

**EUROPEAN COMMISSION**

Directorate General Economic and Financial Affairs

Directorate A - Policy Strategy and Co-ordination

**Unit A4: Economic situation, forecasts, business and consumer surveys****FRAMEWORK PARTNERSHIP AGREEMENT****FRAMEWORK AGREEMENT NUMBER – [...]**

The **European Union** (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), represented for the purposes of signature of this Framework partnership agreement by the Head of Economic Situation, Forecasts, Business and Consumer Surveys Unit, Directorate-General for Economic and Financial Affairs, [forename and surname],

on the one part,

**and**

**[full official name] [ACRONYM]**

[official legal status or form]

[official registration No]

[official address in full]

[VAT number],

hereinafter referred to as "the partner", represented for the purposes of signature of this Framework partnership agreement by [function, forename and surname]

on the other part,

## HAVE AGREED

to the Special Conditions (hereinafter referred to as “the Special Conditions”) and the following Annexes:

Annex I Action plan

Annex II General Conditions (hereinafter referred to as “the General Conditions”)

Annex III Model specific grant agreement

Annex IV Model final technical report

Annex V Model financial statement

Annex VI Model terms of reference for the certificate on the financial statements: *not applicable*

Annex VII Model terms of reference for the operational verification report: *not applicable*

Annex VIII Model terms of reference for the certificate on the compliance of the cost accounting practices: *not applicable*

Annex IX Declaration on actual costs

which form an integral part of this Framework partnership agreement, hereinafter referred to as "the Framework agreement".

The terms set out in the Special Conditions, of which the Preamble forms an integral part, shall take precedence over those set out in the Annexes.

The terms of Annex II "General Conditions" shall take precedence over the other Annexes.

## PREAMBLE

The Commission is responsible for implementing the Union policy in the field of surveillance of the EU economies. The Joint Harmonised European Union Programme of Business and Consumer Surveys (BCS) constitutes an essential tool for the European Commission (Commission) in fulfilling its Treaty-based obligations. The BCS programme was set up based on the Commission's institutional prerogatives<sup>1</sup> and constitutes an important source for decision-making of EU economic policy makers.

The Commission's harmonised survey programme, managed by the Directorate-General for Economic and Financial Affairs (DG ECFIN), was set up in 1961, and its scope has since expanded considerably in terms of both countries and sectors covered. The data published every month by DG ECFIN are derived from surveys conducted by partner institutes in the Member States and the candidate countries. The Joint Harmonised EU BCS Programme provides essential information for economic surveillance, short-term forecasting and economic research. The survey data generated within the framework of the Joint Harmonised EU BCS Programme are particularly useful for monitoring economic developments at Member State, EU and euro-area level. High frequency, timeliness and continuous harmonisation are among their main qualities.

For the purposes of implementing this Union policy, the Commission has selected one or more partners engaged in the area of activity concerned, with which it shares common general objectives and wishes to establish a relationship of lasting cooperation.

The general objectives which it shares with in the above-mentioned area of activity and which justify the establishment of a partnership are the following:

- To carry out harmonised surveys in the following business sectors: industry, construction, retail trade and services as well as among consumers in Member states and candidate countries;
- To make the results of these surveys, in the form of meaningful indicators available for short-term economic analysis;
- To assist the Commission in developing the Joint Harmonised EU Programme of Business and Consumer Surveys;
- To conduct ad-hoc surveys on issues of particular interest.

The framework partnership agreement is based on the Commission Call for proposals ECFIN 2014 001/A4 dated [...] April 2014 and the partner's proposal submitted on [date] with the Commission reference number Ares(2014)[number].

---

<sup>1</sup> Art. 54.2 (d) of FR (Financial Regulation)

## **SPECIAL CONDITIONS**

### **ARTICLE I.1 – SUBJECT MATTER OF THE FRAMEWORK AGREEMENT. AWARD OF SPECIFIC GRANTS**

#### **I.1.1 Subject matter of the Framework agreement**

**I.1.1.1** The Framework agreement is concluded as part of a long-term cooperation between the Commission and the partner (hereinafter referred to as "the partnership") with the aim to contribute to the objectives of the Union policy in the field of surveillance of the EU economies as referred to in the Preamble.

The Framework agreement defines the general rights and obligations of the parties in implementing their partnership.

**I.1.1.2** The partnership shall be implemented for the surveys [...] in [country] in compliance with the Action plan set out in Annex I.

**I.1.1.3.** For the purposes of implementing the partnership the Commission may award to the partner *specific grants for an action*.

The Framework agreement shall apply to any specific grant awarded for implementation of the partnership and to the respective specific grant agreements (hereinafter referred to as "Specific agreements") concluded between the parties.

Signature of the Framework agreement shall not give rise to any obligation of the Commission to award specific grants. It shall be without prejudice to the partner's participation in other calls for proposals for the purposes of award of grants outside the scope of the Action plan set out in Annex I.

**I.1.1.4** Articles II.12.4, II.23.2 (d) (ii) and II.25.3.3(c) shall not apply.

#### **I.1.2 Procedure for award of specific grants**

The Commission may consult its partner in order to obtain a proposal for an action in line with the Action plan set out in Annex I. Such consultation shall take place on the basis of *an invitation to submit a proposal*. The *invitation* shall define the award criteria to be applied. The partner shall not be obliged to submit a proposal in response to such a consultation.

#### **I.1.3. Conclusion of Specific agreements**

Where the Commission decides to award a specific grant, it shall propose to the partner to sign a Specific agreement in accordance with the model set out in Annex III. The Specific agreement shall be signed by the authorized representatives of the parties.

By signing the Specific agreement, the partner shall agree to carry out the action acting on its own responsibility in accordance with the terms and conditions laid down in the Framework agreement and the Specific agreement.

Specific agreements shall be signed before the date when the Framework agreement expires. Where the actions are carried out after the above-mentioned date, the terms of the Framework agreement shall continue to apply to the implementation of the Specific agreements governed by the Framework agreement.

## **ARTICLE I.2 – ENTRY INTO FORCE OF THE FRAMEWORK AGREEMENT AND DURATION OF THE PARTERSHIP**

**I.2.1** The Framework agreement shall enter into force on the date on which the last party signs.

**I.2.2** The Framework agreement shall be concluded for a period of six years starting from the date of its entry into force.

## **ARTICLE I.3 - DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES**

### **I.3.1 Data controller**

The entity acting as a data controller according to Article II.6 shall be: Directorate General for Economic and Financial Affairs.

