with a copy to the contracting authority, within 30 days of the expiration of the latest defects liability period (if there is more than one such period).
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 the soundness of the construction, as laid down in the in the law of the country in which the works are executed. The works could contain latent defects or faults that were not discoverable at the end of the defects liability period. The contractor remains liable for these defects or faults for the periods and extent specified both in the contract and in the law of the country in which the works are executed.
A number of consequences follow from the signature of the final acceptance certificate. For example, the contractor is required to return to the supervisor all contract documents (Article 8(1) of the general conditions). The contractor must submit to the supervisor a draft final statement of account within 90 days of the issuing of the final acceptance certificate (Article 51(1) of the general conditions). The retention sum or retention guarantee and the performance guarantee must be released to the contractor within 60 days after the signed final statement of account has been issued by the contracting authority (Article 47(3) of the general conditions and 15(8) of the general conditions). There may still, of course, be some matters in dispute at this time, which are the subject of amicable settlement, conciliation, arbitration or other litigation procedures. Therefore, the retention sum or retention guarantee and the performance guarantee are released for their total amount except for amounts that are the subject of amicable settlement, arbitration or litigation (Article 51(3) of the general conditions).

21.9. Property in plant and materials

The minimum protection for the contracting authority is described in Article 43(1) of the general conditions, which provides that anything brought onto the site, other than vehicles that are used for transporting labour, materials etc. to or from the site, is deemed to be intended exclusively for work on the site. Thus, it cannot be used by the contractor for work on other contracts. If the contractor wishes to remove from the site any equipment or temporary works or plant or materials, she/he is required first to obtain the consent of the supervisor. The requests and consents should be in writing, so that proper records can be kept.

The special conditions may provide that ownership of equipment, materials, etc. be vested in the contracting authority for the duration of the execution of the works, or that other arrangements are made, to protect the contracting authority for that period (Article 43(2) of the general conditions). In certain types of jurisdiction, in the event of a contractor becoming bankrupt, other creditors may be able to show a better title of ownership and thus have prior claim to the goods. In such jurisdictions, proper legal vesting or the establishment of a sufficient lien is essential to safeguard the rights of the contracting authority and allow it to complete the works.

This is equally important in case of termination of the contract due to breach of contract by the contractor where the contracting authority is entitled to use the equipment, temporary works, plant and materials on the site to complete the works (Article 43(3) of the general conditions). The situation is different when the contractor is entitled to terminate the contract. In that case she/he may remove his equipment from the site, subject, however, to the law of the country of the contracting authority.

Article 43(4) general conditions provides for the situation where the contractor hires equipment, temporary works etc. It requests the contractor to agree with the owner to hire these items to the contracting authority on the same terms as they were hired by the contractor, in the event of termination by the contracting authority. It also requires the owner to permit their use by another contractor employed by the contracting authority for completing the works.

21.10. 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 she/he should take all necessary steps in sufficient time to meet the requirements of his programme.

Under the EDF, in accordance with Article 31, Annex IV to the Cotonou Agreement [10], the contractor is normally required to pay duties and taxes for imported items to be incorporated into the works, unless otherwise stated in the contract. However, equipment and temporary works items should be admitted free of duties. Under such circumstances, it is important to clarify the limits on the use of such equipment and temporary works items as well as any time limit for their re-export after completion of the works.

[10] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, 15.12.2000, p. 3).

Under Article 31(2)b of Annex IV of the Cotonou Agreement, profits and other income resulting from the works are taxable if the contractor is established in the country where the works are executed or, in any case, if the works exceed a duration of 6 months. If the ACP country applies more favourable arrangements to other states or international organisations, it should also apply them to projects funded by the EDF, cf. Article 31(1) Annex IV to Cotonou Agreement.
The contracting authority should give whatever assistance possible to the contractor in connection with clearances through customs, but the contractor herself/himself is ultimately responsible for fulfilling tax and customs obligations.

21.11. Revision of prices

The contractor is bound by the rates and prices in the contract and she/he carries the risk of increases in prices of labour, materials etc. during the period of implementation of tasks. However, revision of prices is allowed if stated in the special conditions (Article 48(2) of the general conditions) [11]. In the case of changes in laws or public regulations or decisions that cause extra cost to the contractor, price revision is, however, possible even when not stated in the special conditions (Article 48(4) of the general conditions). This refers for example to situations where new taxes are introduced.
Revision of prices refers to changes in the contract price that are due to external factors, beyond the control of the contracting authority and the contractor, and takes account of changes in the prices of significant elements in the contractor's costs such as labour and materials (Article 48(2) of the general conditions and 48(4) of the general conditions). Revision of prices can result in increases or reductions of the contract price.
Revision of prices requires a reference date on which prices are determined. This date is set 30 days prior to the deadline for submission of tenders or is, in the case of a direct agreement contract, the date on which the contract was signed by the contractor (Article 48(3) of the general conditions).
The detailed rules for price revision are to be mentioned in the special conditions, which should specify the elements that are subject to price revision. These will normally include the materials to be used in substantial quantities (e.g. cement, aggregates, timber, steel, fuel), often subject of mono-material formulas, and other elements taken into account in the proportional formula, such as labour, grouped in different categories (e.g., office personnel, various trades, plant operators, unskilled). Price revision supposes of course that the basic prices of these elements are clearly mentioned in the contract documents.
If the special conditions refer to the prices effectively paid by the contractor as a basis for price revision, the contractor should supply the invoices. This is not requested where the special conditions refer to price indices as the basis for price revision. This method can only be used for elements for which regular price indices are published in the states concerned. Whilst this method gives only an approximate estimate of the effect of price increases on the contractor's costs, it is much simpler to use. Full details should be included in the special conditions if this method is to be used.

[11] A price revision clause must be defined in the special conditions in all cases for contracts with a total amount above EUR 5 000 000 (excluding VAT) and/or with an initial duration above 1 year.

Where the contractor fails to complete the works on the date that corresponds to the end of the initial period of implementation of tasks or the extended period, prices are 'frozen' in the sense that they cannot be increased. If, however, the prices of the basic elements are reduced after the stated date, appropriate deductions are made from amounts due to the contractor (Article 48(5) of the general conditions).