### **I.3.2 Communication details of the Commission**

Any communication addressed to the Commission for the purposes of payments and other financial information shall be sent to the following address:

European Commission  
Directorate-General Economic and Financial Affairs  
Directorate R - Resources and Communication  
Unit R3: Financial management and control  
N105 01/025  
B-1049 Brussels

Technical reports and all other correspondence shall be sent to the following address:

European Commission  
Directorate-General Economic and Financial Affairs  
Directorate A - Policy Strategy and Co-ordination  
Unit A4: Economic situation, forecasts, business and consumer surveys  
CHAR 15/135  
B-1049 Brussels  
E-mail address: [ECFIN-BCS-MAIL@ec.europa.eu](mailto:ECFIN-BCS-MAIL@ec.europa.eu)

### **I.3.3 Communication details of the partner**

Any communication from the Commission to the partner shall be sent to the following address:

[Full name]  
[Function]  
[Name of the entity]  
[Full official address]  
E-mail address: [complete]

#### ***[ARTICLE I.4 – ENTITIES AFFILIATED TO THE PARTNER***

*The following entities are considered as affiliated entities to the partner:*

- *[name of the entity];*
- *[name of the entity];*

*[idem for further affiliated entities*

*The partner shall inform the Commission immediately of any change in the legal, financial, technical, organisational or ownership situation of its affiliated entities and of any change in their name and address.]*

#### **ARTICLE I.5 – INELIGIBILITY OF DEPRECIATION**

By way of derogation from Article II.19.2(c), the costs related to depreciation of equipment or other assets are not eligible.

#### **ARTICLE I.6 – SPECIAL PROVISIONS ON THE SUBMISSION OF A CERTIFICATE ON THE FINANCIAL STATEMENTS**

By way of derogation from Article II.23.2(d) of the Framework agreement, the partner shall not submit a certificate on the financial statements.

#### **ARTICLE I.7 – SPECIAL PROVISIONS ON THE CONVERSION OF COSTS INCURRED IN ANOTHER CURRENCY INTO EURO**

In case costs are incurred and invoiced in a country which is not part of the euro area (Article I.1.1.2 of the Framework partnership agreement), **the costs shall be presented in local currency and in euro.**

By way of derogation from Article II.23.4 of the Framework agreement, the conversion of the actual costs into euro shall be made by the partner at the rate applicable **on the day when the action covered by the specific grant ends (30th of April)** published in the Official Journal of the European Union or, failing that, at the rate published on the European Commission's website:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

***[ARTICLE I.8 –SETTLEMENT OF DISPUTES WITH A NON EU PARTNER***

*By derogation from Article II.18.2, where the partner is legally established in a country other than a Member State of the European Union (the 'non EU partner'), the Commission and/or the non EU partner may bring before the Belgian Courts any dispute between the Union and the non EU partner concerning the interpretation, application or validity of the Framework agreement and any Specific agreement, if such dispute cannot be settled amicably. In such case where one party (i.e. the Commission or the non EU partner) has brought proceedings before the Belgian Courts concerning the interpretation, application or validity of the Framework agreement and any Specific agreement, the other party may not bring a claim arising from the interpretation, application or validity of the Framework agreement and the Specific agreement in any other court than the Belgian Courts already seized.]*

**SIGNATURES**

For the partner  
[function/forename/surname]

For the Commission  
[forename/surname]

[signature]  
Done at [place], [date]

[signature]  
Done at [place], [date]

In duplicate in English

**ANNEX II****GENERAL CONDITIONS****TABLE OF CONTENTS****PART A – LEGAL AND ADMINISTRATIVE PROVISIONS**

- II.1 –GENERAL OBLIGATIONS OF THE PARTNER
- II.2 – COMMUNICATIONS BETWEEN THE PARTIES
- II.3 – LIABILITY FOR DAMAGES
- II.4 – CONFLICT OF INTERESTS
- II.5 – CONFIDENTIALITY
- II.6 – PROCESSING OF PERSONAL DATA
- II.7 – VISIBILITY OF UNION FUNDING
- II.8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS  
(INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)
- II.9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF AN  
ACTION
- II.10 – SUBCONTRACTING OF TASKS FORMING PART OF AN ACTION
- II.11 – FINANCIAL SUPPORT TO THIRD PARTIES
- II.12 – AMENDMENTS TO THE FRAMEWORK AGREEMENT AND THE SPECIFIC  
AGREEMENTS
- II.13 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES
- II.14 – FORCE MAJEURE
- II.15 – SUSPENSION OF THE IMPLEMENTATION
- II.16 – TERMINATION OF THE FRAMEWORK AGREEMENT AND THE SPECIFIC  
AGREEMENTS
- II.17 – ADMINISTRATIVE AND FINANCIAL PENALTIES
- II.18 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE  
DECISION

**PART B – FINANCIAL PROVISIONS**

- II.19 – ELIGIBLE COSTS
- II.20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED
- II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE PARTNER
- II.22 – BUDGET TRANSFERS
- II.23 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT  
AND SUPPORTING DOCUMENTS
- II.24 – PAYMENTS AND PAYMENT ARRANGEMENTS
- II.25 – DETERMINING THE FINAL AMOUNT OF A SPECIFIC GRANT
- II.26 – RECOVERY
- II.27 – CHECKS, AUDITS AND EVALUATION



## **PART A – LEGAL AND ADMINISTRATIVE PROVISIONS**

### **ARTICLE II.1 – GENERAL OBLIGATIONS OF THE PARTNER**

The partner shall:

- (a) respect the common general objectives that formed the basis for establishing the partnership, as mentioned in the Preamble and in the Action plan set out in Annex I, and endeavour to achieve in practice those objectives in each action for which a specific grant is awarded;
- (b) maintain relations of mutual co-operation and regular and transparent exchanges of information with the Commission on the implementation and the follow-up to implementation of the Action plan set out in Annex I and of any specific grant awarded by the Commission under the Framework agreement, as well as on other matters of common interest related to the Framework agreement;
- (c) be responsible for complying with any legal obligations incumbent on it;
- (d) be responsible for carrying out the actions, for which specific grants were awarded, in accordance with the terms and conditions of the Framework agreement and the Specific agreements;
- (e) inform the Commission immediately of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representative;
- (f) inform the Commission immediately of any change likely to affect or delay the implementation of an action, for which a specific grant was awarded, of which the partner is aware.

### **ARTICLE II.2 – COMMUNICATIONS BETWEEN THE PARTIES**

#### **II.2.1 Form and means of communications**

Any communication relating to the Framework agreement or a Specific agreement or to their implementation shall be made in writing (in paper or electronic form), shall bear the number of the agreement concerned and shall be made using the communication details identified in Article I.3.

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

Formal notifications shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

## **II.2.2 Date of communications**

Any communication is deemed to have been made when it is received by the receiving party, unless the Framework agreement or the Specific agreement refer to the date when the communication was sent.

Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in Article I.3. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in Article I.3. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Commission using the postal services is considered to have been received by the Commission on the date on which it is registered by the department identified in Article I.3.2.

Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

## **ARTICLE II.3 – LIABILITY FOR DAMAGES**

**II.3.1** The Commission shall not be held liable for any damage caused or sustained by the partner, including any damage caused to third parties as a consequence of or during the implementation of an action.

**II.3.2** Except in cases of force majeure, the partner shall compensate the Commission for any damage sustained by it as a result of the implementation of an action or because an action was not implemented or implemented poorly, partially or late.

## **ARTICLE II.4 - CONFLICT OF INTERESTS**

**II.4.1** The partner shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Framework agreement or the Specific agreements is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (“conflict of interests”).

**II.4.2** Any situation constituting or likely to lead to a conflict of interests during the implementation of the Framework agreement or the Specific agreements shall be notified to the Commission, in writing, without delay. The partner shall immediately take all the necessary steps to rectify this situation. The Commission reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

## **ARTICLE II.5 – CONFIDENTIALITY**

**II.5.1** The Commission and the partner shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Framework agreement or the Specific agreements and which are explicitly indicated in writing as confidential.

**II.5.2** The partner shall not use confidential information and documents for any reason other than fulfilling its obligations under the Framework agreement and the Specific agreements, unless otherwise agreed with the Commission in writing.

**II.5.3** The Commission and the partner shall be bound by the obligations referred to in Articles II.5.1 and II.5.2 during the implementation of the Framework agreement and the Specific agreements and for a period of five years starting from the payment of the balance under the Specific agreement concerned, unless:

- (a) the concerned party agrees to release the other party from the confidentiality obligations earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

## **ARTICLE II.6 – PROCESSING OF PERSONAL DATA**

### **II.6.1 Processing of personal data by the Commission**

Any personal data included in the Framework agreement and the Specific agreements shall be processed by the Commission pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Such data shall be processed by the data controller identified in Article I.3.1 solely for the purposes of the implementation, management and monitoring of the Framework agreement and the Specific agreements, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

The partner shall have the right of access to his/her personal data and the right to rectify any such data. Should the partner have any queries concerning the processing of his/her personal data, He/she shall address them to the data controller, identified in Article I.3.1.

The partner shall have the right of recourse at any time to the European Data Protection Supervisor.

## **II.6.2 Processing of personal data by the partner**

Where the Framework agreement or the Specific agreement requires the processing of personal data by the partner, the partner may act only under the supervision of the data controller identified in Article I.3.1, in particular with regard to the purpose of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his or her rights.

The access to data that the partner grants to its personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Framework agreement and the Specific agreements.

The partner undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised persons from using data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Commission;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.7 – VISIBILITY OF UNION FUNDING**

### **II.7.1 Information on Union funding and use of European Union emblem**

Unless the Commission requests or agrees otherwise, any communication or publication related to an action, made by the partner, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall indicate that the action has received funding from the Union and shall display the European Union emblem.

When displayed in association with another logo, the European Union emblem must have appropriate prominence.

The obligation to display the European Union emblem does not confer to the partner a right of exclusive use. The partner shall not appropriate the European Union emblem or any similar trademark or logo, either by registration or by any other means.

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the partner is exempted from the obligation to obtain prior permission from the Commission to use the European Union emblem.

### **II.7.2 Disclaimers excluding Commission responsibility**

Any communication or publication related to an action, made by the partner in any form and using any means, shall indicate that it reflects only the author's view and that the Commission is not responsible for any use that may be made of the information it contains.

## **ARTICLE II.8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **II.8.1 Ownership of the results by the partner**

Unless stipulated otherwise in the Specific agreement, ownership of the results of an action, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the partner.

### **II.8.2 Pre-existing industrial and intellectual property rights**

Where industrial and intellectual property rights, including rights of third parties, exist prior to the conclusion of the Specific agreement, the partner shall establish a list which shall specify all rights of ownership and use of the pre-existing industrial and intellectual property rights and disclose it to the Commission at the latest before the commencement of implementation.

The partner shall ensure that it or its affiliated entities have all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Specific agreement.

### **II.8.3 Rights of use of the results and of pre-existing rights by the Union**

Without prejudice to Articles II.1, II.3 and II.8.1, the partner grants the Union the right to use the results of an action for the following purposes:

- (a) use for its own purposes, and in particular, making available to persons working for the Commission, other Union institutions, agencies and bodies and to Member States' institutions, as well as, copying and reproducing in whole or in part and in unlimited number of copies;
- (b) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on the Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;
- (c) translation;
- (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (e) storage in paper, electronic or other format;
- (f) archiving in line with the document management rules applicable to the Commission;
- (g) rights to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

Additional rights of use for the Union may be provided for in the Specific agreement.

The partner shall warrant that the Union has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of an action. Unless specified otherwise in the Specific agreement, those pre-existing rights shall be used for the same purposes and under the same conditions applicable to the rights of use of the results of the action.

Information about the copyright owner shall be inserted when the result is divulged by the Union. The copyright information shall read: "© – year – name of the copyright owner. All rights reserved. Licenced to the European Union under conditions.".

## **ARTICLE II.9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF AN ACTION**

**II.9.1** Where the implementation of an action requires the procurement of goods, works or services, the partner shall award the contract to the tender offering best value for

money or, as appropriate, to the tender offering the lowest price. In doing so, it shall avoid any conflict of interests.

A partner acting in its capacity of a contracting authority within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts or a contracting entity within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall abide by the applicable national public procurement rules.

**II.9.2** The partner shall retain sole responsibility for carrying out the action concerned and for compliance with the provisions of the Framework agreement and the Specific agreement. The partner shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the Commission under the Framework agreement or the Specific agreement.

**II.9.3.** The partner shall ensure that the conditions applicable to it under Articles II.3, II.4, II.5, II.8 and II.27 are also applicable to the contractor.

## **ARTICLE II.10 – SUBCONTRACTING OF TASKS FORMING PART OF AN ACTION**

**II.10.1** A "subcontract" is a procurement contract within the meaning of Article II.9, which covers the implementation by a third party of tasks forming part of an action as described in Annex I of a Specific agreement.

**II.10.2** The partner may subcontract tasks forming part of an action, provided that, in addition to the conditions specified in Article II.9 and the Special Conditions, the following conditions are complied with:

- (a) subcontracting only covers the implementation of a limited part of the action;
- (b) recourse to subcontracting is justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex II of the Specific agreement;
- (d) any recourse to subcontracting, if not provided for in Annex I of the Specific agreement, is communicated by the partner and approved by the Commission without prejudice to Article II.12.2;
- (e) the partner ensures that the conditions applicable to it under Article II.7 are also applicable to the subcontractor.