21.12. Payments

21.12.1. General

The contractor is entitled to payments at various times throughout the performance of the contract: pre-financing, interim and final payments. These payments must be made in euro or in national currency (only in the case of indirect management) as specified in the special conditions (Article 44(1)). Unless otherwise specified in the special conditions, a performance guarantee is obligatory. If so, no payments can be made before the contractor has provided the performance guarantee. In addition, the contractor also has to provide a pre-financing payment guarantee, unless otherwise specified in the special conditions (Article 46(3)(c)).
Pre-financing is reimbursed by the contractor through deductions from the interim payments which the Contractor is entitled to receive.
Interim payments are payments, normally at monthly intervals, for work that the contractor has done (Article 50(7) of the general conditions). This is normally calculated by measurement of the work done and applying the unit rates to the quantities. Deductions to be made from the interim payments are not only for the reimbursement of pre-financing but also include a retention sum (Article 47 of the general conditions - unless the contracting authority agrees that retention sums are substituted by a retention guarantee). Normally, the sum to be retained from interim payments to guarantee implementation of the contractor's obligations during the defects liability period is 10% of each instalment.
A final payment may be made to the contractor after the final statement of account has been issued by the supervisor.
In indirectly managed contracts with *ex ante* Commission control, payments are normally made, after approval by the contracting authority and endorsement by the EU delegation, directly to the contractor by the Commission.
Contractors are encouraged to submit reports and other documents (if any) related to a payment request in electronic version, if this is allowed by the national law of the contracting authority (under indirect management).

21.12.2. Pre-financing

Pre-financing payments to the contractor can be made only if permitted by the special conditions (Article 46).
The contractor may request two types of pre-financing:
a) lump sum pre-financing, at the start of contract, enabling the contractor to meet expenditure

resulting from the commencement of the execution of the contract; the amount of this advance may not exceed 10% of the original contract price;
b) pre-financing for the purchase of equipment, tools and materials required for carrying out the contract and for any other substantial prior expenses, such as surveys and the acquisition of patents; these advances cannot exceed 20% of the contract price (Article 46(1) of the general conditions and 46(2) of the general conditions).
Pre-financing cannot be granted until the contract has been concluded and the performance guarantee and the pre-financing payment guarantee have been provided (Article 46(3) of the general conditions).
Repayment of the pre-financing is normally made by a deduction from the interim payments to the contractor. As a rule, repayment of the lump sum pre-financing must be completed at the latest by the time 80% of the amount of the contract has been paid (90% in the case of the pre-financing for the purchase of equipment, tools and materials).
The guarantee for pre-financing payment is normally progressively reduced by the amount repaid in interim payments and its release becomes due when the total pre-financing is repaid (Article 46(7) of the general conditions).
A somewhat different situation arises if the pre-financing guarantee ceases to be valid and the contractor fails to re-validate it. In that case, the pre-financing can be recovered directly by means of a deduction by the contracting authority from further payments due to the contractor. The contracting authority may even terminate the contract (Article 46(5) of the general conditions).

21.12.3. Interim payments

The contractor must submit an invoice for interim payment to the supervisor at the end of each period of one month, unless another period is specified in the special conditions (Article 50(7)). At the start of the works, the supervisor should agree with the contractor on the form and content of the payment 'dossier' (Article 50(1) of the general conditions).
Interim payments relate to work that the contractor has executed, to plant and materials delivered to the site and other sums such as amounts resulting from revision of prices. Deductions should be made for repayment of pre-financing and for retention sums as guarantee for the contractor's obligations during the defects liability period (Article 50(1) of the general conditions and Article 47 of the general conditions).
The specific conditions, which must be satisfied before payment for plant and materials delivered to the site, are stated in Article 50(2) of the general conditions. Payment for such items does not imply that the supervisor has accepted them. She/he is free to reject them at a later date (Article 50(3) of the general condition) and payment does not relieve the contractor of responsibility for loss or damage to plant and materials on site.
Within 30 days of receiving the contractor's invoice for interim payment, the supervisor is required to issue to the contracting authority and the contractor an interim payment certificate stating the amount that (after due verification that the invoice amount reflects the payable amount) in his opinion is due to the contractor (Article 50(5)(a) and (b) of the general conditions). The supervisor is free to include corrections of errors or modifications of amounts in previous certificates (Article 50(6) of the general conditions).

21.12.4. Measurement

In deciding the payments to the contractor the supervisor must assess or measure the work that the contractor has done. The way that this measurement is done depends on the type of contract.
a) For lump-sum contracts, the supervisor should request a detailed breakdown of the contract price (Article 18(1) of the general conditions) and use this to calculate the value of work done. If the contract provides for payments in stages, payment of stated percentages of the contract price are made when various stages of the works, have been completed.
b) For unit-price contracts, the quantities of work actually done are priced at the unit rates mentioned in the contract. Payment is based on the measurement of work actually carried out and value of plant and materials on site.
When measuring the works, the supervisor is required to notify the contractor so that she/he can attend, or send a qualified agent to represent him/her. The contractor is required to help with the measurement and provide any necessary details requested by the supervisor. Failure by the contractor to attend, or omit to send such agent when measurement is being done deprives her/him of the right to challenge the measurements later (Article 49(1)(b)(iv) of the general conditions).
Unless otherwise provided in the contract, measurements should be taken net (Article 49(1)(b)(v) of the general conditions). This means that any extra work required, such as additional excavation for working space, or over-excavation, is not measured for payment purposes unless the method of measurement provides special items for such purposes.
c) For cost-plus contracts, the amount due under the contract must be determined on the basis of actual costs with an agreed addition for overheads and profit. The special conditions must stipulate the information that the contractor is required to submit to the supervisor and the manner in which it should be submitted.

21.12.5. Retention sum

The retention sums, which are to be deducted from interim payments, represent further security for the contractor's performance during the defects liability period. Although the maximum retention permitted is 10% of the contract price, a lower percentage may be appropriate depending on the risks inherent to the contract and bearing in mind that such deductions must be financed by the contractor, resulting in higher tender prices.
The contractor may offer a retention guarantee as an alternative to retention sums not later than the date agreed for the commencement of the works (Article 47(2) of the general conditions). The contracting authority's prior approval is required. This approval is to ascertain, in the same way as for the performance guarantee, mentioned in Article 15 of the general conditions, whether the guarantee is compliant with contractual obligations.
The sum retained or the retention guarantee should be released within 60 days of the issuing of the signed final statement of account. However, for contracts applying general conditions previous to PRAG 2015 version, the time period for release is 45 days.