## **ARTICLE II.11 - FINANCIAL SUPPORT TO THIRD PARTIES**

**II.11.1** Where the implementation of an action requires giving financial support to third parties, the partner shall give such financial support in accordance with the conditions specified in Annex I of the Specific agreement, which shall at least contain:

- (a) the maximum amount of financial support, which shall not exceed EUR 60 000 for each third party except where the financial support is the primary aim of the action as specified in Annex I of the Specific agreement;
- (b) the criteria for determining the exact amount of the financial support;
- (c) the different types of activity that may receive financial support, on the basis of a fixed list;
- (d) the definition of the persons or categories of persons which may receive financial support;
- (e) the criteria for giving the financial support.

**II.11.2** By way of derogation from Article II.11.1, in case the financial support takes the form of a prize, the partner shall give such financial support in accordance with the conditions specified in Annex I of the Specific agreement, which shall at least contain:

- (a) the conditions for participation;
- (b) the award criteria;
- (c) the amount of the prize;
- (d) the payment arrangements.

**II.11.3** The partner shall ensure that the conditions applicable to it under Articles II.3, II.4, II.5, II.7, II.8 and II.27 are also applicable to the third parties receiving financial support.

## **ARTICLE II.12 – AMENDMENTS TO THE FRAMEWORK AGREEMENT AND THE SPECIFIC AGREEMENTS**

**II.12.1** Any amendment to the Framework agreement or a Specific agreement shall be made in writing.

**II.12.2** An amendment may not have the purpose or the effect of making changes to the Framework agreement or the Specific agreement which would call into question the Commission's decision to establish the framework partnership or to award the specific grant or which would be contrary to the equal treatment of applicants.



**II.12.3** Any request for amendment shall be duly justified and shall be sent to the other party in due time before it is due to take effect, and, as far as Specific agreements are concerned, at the latest one month before the end of the period set out in Article 2.2 of the Specific agreement, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.

**II.12.4** In case of a specific operating grant the period set out in Article 2.2 of the Specific agreement shall not be extended via amendments.

**II.12.5** Amendments shall enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

Amendments shall take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

## **ARTICLE II.13 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES**

**II.13.1** Claims for payments of the partner against the Commission may not be assigned to third parties, except in duly justified cases where the situation warrants it.

The assignment shall only be enforceable against the Commission if it has accepted the assignment on the basis of a written and reasoned request to that effect made by the partner. In the absence of such an acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Commission.

**II.13.2** In no circumstances shall such an assignment release the partner from its obligations towards the Commission.

## **ARTICLE II.14 – FORCE MAJEURE**

**II.14.1** "*Force majeure*" shall mean any unforeseeable exceptional situation or event beyond the parties' control, which prevents either of them from fulfilling any of their obligations under the Framework agreement or a Specific agreement, which was not attributable to error or negligence on their part or on the part of subcontractors, affiliated entities or third parties involved in the implementation and which proves to be inevitable in spite of exercising all due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as *force majeure*.

**II.14.2** A party faced with *force majeure* shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

**II.14.3** The parties shall take the necessary measures to limit any damage due to *force majeure*. They shall do their best to resume the implementation of the action as soon as possible.

**II.14.4** The party faced with *force majeure* shall not be held to be in breach of its obligations under the Framework agreement or a Specific agreement if it has been prevented from fulfilling them by *force majeure*.

## **ARTICLE II.15 – SUSPENSION OF THE IMPLEMENTATION**

### **II.15.1 Suspension of the implementation of an action by the partner**

The partner may suspend the implementation of an action or any part thereof, if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*. The partner shall inform the Commission without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

Unless the Specific agreement is terminated in accordance with Article II.16.1 or points (b) or (c) of Article II.16.2.2, the partner shall, once the circumstances allow resuming the implementation of the action, inform the Commission immediately and present a request for amendment of the Specific agreement as provided for in Article II.15.3.2.

### **II.15.2 Suspension of the implementation by the Commission**

**II.15.2.1** The Commission may suspend the implementation of an action or any part thereof or the implementation of the Framework agreement:

- (a) if the Commission has evidence that the partner has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Framework agreement or the Specific agreements or if the partner fails to comply with its obligations under those agreements;
- (b) if the Commission has evidence that the partner has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to the partner under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on one or more specific grants awarded under the Framework agreement; or
- (c) if the Commission suspects substantial errors, irregularities, fraud or breach of obligations committed by the partner in the award procedure or in the implementation of the Framework agreement or the Specific agreements and needs to verify whether they have actually occurred.

**II.15.2.2** The implementation of each action for which a specific grant has been awarded is deemed automatically suspended from the date on which the suspension of the implementation of the Framework agreement takes effect.

**II.15.2.3** Before suspending the implementation the Commission shall formally notify the partner of its intention to suspend, specifying the reasons thereof, and, in the cases referred to in points (a) and (b) of Article II.15.2.1, the necessary conditions for resuming the implementation. The partner shall be invited to submit observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the partner, the Commission decides to stop the suspension procedure, it shall formally notify the partner thereof.

If no observations have been submitted or if, despite the observations submitted by the partner, the Commission decides to pursue the suspension procedure, it may suspend the implementation by formally notifying the partner thereof, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of Article II.15.2.1, the definitive conditions for resuming the implementation or, in the case referred to in point (c) of Article II.15.2.1, the indicative date of completion of the necessary verification.

The suspension shall take effect on the day of the receipt of the notification by the partner or on a later date, where the notification so provides.

In order to resume the implementation of the Framework agreement or the action, the partner shall endeavour to meet the notified conditions as soon as possible and shall inform the Commission of any progress made in this respect.

Unless the Framework agreement or the Specific agreement is terminated in accordance with Article II.16.1 or points (b), (h) or (i) of Article II.16.2.2, the Commission shall, as soon as it considers that the conditions for resuming the implementation have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify the partner thereof and invite the partner to present a request for amendment of the Specific agreement concerned, as provided for in Article II.15.3.2 or, where applicable, lay down the necessary adaptations of the Framework agreement, on which the parties need to agree in accordance with Article II.15.3.1.

### **II.15.3 Effects of the suspension**

**II.15.3.1** If the Framework agreement is not terminated, it may be adapted to the new implementing conditions in accordance with Article II.12. Such an amendment shall not have as a purpose or effect to extend the period set out in Article I.2.2.

The suspension of the implementation of the Framework agreement and of all automatically suspended actions in accordance with Article II.15.2.2 is deemed lifted as from the date of the notification by the Commission referred to in the

sixth subparagraph of Article II.15.2.3. In this case Article II.15.3.2 shall not apply.

**II.15.3.2** If the implementation of a suspended action can be resumed and the Specific agreement is not terminated, an amendment to the Specific agreement shall be made in accordance with Article II.12 in order to establish the date on which the action shall be resumed, to extend the duration of the action and to make any other modifications that may be necessary to adapt the action to the new implementing conditions.

The suspension of the implementation of the action is deemed lifted as from the date of resumption of the action agreed by the parties in accordance with the first subparagraph. Such a date may be before the date on which the amendment of the Specific agreement enters into force.