21.12.6. Final statement of account

The contractor initiates the process by submitting to the supervisor a draft final statement of account. Unless otherwise agreed in the special conditions, the time limit for this submission is 90 days after the issuing of the final acceptance certificate (Article 51(1) of the general conditions).
To achieve submission within the stated period, it is essential that the contractor keeps up to date records as work progresses and that calculations are made progressively rather than left until the works have been completed. It is essential that the contractor includes in his draft final statement of account all claims for amounts that she/he considers are due to her/him, since she/he is effectively barred from claiming at a later date (Article 51(5) of the general conditions).
Within 90 days of receiving the draft final statement of account and all supporting information required by the contract, the supervisor is required to prepare and sign the final statement of account, which determines the final amount due to the parties under the contract (Article 51(2) of the general conditions). Then the contracting authority and the contractor also sign the final statement as an acknowledgement of the full and final value of the work implemented under the contract, and submit a signed copy to the supervisor together with an invoice for the payment of any amounts owed to the Contractor. However, the final statement of account excludes any amounts that are subject of negotiations, conciliation, arbitration or litigation at that time (Article 51(3) of the general conditions).
When signed, the final statement of account represents a discharge of the contracting authority's obligation for payment other than the amounts still in dispute. This discharge becomes effective when all amounts due in accordance with the final statement of account have been paid and the performance guarantee returned to the contractor (Article 51(4) of the general conditions).

21.12.7. Delayed payments

According to Article 44(3) of the general conditions, supplemented by the special conditions, payment time limits vary according to criteria. All payments have to be executed in 90 days in the EDF while for contracts financed under the budget time limits vary according to management mode (centralised/direct; decentralised/indirect) and also according to the type of payment requested (pre-financing, interim payment, final statement of account).
In directly managed contracts and according to Article 53(1) of the special conditions, if the payment time limit indicated in the contract is exceeded, the contractor is automatically entitled to late-payment interest. However, by way of exception, when the interest is lower than or equal to EUR 200, it must be paid to the contractor only upon demand, submitted within two months of receiving late payment.
In indirectly managed contracts and according to Article 53(1) of the general conditions, the contractor will be entitled to late-payment interest (irrespective of the amount) only upon demand, submitted within two months of receiving late payment.
Default interest is calculated:

- at the rediscount rate applied by the central bank by the law of the country in which the works are executed 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 three and a half percentage points. The interest must 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.
Pursuant to Article 38(2) of the general conditions, the contractor has the right, after a 30 days' notice, to suspend all or part of the works when payment is late by more than 30 days (pre-financing and advances are not concerned)[12]. Work will resume once the contractor has received payments or has received reasonable evidence that the payment has been executed.
General conditions stipulate that non-payment for more than 120 days from the expiry of the time limit for payment entitles the contractor to terminate the contract in accordance with the procedure laid down in Article 65 of the general conditions.

21.12.8. Claims for additional payment

Article 55 of the general conditions sets out a procedure for dealing with claims for additional payment. The article places time limits for the notification and substantiation of claims. The contractor must give to the supervisor notice of his intention to make such claim within 15 days after the circumstances become known to the contractor or should have become known to her/him, stating the reason for his claim. The contractor must then submit full and detailed particulars of his claim as soon as it is practicable, but not later than 60 days after the date of the notice of his intention to claim additional payment. Nevertheless, the supervisor may agree on a different deadline, which in any case cannot go beyond the date of submission of the draft final statement of account. Late submission of a claim or of the detailed particulars is sufficient grounds for rejecting it (Article 55(3) of the general conditions).
No time limit is established for the supervisor to determine the amount of the claim. Before taking his decision, the supervisor should consult with the contracting authority and, where appropriate, with the contractor.

21.12.9. Payments to third parties

Orders for payments to third parties may normally be carried out only 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 54(1) of the general conditions and 6(2) of the general conditions).
However, while the contracting authority does not have any formal links with subcontractors, direct payment to them can exceptionally take place if that is in the interest of the contracting authority (Article 52 of the general conditions). This situation may occur when a subcontractor introduces a claim to the supervisor that she/he is not receiving payment from the contractor.

[12] See also section 18.13. 'Suspension'.

Under such circumstances, the supervisor must investigate the matter and enquire with the contractor whether the claim is founded. If the claim is founded and the contractor does not pay, then the supervisor may issue a payment certificate in favour of the subcontractor. Payment will then be made out of what is otherwise owed to the contractor at the time.

21.13. Suspension

Various reasons can justify the suspension of a contract. Sometimes, the law governing the contract provides for special causes of suspension, which are in addition to the specific causes mentioned in the contract. Article 38 of the general conditions foresees three cases of contract suspension:

21.13.1. Suspension by administrative order of the supervisor

This type of suspension can cover all or part of the work(s) for such time(s) and in such manner as the supervisor may consider necessary.

21.13.2. Suspension on notice of the contractor

Article 38(2) of the general conditions specifically provides for a suspension, on 30 days' notice by the contractor, for default in payment of more than 30 days after the expiry of the period referred to in Article 44(3) of the general conditions. This provision entitles the contractor to suspend or reduce the rate of the work.

21.13.3. Suspension for presumed substantial errors, irregularity or fraud

Such suspension may be notified by the supervisor or the contracting authority. If that substantial error, irregularity or fraud during the award procedure or performance of the contract is not confirmed, performance of the contract must resume as soon as possible.
The contractual and financial consequences of the suspension are set out in Articles 38(4) to 38(6) of the general conditions.

21.14. Breach of contract and termination

21.14.1. Breach of contract

A breach of contract is committed where one of the parties to the contract fails to discharge any of his obligations under the contract. Some breaches are of only minor importance, whereas others, such as failure to complete the works within the period of implementation of tasks or failure by the contracting authority to pay amounts due to the contractor, are serious breaches and have serious consequences for the injured party.
Serious breaches, enumerated in Article 64(2) of the general conditions (breaches by the contractor) and Article 65(1) of the general conditions (breaches by the contracting authority), may lead to the termination of the contract by the injured party.