**II.15.3.3** Any costs incurred by the partner, during the period of suspension, for the implementation of the suspended action or the suspended part thereof, shall not be reimbursed or covered by the grant.

The right of the Commission to suspend the implementation of the action or of the Framework agreement is without prejudice to its right to terminate the Framework agreement or the Specific agreement in accordance with Article II.16.2 and its right to reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party shall be entitled to claim compensation on account of a suspension by the other party.

## **ARTICLE II.16 – TERMINATION OF THE FRAMEWORK AGREEMENT AND THE SPECIFIC AGREEMENTS**

### **II.16.1 Termination of the Framework agreement or a Specific agreement by the partner**

The partner may terminate the Framework agreement at any time by formally notifying the Commission thereof, specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect. The partner shall complete the implementation of any Specific agreement, governed by the Framework agreement, which has entered into force before the date on which the termination of the Framework agreement takes effect.

In duly justified cases the partner may terminate a Specific agreement by formally notifying the Commission thereof, stating clearly the reasons and specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect.

If no reasons are given or if the Commission considers that the reasons exposed cannot justify the termination, it shall formally notify the partner, specifying the grounds thereof, and the

Specific agreement shall be deemed to have been terminated improperly, with the consequences set out in the third subparagraph of Article II.16.3.

## **II.16.2 Termination of the Framework agreement or a Specific agreement by the Commission**

**II.16.2.1** The Commission may decide to terminate the Framework agreement at any time by formally notifying the partner thereof, specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect. Without prejudice to its right to terminate a Specific agreement according to Article II.16.2.2 and the effects of such a termination according to Article II.16.3, the Commission shall honour its obligations arising from the implementation of any Specific agreement, governed by the Framework agreement, which has entered into force before the date on which the termination of the Framework agreement takes effect.

**II.16.2.2** The Commission may decide to terminate the Framework agreement or a Specific agreement in the following circumstances:

- (a) if a change to the partner's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Framework agreement or the Specific agreement substantially or calls into question the Commission's decision to establish the framework partnership or to award the specific grant;
- (b) if the partner does not implement the action as specified in Annex I of the Specific agreement or fails to comply with another substantial obligation incumbent on it under the terms of the Framework agreement or the Specific agreement;
- (c) in the event of *force majeure*, notified in accordance with Article II.14, or in the event of suspension by the partner as a result of exceptional circumstances, notified in accordance with Article II.15, where resuming the implementation is impossible or where the necessary modifications to the Framework agreement or the Specific agreement would call into question the Commission's decision to establish the framework partnership or to award the specific grant or would result in unequal treatment of applicants;
- (d) if the partner is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) if the partner or any related person, as defined in the second subparagraph, have been found guilty of professional misconduct proven by any means;

- (f) if the partner is not in compliance with its 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 or in which the action is implemented;
- (g) if the Commission has evidence that the partner or any related person, as defined in the second subparagraph, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (h) if the Commission has evidence that the partner or any related person, as defined in the second subparagraph, have committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Framework agreement or the Specific agreement, including in the event of submission of false information or failure to submit required information in order to establish the framework partnership with the Commission or to obtain a specific grant; or
- (i) if the Commission has evidence that the partner has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to the partner under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on a specific grant awarded under the Framework agreement.

For the purposes of points (e), (g) and (h), "any related person" shall mean any natural person who has the power to represent the partner or to take decisions on its behalf.

**II.16.2.3** Before terminating the Framework agreement or a Specific agreement in accordance with Article II.16.2.2, the Commission shall formally notify the partner of its intention to terminate, specifying the reasons thereof and inviting the partner, within 45 calendar days from receipt of the notification, to submit observations and, in the case of point (b) of Article II.16.2.2, to inform the Commission about the measures taken to ensure that it continues to fulfil its obligations under the agreement concerned.

If, after examination of the observations submitted by the partner, the Commission decides to stop the termination procedure, it shall formally notify the partner thereof.

If no observations have been submitted or if, despite the observations submitted by the partner, the Commission decides to pursue the termination procedure, it may terminate the Framework agreement or the Specific agreement by formally notifying the partner thereof, specifying the reasons for the termination.

In the cases referred to in points (a), (b), (d) and (f) of Article II.16.2.2, the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (c), (e), (g), (h) and (i) of Article II.16.2.2, the

termination shall take effect on the day following the date on which the formal notification was received by the partner.

### **II.16.3 Effects of termination**

Where a Specific Agreement is terminated, payments by the Commission shall be limited to the amount determined in accordance with Article II.25 on the basis of the eligible costs incurred by the partner and the actual level of implementation of the action on the date when the termination takes effect. Costs relating to current commitments, which are not due for execution until after the termination, shall not be taken into account. The partner shall have 60 days from the date when the termination of the Specific agreement takes effect, as provided for in Articles II.16.1 and II.16.2.3, to produce a request for payment of the balance in accordance with Article II.23.2. If no request for payment of the balance is received within this time limit, the Commission shall not reimburse or cover any costs which are not included in a financial statement approved by it or which are not justified in a technical report approved by it. In accordance with Article II.26, the Commission shall recover any amount already paid, if its use is not substantiated by the technical reports and, where applicable, by the financial statements approved by the Commission.

Where the Commission, in accordance with point (b) of Article II.16.2.2, is terminating the Specific agreement on the grounds that the partner has failed to produce the request for payment and, after a reminder, has still not complied with this obligation within the deadline set out in Article II.23.3, the first subparagraph shall apply, subject to the following:

- (a) there shall be no additional time period from the date when the termination of the Specific agreement takes effect for the partner to produce a request for payment of the balance in accordance with Article II.23.2; and
- (b) the Commission shall not reimburse or cover any costs incurred by the partner up to the date of termination or up to the end of the period set out in Article 2.2 of the Specific agreement, whichever is the earlier, which are not included in a financial statement approved by it or which are not justified in a technical report approved by it.

In addition to the first and second subparagraphs, where the Specific agreement is terminated improperly by the partner within the meaning of Article II.16.1, or where the Specific agreement is terminated by the Commission on the grounds set out in points (b), (e), (g), (h) and (i) of Article II.16.2.2, the Commission may also reduce the specific grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26, in proportion to the gravity of the failings in question and after allowing the partner to submit its observations.

Neither party shall be entitled to claim compensation by the other party on account of a termination of the Framework agreement or a Specific agreement.

## **ARTICLE II.17 – ADMINISTRATIVE AND FINANCIAL PENALTIES**

**II.17.1** By virtue of Articles 109 and 131(4) of 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 with due regard to the

principle of proportionality, if the partner has committed substantial errors, irregularities or fraud, has made false declarations in supplying required information or has failed to supply such information at the moment of the submission of an application or during the implementation of the Framework agreement or a Specific agreement, or has been found in serious breach of its obligations under the Framework agreement or a Specific agreement, it shall be liable to:

- (a) administrative penalties consisting of exclusion from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established and confirmed following a contradictory procedure with the partner; and/or
- (b) financial penalties of 2% to 10% of the maximum amount of the specific grant in question as set out in Article 3 of the Specific agreement concerned.

In the event of another infringement within five years following the establishment of the first infringement, the period of exclusion under point (a) may be extended to 10 years and the range of the rate referred to in point (b) may be increased to 4% to 20%.

**II.17.2** The Commission shall formally notify the partner of any decision to apply such penalties.

The Commission is entitled to publish such decision under the conditions and within the limits specified in Article 109(3) of Regulation (EU, Euratom) No 966/2012.

An action may be brought against such decision before the General Court of the European Union, pursuant to Article 263 of the Treaty on the Functioning of the European Union ("TFEU").

## **ARTICLE II.18 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISION**

**II.18.1** The Framework agreement and any Specific agreement are governed by the applicable Union law complemented, where necessary, by the law of Belgium.

**II.18.2** Pursuant to Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, shall have sole jurisdiction to hear any dispute between the Union and the partner concerning the interpretation, application or validity of the Framework agreement or any Specific agreement, if such dispute cannot be settled amicably.

**II.18.3** By virtue of Article 299 TFEU, for the purposes of recoveries within the meaning of Article II.26 or financial penalties, the Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States. An action may be brought against such decision before the General Court of the European Union pursuant to Article 263 TFEU.



## **PART B – FINANCIAL PROVISIONS**

### **ARTICLE II.19 – ELIGIBLE COSTS**

#### **II.19.1 Conditions for the eligibility of costs**

"Eligible costs" of the action are costs actually incurred by the partner which meet the following criteria:

- (a) they are incurred in the period of duration of the action set out in Article 2.2 of the Specific agreement, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article II.23.2;
- (b) they are indicated in the estimated budget set out in Annex II of the Specific agreement;
- (c) they are incurred in connection with the action as described in Annex I of the Specific agreement and are necessary for its implementation;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the partner and determined according to the applicable accounting standards of the country where the partner is established and with the usual cost accounting practices of the partner;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

#### **II.19.2 Eligible direct costs**

"Direct costs" of the action are those specific costs which are directly linked to the implementation of the action and can therefore be attributed directly to it. They may not include any indirect costs.

To be eligible, direct costs shall comply with the conditions of eligibility set out in Article II.19.1.

In particular, the following categories of costs are eligible direct costs, provided that they satisfy the conditions of eligibility set out in Article II.19.1 as well as the following conditions:

- (a) the costs of personnel working under an employment contract with the partner or an equivalent appointing act and assigned to the action, comprising actual salaries plus social security contributions and other statutory costs included in the remuneration, provided that these costs are in line with the partner's usual policy on remuneration; those costs may also include additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that

they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used;

The costs of natural persons working under a contract with the partner other than an employment contract may be assimilated to such costs of personnel, provided that the following conditions are fulfilled:

- (i) the natural person works under the instructions of the partner and, unless otherwise agreed with the partner, in the premises of the partner;
  - (ii) the result of the work belongs to the partner; and
  - (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the partner;
- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the partner's usual practices on travel;
  - (c) the depreciation costs of equipment or other assets (new or second-hand) as recorded in the accounting statements of the partner, provided that the asset has been purchased in accordance with Article II.9 and that it is written off in accordance with the international accounting standards and the usual accounting practices of the partner; the costs of rental or lease of equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the period set out in Article 2.2 of the Specific agreement concerned and the rate of actual use for the purposes of the action may be taken into account. By way of exception, the Special Conditions or the Specific agreement may provide for the eligibility of the full cost of purchase of equipment, where justified by the nature of the action and the context of the use of the equipment or assets;

- (d) costs of consumables and supplies, provided that they are purchased in accordance with Article II.9 and are directly assigned to the action;
- (e) costs arising directly from requirements imposed by the Framework agreement or the Specific agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.9;
- (f) costs entailed by subcontracts within the meaning of Article II.10, provided that the conditions laid down in that Article are met;
- (g) costs of financial support to third parties within the meaning of Article II.11, provided that the conditions laid down in that Article are met;

- (h) duties, taxes and charges paid by the partner, notably value added tax (VAT), provided that they are included in eligible direct costs, and unless specified otherwise in the Special Conditions or in the Specific agreement.

### **II.19.3 Eligible indirect costs**

"Indirect costs" of the action are those costs which are not specific costs directly linked to the implementation of the action and can therefore not be attributed directly to it. They may not include any costs identifiable or declared as eligible direct costs.

To be eligible, indirect costs shall represent a fair apportionment of the overall overheads of the partner and shall comply with the conditions of eligibility set out in Article II.19.1.

Unless otherwise specified in the Article 3 of the Specific agreement, eligible indirect costs shall be declared on the basis of a flat rate of 7% of the total eligible direct costs.

### **II.19.4 Ineligible costs**

In addition to any other costs which do not fulfill the conditions set out in Article II.19.1, the following costs shall not be considered eligible:

- (a) return on capital;
- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) doubtful debts;
- (f) exchange losses;
- (g) costs of transfers from the Commission charged by the bank of the partner;
- (h) costs declared by the partner in the framework of another action receiving a grant financed from the Union budget (including grants awarded by a Member State and financed from the Union budget and grants awarded by other bodies than the Commission for the purpose of implementing the Union budget); in particular, indirect costs shall not be eligible under a specific grant for an action awarded to the partner when it already receives an operating grant financed from the Union budget during the period in question;
- (i) contributions in kind from third parties;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.

## **ARTICLE II.20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

### **II.20.1 Reimbursement of actual costs**

Where, in accordance with Article 3(a)(i) of the Specific agreement, the grant takes the form of the reimbursement of actual costs, the partner must declare as eligible costs the costs it actually incurred for the action.

If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records. In addition, the partner's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements as well as with the amounts indicated in the supporting documents.

### **II.20.2 Reimbursement of pre-determined unit costs or pre-determined unit contribution**

Where, in accordance with Article 3(a)(ii) or (b) of the Specific agreement, the grant takes the form of the reimbursement of unit costs or of a unit contribution, the partner must declare as eligible costs or as requested contribution the amount obtained by multiplying the amount per unit specified in Article 3(a)(ii) or (b) of the Specific agreement by the actual number of units used or produced.

If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the number of units declared. However, the partner does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared per unit.

### **II.20.3 Reimbursement of pre-determined lump sum costs or pre-determined lump sum contribution**

Where, in accordance with Article 3(a)(iii) or (c) of the Specific agreement, the grant takes the form of the reimbursement of lump sum costs or of a lump sum contribution, the partner must declare as eligible costs or as requested contribution the global amount specified in Article 3(a)(iii) or (c) of the Specific agreement, subject to the proper implementation of the corresponding tasks or part of the action as described in Annex I to the Specific agreement.