Also, whether the breaches may lead to a termination in accordance with the articles mentioned above or not, the injured party may claim damages.
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 1 to the Practical Guide.
Liquidated damages are damages that 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. In works contracts, the simplest and most frequently used example occurs when the contractor fails to complete and hand over the works on the agreed date. In that case, the contracting authority will be entitled to an amount stated in the contract as liquidated damages for every day that the handing over is delayed because of a failure on the part of the contractor. The contracting authority will not have to give proof that it suffered actual loss. The mere fact that a delay exists is a sufficient basis for imposing the liquidated damages.
General damages, on the other hand, 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.
Where liquidated damages for a particular breach have been agreed in the contract, the injured party cannot then claim general damages for that particular breach.
Any amount of damages, whether liquidated or general, to which the contracting authority is entitled can be deducted from any sums that must be paid to the contractor or, alternatively, from an appropriate guarantee (usually the performance guarantee). If at the time in question there are no amounts due to the contractor, the contracting authority can only recover sums from the guarantor or through legal action against the contractor.

21.14.2. Termination by the contracting authority

The general conditions enumerate several grounds that entitle the contracting authority to terminate the contract, and also stipulate its rights upon termination. Before resorting to termination, the issuing of warnings to the contractor or, in the case of defects, instructions to remedy should be considered.
The grounds for termination mentioned in Article 64(2) of the general conditions generally relate to defaults or inabilities on the side of the contractor. Nevertheless, the contracting authority may also terminate the contract for reasons of organisational modifications in the legal personality, nature or control of the contractor, for which the latter did not obtain the prior consent of the contracting authority through an addendum to the contract (Article 64(2)(f)) of the general conditions).
When, for the above-mentioned grounds, the contracting authority terminates a contract, a notice of seven days must be given to the contractor. This seven-day period is not intended to give the contractor an opportunity to remedy the default but rather to give her/him an opportunity to make the preparations necessary to leave the site.
The contracting authority may also, at any time and with immediate effect, terminate the contract for other reasons, whether they are provided elsewhere in the general conditions or not (Article 64(1) of the general conditions and 64(9) of the general conditions). Where termination by the contracting authority is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of the contracting authority, the contractor is entitled to claim an indemnity for loss suffered, in addition to sums owed to her/him for work already performed.

Termination of the contract does not result in a cessation of all rights and obligations and activities. Indeed, in such a case, the supervisor has to draw up a detailed report of work completed by the contractor including an inventory of temporary works, plant, materials and equipment on the site and of outstanding payments to the contractor's employees and the contracting authority. The contracting authority has the right to purchase temporary structures, plant and materials already supplied or ordered by the contractor but not delivered (Article 64(6) of the general conditions). These rights enable the contracting authority to complete the works itself or by contracting another party at the contractor's expense.

The net amount due to the contractor can be ascertained and paid only when the entire works have been completed and the full value of contracts with third parties and other costs have been deducted from monies due to the contractor (Article 64(7) of the general conditions).

The contracting authority is also entitled to recover from the contractor, in addition to the extra costs for completion of the works, any loss it has suffered up to 10% of the contract price, as stipulated in Article 64(8).

21.14.3. Termination by the contractor

Unlike the contracting authority, the contractor can terminate the contract only on few specific grounds listed in Article 65(1) of the general conditions: the contracting authority fails to pay, consistently fails to meet its obligations under the contract, or has suspended the works for more than 180 days for reasons not specified in the contract and not due to any failure by the contractor. The termination takes effect automatically 14 days after the contractor gives notice of termination to the contracting authority.

Subject to the law of the country in which the works are executed, the contractor is, upon termination by it, entitled to immediately remove its equipment from the site (Article 65(2) of the general conditions).

The contractor is entitled to receive, from the contracting authority, payment for any loss or damage she/he has suffered. This entitlement is limited to maximum 10% of the contract price (Article 65(3) of the general conditions).

21.14.4. Force majeure

If the contract implementation is prevented by any circumstances of force majeure, this will not be considered a breach of contract (Article 66(1) of the general conditions). Exemption may be partial or total, and allows contractors to request the termination of the contract.

Given the serious consequences that may arise, such qualification must be accepted only under very strict conditions and any notification of cases of force majeure has to be examined carefully to ensure that the event can indeed be qualified as force majeure.

To admit the existence of force majeure, three conditions should be met. First, the contractor faced 'unforeseeable' difficulties, i.e. the event escaped all the forecasts at the time of the conclusion of the contract. In this sense, floods and accidents such as explosions may in certain circumstances be predictable and therefore their consequences avoidable. The second requirement is that the event is in fact not a result of the contractor's action, e.g. strikes and lockout can be caused by an act of the

contractor and are not, in that case, considered as force majeure situations. Finally, this difficulty should be of a scale or of such a nature that it renders performance of the contract impossible either temporarily or definitively. This last condition is not met if, as a result of economic or social circumstances, the execution of the contract only becomes more expensive.
Due to these restrictive conditions, no party should be able to use the force majeure clause to avoid its contractual obligations or to terminate the contract improperly. Any dispute between the parties that would result from the application of this article is decided in accordance with the dispute settlement procedures.
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'. This explains why, in Article 66(3) of the general conditions, the contracting authority is not entitled to call upon the performance guarantee or to the payment of liquidated damages or to terminate the contract due to the contractor's default to the extent that it 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 non-performance where this is due to force majeure.
The procedure to be followed in the event of force majeure is stated in Article 66(4) of the general conditions. Either party giving prompt notice of the particular event initiates it. The contractor must continue to perform its obligations as far as possible and must seek reasonable alternatives for the performance of its obligations. However, such alternatives may be put into effect only under the supervisor's direction (Article 66(4) of the general conditions). The contractor is entitled to any extra costs incurred as a result of the supervisor's directions (Article 66(5) of the general conditions).
The persistence of force majeure for a period of 180 days gives either party the right to terminate the contract after having served 30 days formal notice (Article 66(6) of the general conditions).
Article 66(2) of the general conditions also provides that a decision of the European Union to suspend cooperation with the partner country is considered force majeure when it involves suspending the contract's financing.

21.15. Dispute settlement procedures

Although a party can decide to initiate the dispute settlement procedures of Article 68 of the general conditions during the implementation period of the contract, in the overall majority of cases such procedures only start after the implementation period of the contract or after early contract termination. The fact that in an ongoing contract a dispute exists, does not relieve the contractor of his responsibility to continue complying with his contractual obligations with due diligence. Occasionally, the initiation of a dispute settlement procedure occurs years after provisional acceptance, for instance in case of defects affecting the soundness of the construction for which the contractor is liable under the law of the country in which the works are executed (Article 61(8) of the general conditions).

21.15.1. 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 effect, as an obligatory first step, Article 68(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. A prior information letter issued in the view of a recovery order can also take the place of a formal request for amicable settlement, if so indicated in the letter itself. The other party is to respond to that request within 30 days with its position on the dispute. The general principle is indeed that disputes are discussed by the parties and, whenever possible, resolved amicably. 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 68(2) of the general conditions sets clear time limits for 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. The maximum time period for reaching an amicable settlement is fixed at 120 days, unless both parties agree otherwise. The amicable settlement procedure can even 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.

21.15.2. Litigation

If the attempt at 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. Contrary to the attempt at amicable settlement, the court or arbitral tribunal may take a decision on the submitted claims, even if the other party would not cooperate during such legal proceedings, for instance by choosing to make default of appearance in those proceedings. Unlike the proposal made during a conciliation procedure, the final decision taken by the court or arbitral tribunal is binding.
The special conditions of the contract stipulate whether a court or an arbitral tribunal is competent and, if so, which court or arbitral tribunal.
As a rule, whenever the Commission is the contracting authority, the Courts in Brussels are designated as exclusively competent courts.
In the case of indirectly managed EDF financed contracts, the special conditions distinguish between disputes arising in national contracts and disputes arising in transnational contracts. Disputes arising in a national contract (i.e. a contract concluded with a national of the State of the contracting authority) are, according to 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 in 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 decision of the ACP-EC Council of Ministers (the EDF Procedural Rules)[13].

[13] Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, general conditions and procedural rules on conciliation and arbitration for works, supply and service contracts financed by the European Development Fund (EDF) and concerning their application (OJ L 382, 31.12.1990, p. 1).

In an EDF indirectly managed transnational contract, parties also 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 is to be recorded in writing and signed by both parties.

If within the ACP State an internal administrative appeal procedure exists, the arbitration will necessarily be preceded by that procedure. The contractor will only be in a position to initiate arbitration if this internal administrative appeal procedure fails or is deemed to have failed (in the absence of such procedure in the ACP State in question) as indicated in Article 4 of the EDF Procedural Rules.

Arbitration is a kind of private court 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 a 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.

For more information on arbitration in EDF contracts, please see the background document [14] on this topic, as well as the full text of the EDF Procedural Rules.

21.15.3. Conciliation

In the absence of an amicable settlement, the parties may agree, as an option, to request a conciliation by a third party.

The main difference between conciliation and arbitration is that, contrary to 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. Contrary to 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. Article 18 of the EDF Procedural Rules stipulates that the notice initiating arbitration must 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. If so, the conciliator will, as a rule, request the parties to suspend the arbitration proceedings pending the conciliation.

Like under the amicable settlement procedure, a 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.

[14] To be obtained from DEVCO LEGAL HELPDESK europeaid-legal-helpdesk@ec.europa.eu.

If conciliation fails, the parties must be at liberty to refer their dispute before court or arbitral tribunal, as specified in the special conditions. If so, nothing that has transpired in connection with the proceedings before the conciliator must in any way affect the rights of any of the parties in the arbitration.

In a contract to which the Commission is not a party, the Commission can intervene as a conciliator, and if so, it will take the form of a good offices procedure. Such 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 [15] to be previously signed by the parties, which describes its steps and principles.

[15] To be obtained from DEVCO LEGAL HELPDESK europeaid-legal-helpdesk@ec.europa.eu.

22. The implementation of supply contracts - A users' guide

[*The content of this chapter is under the responsibility of Unit DEVCO.R.3. The last update was made in May 2019.]*

22.1. 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 not an official interpretation of the contract documents and it does not 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 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 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.

22.2. 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 herself/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 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 not imply that these bank or insurance companies will take over the further implementation of the contract.

Consequently, Article 5(2) 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).

In other cases, a prior authorisation of the contracting authority is required. In the 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 (e.g. 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. It does not call into question the basis on which the award decision was made. For this reason, the assignee must 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.
The addendum is to be signed by the contracting authority, the assignor and the assignee. The assignor and assignee often 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) 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), 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) 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 must 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.

22.3. Article 6 - Subcontracting

Although certain supplies may be subcontracted, the contractor remains fully responsible for his obligations under the contract (Article 6(5)). The supply to be subcontracted and the names of the subcontractors must be notified to the contracting authority. The contracting authority then notifies the contractor of its decision authorising or refusing to authorise the proposed subcontract within 30 days. Where the contracting authority refuses authorisation, the reason for the refusal should be stated (Article 6(2)). Subcontracting without the authorisation of the contracting authority can result in termination of the contract (Article 6(7) and 36(2)(d)).
Before authorising a subcontract, the contracting authority should examine the contractor's evidence that the subcontractor she/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 European Development Fund (EDF) financed contracts, where subcontracting is envisaged, preference must be given by the contractor to subcontractors of African, Caribbean and Pacific (ACP) States capable of implementing the tasks required on similar terms (Article 26(1)(d), of Annex IV to

the Cotonou Agreement[16]). It is most likely the case that private sector operators of ACP States be awarded subcontracts on the local market. However, when checking that the proposed subcontractor meets eligibility criteria, the contracting authority should bear in mind Article 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 she/he proposes to subcontract and sometimes also the name of the proposed subcontractors. Before the contract is signed, it should be made clear whether the contractor is to be bound by such proposed subcontracts. This will be the case where the qualifications of the subcontractors, 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, the notification of award of the contract should be explicitly mentioned it.

In relation to the execution of a subcontract, it is sometimes necessary for the project manager to deal directly with the subcontractor on technical matters. In such a case, she/he may only do so with the agreement of the contractor. 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 subcontractor and can comment or take such action as she/he considers appropriate.