If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the proper implementation. However, the partner does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared as lump sum.

#### **II.20.4 Reimbursement of pre-determined flat-rate costs or pre-determined flat-rate contribution**

Where, in accordance with Article 3(a)(iv) or (d) of the Specific agreement, the grant takes the form of the reimbursement of flat-rate costs or of a flat-rate contribution, the partner must declare as eligible costs or as requested contribution the amount obtained by applying the flat rate specified in Article 3(a)(iv) or (d) of the Specific agreement.

If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies. However, the partner does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, for the flat rate applied.

#### **II.20.5 Reimbursement of costs declared on the basis of the partner's usual cost accounting practices**

Where, in accordance with Article 3(a)(v) of the Specific agreement, the grant takes the form of the reimbursement of unit costs declared on the basis of the partner's usual cost accounting practices, the partner must declare as eligible costs the amount obtained by multiplying the amount per unit calculated in accordance with its usual cost accounting practices by the actual number of units used or produced. If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the number of units declared.

Where, in accordance with Article 3(a)(v) of the Specific agreement, the grant takes the form of the reimbursement of lump sum costs declared on the basis of the partner's usual cost accounting practices, the partner must declare as eligible costs the global amount calculated in accordance with its usual cost accounting practices, subject to the proper implementation of the corresponding tasks or part of the action. If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the proper implementation.

Where, in accordance with Article 3(a)(v) of the Specific agreement, the grant takes the form of the reimbursement of flat-rate costs declared on the basis of the partner's usual cost accounting practices, the partner must declare as eligible costs the amount obtained by applying the flat rate calculated in accordance with its usual cost accounting practices. If requested to do so in the context of the checks or audits described in Article II.27, the partner must be able to provide adequate supporting documents to prove the eligible costs to which the flat rate applies.

In all three cases provided for in the first, second and third subparagraphs, the partner does not need to identify the actual eligible costs covered, but it must ensure that the cost accounting practices used for the purpose of declaring eligible costs are in compliance with the following conditions:

- (a) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;
- (b) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
- (c) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant in accordance with Article 3 of the Specific agreement.

Where the Special Conditions provide for the possibility for the partner to request the Commission to assess the compliance of its usual cost accounting practices, the partner may submit a request for assessment, which, where required by the Special Conditions, shall be accompanied by a certificate on the compliance of the cost accounting practices (“certificate on the compliance of the cost accounting practices”).

The certificate on the compliance of the cost accounting practices shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with the Annex VIII.

The certificate shall certify that the partner's cost accounting practices used for the purpose of declaring eligible costs comply with the conditions laid down in the fourth subparagraph and with the additional conditions which may be laid down in the Special Conditions.

Where the Commission has confirmed that the usual cost accounting practices of the partner are in compliance, costs declared in application of these practices shall not be challenged *ex post*, provided that the practices actually used comply with those approved by the Commission and that the partner did not conceal any information for the purpose of their approval.

## **ARTICLE II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE PARTNER**

Where the Special Conditions or the Specific agreement contain a provision on entities affiliated to the partner, costs incurred by such an entity are eligible, provided that they satisfy the same conditions under Articles II.19 and II.20 as apply to the partner, and that the partner ensures that the conditions applicable to it under Articles II.3, II.4, II.5, II.7, II.9, II.10, and II.27 are also applicable to the entity.

## **ARTICLE II.22 – BUDGET TRANSFERS**

Without prejudice to Article II.10 and provided that the action is implemented as described in Annex I of the Specific agreement, the partner is allowed to adjust the estimated budget set out in Annex II of the Specific agreement, by transfers between the different budget

categories, without this adjustment being considered as an amendment of the Specific agreement within the meaning of Article II.12.

The first subparagraph does not apply to amounts which, in accordance with Article 3(a)(iii) or (c) of the Specific agreement, take the form of lump sums.

## **ARTICLE II.23 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS**

### **II.23.1 Requests for further pre-financing payments and supporting documents**

Where, in accordance with Article 4.1 of the Specific agreement, the pre-financing shall be paid in several instalments and where Article 4.1 of the Specific agreement provides for a further pre-financing payment subject to having used all or part of the previous instalment, the partner may submit a request for a further pre-financing payment once the percentage of the previous instalment specified in Article 4.1 of the Specific agreement has been used.

Where, in accordance with Article 4.1 of the Specific agreement, the pre-financing shall be paid in several instalments and where Article 4.1 of the Specific agreement provides for a further pre-financing payment at the end of a reporting period, the partner shall submit a request for a further pre-financing payment within 60 days following the end of each reporting period for which a new pre-financing payment is due.

In both cases, the request shall be accompanied by the following documents:

- (a) a progress report on implementation of the action (“technical report on progress”);
- (b) a statement on the amount of the previous pre-financing instalment used to cover costs of the action (“statement on the use of the previous pre-financing instalment”), drawn up in accordance with Annex V; and
- (c) where required by Article 4.1 of the Specific agreement, a financial guarantee.

### **II.23.2 Requests for interim payments or for payment of the balance and supporting documents**

The partner shall submit a request for an interim payment or for payment of the balance within 60 days following the end of each reporting period for which, in accordance with Article 4.1 of the Specific agreement, an interim payment or the payment of the balance is due.

This request shall be accompanied by the following documents:

- (a) an interim report (“interim technical report”) or, for the payment of the balance, a final report on implementation of the action (“final technical report”), drawn up in accordance with Annex IV; the interim or final technical report must contain the information needed to justify the eligible costs declared or the contribution requested on the basis of unit costs and lump sums where the grant takes the form of the

reimbursement of unit or lump sum costs or of a unit or lump sum contribution in accordance with Article 3(a)(ii), (iii), (b) or (c) of the Specific agreement, as well as information on subcontracting as referred to in Article II.10.2(d);

- (b) an interim financial statement (“interim financial statement”) or, for the payment of the balance, a final financial statement (“final financial statement”); the interim or final financial statements must include a breakdown of the amounts claimed by the partner and its affiliated entities; it must be drawn up in accordance with the structure of the estimated budget set out in Annex II of the Specific agreement and with Annex V and detail the amounts for each of the forms of grant set out in Article 3 of the Specific agreement for the reporting period concerned;
- (c) only for the payment of the balance, a summary financial statement (“summary financial statement”); this statement must include a breakdown of the amounts declared or requested by the partner and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts referred to in Article II.25.3.2 for the partner and its affiliated entities; it must be drawn up in accordance with Annex V;
- (d) a certificate on the financial statements and underlying accounts (“certificate on the financial statements”) where the following conditions are met:
  - (i) in case of a specific grant for an action, where such a certificate is required by Article 4.1 of the Specific agreement or where both the total contribution in the form of reimbursement of actual costs as referred to in Article 3(a)(i) of the Specific agreement is at least EUR 750 000 and the partner requests a reimbursement in that form of at least EUR 325 000 (when adding all previous reimbursements in that form for which a certificate on the financial statements has not been submitted),
  - (ii) in case of a specific operating grant, where such a certificate is required by Article 4.1 of the Specific agreement or where the total contribution in the form of reimbursement of actual costs as referred to in Article 3(a)(i) of the Specific agreement is at least EUR 100 000.