If, at the end of the warranty period, there is still some unexpired guarantee or other obligation due from a subcontractor to the contractor, the latter must transfer this right including any guarantee to the contracting authority if so requested (Article 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 subcontractor so that she/he can fulfil his contractual obligations in this respect.

Subcontracting 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 subcontractors, she/he is not responsible for other contractors working on the project but she/he may be responsible for liaising with them if she/he is required to do so in his contract.

22.4. 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 developed in Article 9a(4) that also concerns its subcontractors, agents, and personnel.

[16] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, 15.12.2000, p. 3).

The European Commission applies a zero tolerance policy regarding all forms of misconduct including sexual exploitation, abuse and harassment by its staff and those of partner organisations receiving EU funds.

In this respect Article 9a(1) covers any form of physical, sexual and psychological conduct as well as any form of verbal and non-verbal abuse and intimidation, including harassment and sexual harassment.

Contractors must immediately report to the contracting authority any allegation of misconduct involving sexual exploitation, abuse and harassment. If the contracting authority is an EU delegation, it must also inform the relevant finance and contracts unit as well as the central contact point in Headquarters (DG DEVCO Director R. Security Coordinator).

As a minimum this notification should include the following information about the report/allegation e.g. misconduct category, type and short description. It is for the contracting authority to assess the gravity of the misconduct, taking into account possible remedial measures taken these remedial measures may include for instance:

- the active collaboration with the investigating authorities;
- the implementation of safeguarding procedures to prevent, respond and manage the harassment/sexual harassment and sexual exploitation and abuse situations, such as: creating internal procedures to address the risk of sexual exploitation and abuse in the contractor staff programme, developing a code of conduct with standards that include the sexual exploitation and abuse principles, developing complaints procedures for the staff and other personnel to report incidents, developing internal investigation procedures, ensuring disciplinary actions and sanctions, establishing and implementing a victim assistance mechanism;
- the evidence of appropriate staff reorganisation measures following the misconduct, such as the dismissal of the employee responsible of the infringement.

Investigations should be completed within an acceptable time frame and the contracting authority should update DG DEVCO Directorate R and the appropriate geographical directorate on outcomes and actions taken.

If the contracting authority considers the remedial measures to be not sufficient, it must inform the contractor.

These procedures should take into consideration all relevant data protection and confidentiality related requirements. The contracting authorities must treat the related information as 'special categories of personal data' and in doing so ensure appropriate confidential storage and handling. To this end, the contracting authorities must have in place appropriate safeguards for the rights of the data subjects concerned, in particular adequate technical and organisational measures to ensure the security and confidentiality of such categories of data, to prevent accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted stored or otherwise processed. Where the contracting authority is a EU delegation the measures may, among other, take the form of secure transmission of data via Secure Electronic Mail (SECEM), definition of access rights strictly on a need to know basis, secure storage of paper files in locked cupboards, restricted access to relevant Ares files, secured electronic documents stored in common drives.

The respect of the code of conduct set out in Article 9a constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 35 of

the general conditions. In addition, failure to comply with the provision set out in the Article 9a can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.

The grave professional misconduct covers not only the misconduct related to offensive behaviours as defined in the 'zero tolerance' clause (Article 9a(1)), but also any wrongful conduct that has an impact on the professional credibility of the contractor and denoting a wrongful intent or gross negligence. In practical terms, the contracting authority may invoke the grave professional misconduct for all wrongful conduct that implies a breach of the obligations stated in the code of conduct/ethical obligations by contractors that the contracting authority can demonstrate with any means. In this respect, the grave professional misconduct may lead to suspension or termination of the contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.

Article 136(1)(c) Financial Regulation[17] provides a non-exhaustive list of cases, such as:

- fraudulently or negligently misrepresenting information required for the verification of absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;
- entering into agreement with other persons or entities with the aim of distorting competition;
- violating intellectual property rights;
- attempting to influence the decision-making of the authorising officer responsible during the award procedure;
- attempting to obtain confidential information that may confer upon it undue advantages in the award procedure.

22.5. Article 9b - Conflict of interest

The contractor must take all necessary measures to prevent or put an end to any situation of conflict of interest that 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 subcontractors, agents, and personnel.

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.

For distortion of competition during the procurement procedure, please refer to PRAG 2.5.1.

Article 36(2)(n) permits the contracting authority to terminate the contract if the provisions concerning conflicts of interest have not been respected.

22.6. Article 10 - Origin

[17] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1).

Origin is the 'economic' nationality of goods in international trade. The rule of origin refers to the origin of goods and equipment. The contract notice/instructions to tenderers of the call for tender defined it. Therefore, it is required to refer to those documents and to Annex a2a of the PRAG in order to assess goods compliance with the rule of origin in a concrete call for tenders.

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 and captured properly in the tender documents so that potential bidders take into account when preparing their offers.

Goods whose production involves more than one country must be deemed to originate in the country where they underwent their last substantial transformation (see PRAG Sections 2.3.5 to 2.3.9).

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

The contractor must declare 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[18]. The provision of the certificate of origin cannot be considered an *outstanding item*, 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). In case of doubt regarding the certificate of origin or the information it contains, the contracting authority should request additional information to the contractor or to the chamber of commerce having issued the certificate[19].

The contracting authority may also require the contractor to provide more information before the provision of the certificate (e.g. when the supply is a component of a works contract) (Article 10(2)). The contractor can also be requested the information provided to the chamber of commerce in order to get the certificate of origin issued.

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 or a fake certificate may lead, in addition to other possible sanctions, to the ineligibility of the relevant costs of the supply covered by the certificate, to damages and/or to termination of the contract (Article 10(3)). The provision of an accurate certificate of origin, issued by the institution legally empowered to do so is a contractual obligation by the contractor.

Contracting authorities are strongly encouraged to pursue the range of actions above mentioned in accordance with the gravity of the case at stake. As guidance, the following measures should be observed:

[18] Please note that this does not apply to contracts below EUR 100 000, where origin has been untied and goods can be purchased from any country.

[19] An illustrative list of contact points at different chambers of commerce in some Member States is provided as an annex to this guide.

- Absence or non-compliant certificate of origin: ineligibility of the costs of the supplies affected, these items will not be paid for (see Article 35(4)). The claim of damages and/or the termination of the contract may also be envisaged depending on the seriousness of the case in relation with the total contractual amount and on the status of implementation of the contract. In the case of liquidated damages, they can be calculated on the basis of the contractual portion affected by the lack or non-compliant certificates (financial amount of items).
- Proved faked certificate(s): in addition to the above measures, the contracting authority should consider launching a procedure to impose administrative sanctions (exclusion and/or financial penalty) on the contractor.

In order to apply these measures, the contracting authority has to take into account not only the impact of the case in relation with the total contractual amount and the status of the contract in terms of degree of implementation, but also additional factors such as urgency, room for maneuver to award another contract with a different supplier, etc.

Contracting authorities are also strongly encouraged, along with Commission's staff in cases of indirect management, to carry out on-the-spot checks of origin of goods, even more if there are doubts about the origin declared during the tender phase or about the certificates provided. Some checks can be as simple as searching for plates in the supplies with a declared origin 'Made in_____', or other clues conducive to ascertain a possible origin. These checks can potentially unveil cases of non-compliant declared origin.

22.7. Article 12 - Liabilities and insurance

Article 12 contains two liability caps: Article 12(1)(a) caps compensation for damage to the supplies, while Article 12(1)(b) caps compensation for damage in respect of the contracting authority. The liability is capped to the contract value / EUR 1 000 000 for each part of this article. The overall liability is therefore not capped to the contract value / EUR 1 000 000 in aggregate.

22.8. Article 13 - Programme of implementation of tasks

If so required in Article 13(2) of the special conditions, the contractor must 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 (Article 13(1)).

The contractor sends the programme to the project manager within the deadline set in the special conditions. It is 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 arrange 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 (Article 13(4)). The purpose of having a revised programme is to show how the contractor intends to make up for any delay 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.

22.9. 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 she/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 herself/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 delivery duty paid (DDP), according to Incoterms established by the International Chamber of Commerce in 2010 (Article 16).
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 delivered at place (DAP): '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 (usually the case under the EDF), by relieving the seller from often lengthy customs formalities.
Unloading is not included in the Incoterms delivery conditions; however it is already foreseen in

Article 15(1). Nevertheless when it is required (and it is strongly encouraged to do it), 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 Article 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 Article 15(1) fully applies.
For specific obligations on ACP States related to taxes and customs arrangements (Article 31 of Annex IV to Cotonou agreement) please refer to Section 9.4.1. of the DEVCO Companion.

22.10. Article 22 - Amendments

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.

22.10.1. Changes that do not need a contractual modification

Increases or decreases as regards the quantity of any incidental siting or installation that 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 (Article 22(4)(c)). The same applies to any changes of address or bank account by the contractor (Article 22(9)).

22.10.2. Administrative order

On his own initiative or at the request of the contractor, the project manager or the contracting authority can order any modification that she/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 she/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 (Article 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, she/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. She/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. This possibility is foreseen in Article 22(2).
Apart from the case above, the project manager cannot issue an administrative order resulting in an increase or reduction in the initial amount of the contract. All other modifications, which result in an increase or reduction in the total value of the contract or substantial modifications, require an addendum (see Section 22.10.3. of the Companion).
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.
Sometimes a modification is made necessary by a failure of the contractor or by a deficiency in implementation, which is imputable to her/him. In this case, all the additional costs created by this modification are attributable to the contractor (Article 22(7)).

22.10.3. 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 (Article 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 that 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.

22.11. 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 foresees two cases of contract suspension.

22.11.1. 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.

22.11.2. 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).

22.12. Testing, acceptance and maintenance

22.12.1. Introduction

The contractor is required to provide the supplies, which conform to the specifications, samples, etc. laid down in the contract (Article 24(1)).
The various stages in the checking procedure result in preliminary technical acceptance for certain materials, if required in the special conditions (Article 24(2)), provisional acceptance (Article 31) and final acceptance of the supplies (Article 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 takes place once the warranty period expires and any defects have been properly made good by the contractor. The contract may permit the provisional acceptance of the supplies in parts (partial provisional acceptances).
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. She/he will not, however, be liable

for defects that 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.

22.12.2. 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, she/he takes the initiative by sending a request to the project manager (Article 24(2)). This is particularly important for inspections and tests not carried out on site but at the place of manufacture. If the project manager finds them satisfactory, she/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[20] 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 (Article 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 Article 25(3).
If the project manager and the 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 (Article 25(6)).
Components and materials that 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 (Article 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.

[20] In centralised operations, the project manager might not be located in the country of delivery (mostly in Headquarters) and therefore will need to rely on the beneficiary country for inspection and some other tasks that need to be carried out in place.

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 (Article 24(3)).
When tests have shown no failure and the supplies fail to meet non-essential technical requirements of the contract only at a later stage, the project manager may investigate with the parties to the contract whether an acceptable solution can be found based on 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. She/he is required to respect the confidentiality of this information and describe it to others only on a 'need to know' basis (Article 25(7)).

22.12.3. Partial provisional acceptance

Partial provisional acceptance involves the acceptance on a provisional basis of parts of supplies, which have been delivered separately (Article 31(5)).
This may be with or without the contract specifying different lots (Article 31(4)).

22.12.4. 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 (Article 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, she/he is deemed to have issued the certificate on the last day of that period (Article 31(4)). The provisional acceptance certificate cannot be issued without previous positive assessment of the certificate of origin (see Section 22.6.). Partial provisional acceptance can be envisaged if needed for an efficient contract implementation (delivery by big batches in different periods, issues pending with some certificates, etc.).
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 she/he no longer requires and any litter or obstructions and restore the place of acceptance to the condition specified in the contract (Article 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 must no longer be responsible for risks that may affect the supplies and that result from causes not attributable to her/him.

22.12.5. 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 (Article 32(7) of special conditions). Separate parts of the supplies may be assigned different defects liability periods, if need be (Article 32(3)).
The warranty period for items that 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. She/he should also remedy any defects, which are revealed during the warranty period (Article 32(2)). The certificate of origin cannot be treated as outstanding item (see Section 22.6.).
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) (Article 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 (Article 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.

22.12.6. 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 (Article 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 (Article 7(1)). The performance guarantee is also released within 45 days after the signed final acceptance certificate has been issued (Article 11(7)). There may still 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.

22.13. Article 26 - Revision of prices

The contractor is bound by the rates and prices specified in the contract. She/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, and/or when the price of goods is subject to heavy inflation it is possible to make recourse to indexation. None of these cases is common in supply contracts and revision of prices is rarely used.
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 (Annex I2), 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 that 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.

22.14. Payments

22.14.1. General

The contractor is entitled to pre-financing and final payments. These payments must be made in euro or in national currency as specified in the special conditions (Article 26(1)). Unless otherwise specified in the special conditions (Article 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 she/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 (see Article 26(5)(a) of the 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, see Article 10(3)).
In indirect management with partner countries, for contracts with *ex ante* Commission control, the contracting authority makes payments after clearance and endorsement by the Delegation, directly to the contractor by the Commission.
According to Article 26(3) supplemented by the special conditions for indirect management with partner countries, payment delays vary according to criteria. Please refer to DEVCO Companion Section 9.2.5. (Time limits for expenditure operations).
Payments due by the contracting authority must 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.

22.14.2. 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 (Article 11) and the pre-financing guarantee have been provided (Article 26(5)), unless otherwise provided for in the special conditions.
Pre-financing payment must be made in accordance with Article 26(3) of the general and special conditions and upon receipt of an admissible invoice by the contracting authority. The invoice must 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 limit laid down in Article 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 Article 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.
Under indirect management, contractors are encouraged to submit reports and other documents (if any) related to a payment request in electronic version, if the national law of the contracting authority allows it.

22.14.3. Delayed payments

All payments to be made by the contracting authority to the contractor must be executed in accordance with Article 26(3). Once the time limit for payment has expired, the contractor must, 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 (Article 28(2) of the special conditions).
Default interest must 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 must be paid to the contractor only upon demand submitted within two months of receiving late payment.
The late-payment interest must 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), 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.

22.14.4. 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)).

22.15. Financial guarantees

For the financial execution of the supply contract two types of financial guarantee could be required:
a) the performance guarantee (Article 11)
b) the pre-financing guarantee (Article 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 acceptance and release of guarantees, please refer to Section 9.1. of the Companion.

22.15.1. 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. The guarantee amount is set by the contracting authority between 5% and 10% of the amount of the contract and any riders. The guarantee 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 released within 60 days, starting from the date of issue of the final acceptance certificate by the project manager. However, for contracts applying general conditions before PRAG 2015, the time limit for release is 45 days.
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.

22.15.2. 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.
A pre-financing guarantee may also be required below the amount of EUR 300 000 of pre-financing, subject to a risk analysis to be made by the contracting authority,
(i) for contractors that have been listed in the EDES at any moment during the last 3 years, and (ii) for contractors having relied on the capacity of another entity not part of the contract in order to meet the selection criteria.
For supply contracts of less than EUR 60 000, no pre-financing guarantee is to be requested.
The pre-financing guarantee is released within 30 days of issue of the provisional acceptance certificate for the supplies. However, for contracts applying general conditions before PRAG 2015 version, the time limit for release is 45 days.

22.16. 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. 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 are defined in the Glossary of Terms, annexes a1a and a1b to the PRAG.
Liquidated damages are damages, which have been agreed beforehand by the parties. They are 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 that it is due to pay to the contractor, or alternatively from an appropriate guarantee, usually the performance guarantee (see Section 9.1. of the Companion).

22.17. 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. Some of those cases are also applicable to members of the administrative, management or supervisory body of the contractor and/or to persons having powers of representation, decision or control with regard to the contractor, to persons jointly and severally liable with the contractor for the performance of the contract, or to subcontractors. Nevertheless, 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 (Article 36(2)(f)).
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 that affect the rights of the contracting authority in a way it cannot accept. In that case, termination of the contract is possible.
At any time and with immediate effect, The contracting authority may 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 her/him for supplies already delivered. Such a 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. The project manager has to draw up a detailed report of the supplies that 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 (Article 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.

22.18. 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:
1) the contracting authority has not paid her/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
2) has suspended the contract for more than 180 days for reasons that are not specified in the contract and that 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 (Article 37(3)).

22.19. Article 38 - Force majeure

There is no default or breach of contract if implementation is prevented by force majeure (Article 38(1)). Because of the seriousness of the consequences, 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 lockouts 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 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 concerns the suspension of cooperation with the partner country when it implies suspension of funding this contract (Article 38(2)). This case protects the interests of the contractor, who can terminate the contract 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. The contractor is 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 (Article 38(5)).
Both parties should monitor the evolution of the circumstances of force majeure especially when those are long-lasting. If the situation of force majeure continues for a period of 180 days, each party is encouraged to make recourse to the 30-day notice for termination provided for in Article 38(6), in order to release all parties from their respective contractual obligations.

22.20. Article 40 - Dispute settlement procedures

Although a party can decide to initiate the dispute settlement procedures of Article 40 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. If there is a dispute that concerns an ongoing contract, this does not relieve the contractor of its responsibility to continue complying with its contractual obligations with due diligence.

22.20.1. 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) 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.
A prior information letter issued in the view of a recovery order can also take the place of a formal request for amicable settlement, if so indicate in the letter itself. 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. Whenever possible, they are 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) 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. The maximum time limit 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.

22.20.2. 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 counterpart 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. Generally, 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 (the EDF Procedural Rules)[21].

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. 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.

[21] Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, general conditions and procedural rules on conciliation and arbitration for works, supply and service contracts financed by the European Development Fund (EDF) and concerning their application (OJ L 382, 31.12.1990, p. 1).

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 chairperson 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 must 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 (annex a12 to the PRAG):
http://ec.europa.eu/europeaid/prag/annexes.do

22.20.3. 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.
Conciliation is often initiated when one of the parties has already submitted the dispute to a court or arbitral tribunal. 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 must 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. As a general rule, the conciliator will 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 limit 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 must 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 that describes its steps and principles (and that should have been previously signed by the parties).

23. List of Annexes

V	**The implementation of supply contracts - A users' guide**	
V1	Guiding list of contact points on certificates of origin at some chambers of commerce	v1_contacts_chambers_commerce_en .xlsx