This certificate shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VI. It shall certify that the costs declared in the interim or final financial statement by the partner or its affiliated entities for the categories of costs reimbursed in accordance with Article 3(a)(i) of the Specific agreement are real, accurately recorded and eligible in accordance with the Framework agreement and the Specific agreement. In addition, for the payment of the balance, it shall certify that all the receipts referred to in Article II.25.3.2 have been declared; and

- (e) where required by Article 4.1 of the Specific agreement, an operational verification report (“operational verification report”), produced by an independent third party approved by the Commission and drawn up in accordance with Annex VII.



This report shall state that the actual implementation of the action as described in the interim or final report complies with the conditions set out in the Framework agreement and the Specific agreement.

The partner shall certify that the information provided in the request for interim payment or for payment of the balance is full, reliable and true. It shall also certify that the costs incurred can be considered eligible in accordance with Framework agreement and the Specific agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27. In addition, for the payment of the balance, it shall certify that all the receipts referred to in Article II.25.3.2 have been declared.

### **II.23.3 Non-submission of documents**

Where the partner has failed to submit a request for interim payment or payment of the balance accompanied by the documents referred to above within 60 days following the end of the corresponding reporting period and where the partner still fails to submit such a request within 60 days following a written reminder sent by the Commission, the Commission reserves the right to terminate the Specific agreement in accordance with Article II.16.2.2(b), with the effects described in the second and the third subparagraphs of Article II.16.3.

### **II.23.4 Currency for requests for payment and financial statements and conversion into euro**

Requests for payment and financial statements shall be drafted in euro.

Where the partner keeps its general accounts in a currency other than the euro, it shall convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of *Official Journal of the European Union*, determined over the corresponding reporting period. Where no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, conversion shall be made at the average of the monthly accounting rates established by the Commission and published on its website ([http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)), determined over the corresponding reporting period.

Where the partner keeps its general accounts in euro, it shall convert costs incurred in another currency into euro according to its usual accounting practices.

## **ARTICLE II.24 – PAYMENTS AND PAYMENT ARRANGEMENTS**

### **II.24.1 Pre-financing**

The pre-financing is intended to provide the partner with a float.

Without prejudice to Article II.24.6, where Article 4.1 of the Specific agreement provides for a pre-financing payment upon entry into force of the Specific agreement, the Commission

shall pay to the partner within 30 days following that date or, where required by Article 4.1 of the Specific agreement, following receipt of the financial guarantee.

Where payment of pre-financing is conditional on receipt of a financial guarantee, the financial guarantee shall fulfill the following conditions:

- (a) it is provided by a bank or an approved financial institution or, at the request of the partner and acceptance by the Commission, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Commission to have recourse against the principal debtor (i.e. the partner); and
- (c) it provides that it remains in force until the pre-financing is cleared against interim payments or payment of the balance by the Commission and, in case the payment of the balance is made in the form of a debit note, three months after the debit note is notified to the partner. The Commission shall release the guarantee within the following month.

#### **II.24.2 Further pre-financing payments**

Without prejudice to Articles II.24.5 and II.24.6, on receipt of the documents referred to in Article II.23.1, the Commission shall pay to the partner the new pre-financing instalment within 60 days.

Where the statement on the use of the previous pre-financing instalment submitted in accordance with Article II.23.1 shows that less than 70% of the previous pre-financing instalment paid has been used to cover costs of the action, the amount of the new pre-financing to be paid shall be reduced by the difference between the 70% threshold and the amount used.

#### **II.24.3 Interim payments**

Interim payments are intended to reimburse or cover the eligible costs incurred for the implementation of the action during the corresponding reporting periods.

Without prejudice to Articles II.24.5 and II.24.6, on receipt of the documents referred to in Article II.23.2, the Commission shall pay to the partner the amount due as interim payment within the time limit specified in Article 4.2 of the Specific agreement.

This amount shall be determined following approval of the request for interim payment and of the accompanying documents and in accordance with the fourth, fifth and sixth subparagraphs. Approval of the request for interim payment and of the accompanying documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Without prejudice to any ceiling set out in Article 4.1 of the Specific agreement and to Articles II.24.5 and II.24.6, the amount due as interim payment shall be determined as follows:

- (a) where, in accordance with Article 3(a) of the Specific agreement, the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate specified in that Article to the eligible costs of the action approved by the Commission for the concerned reporting period and the corresponding categories of costs, for the partner and its affiliated entities; if Article 4.1 of the Specific agreement specifies another reimbursement rate, this other rate shall be applied instead;
- (b) where, in accordance with Article 3(b) of the Specific agreement, the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified in that Article by the actual number of units approved by the Commission for the concerned reporting period for the partner and its affiliated entities;
- (c) where, in accordance with Article 3(c) of the Specific agreement, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the partner and its affiliated entities, subject to approval by the Commission of the proper implementation during the concerned reporting period of the corresponding tasks or part of the action in accordance with Annex I of the Specific agreement;
- (d) where, in accordance with Article 3(d) of the Specific agreement, the grant takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Commission for the concerned reporting period for the partner and its affiliated entities.

Where Article 3 of the Specific agreement provides for a combination of different forms of grant, these amounts shall be added.

Where Article 4.1 of the Specific agreement requires that the interim payment clears all or part of the pre-financing paid to the partner, the amount of pre-financing to be cleared shall be deducted from the amount due as interim payment, as determined in accordance with the fourth and fifth subparagraphs.

#### **II.24.4 Payment of the balance**

The payment of the balance, which may not be repeated, is intended to reimburse or cover after the end of the period set out in Article 2.2 of the Specific agreement the remaining part of the eligible costs incurred by the partner for its implementation. Where the total amount of earlier payments is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance may take the form of a recovery as provided for by Article II.26.

Without prejudice to Articles II.24.5 and II.24.6, on receipt of the documents referred to in Article II.23.2, the Commission shall pay the amount due as the balance within the time limit specified in Article 4.2 of the Specific agreement.

This amount shall be determined following approval of the request for payment of the balance and of the accompanying documents and in accordance with the fourth subparagraph. Approval of the request for payment of the balance and of the accompanying documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

The amount due as the balance shall be determined by deducting, from the final amount of the grant determined in accordance with Article II.25, the total amount of pre-financing and interim payments already made.

#### **II.24.5 Suspension of the time limit for payment**

The Commission may suspend the time limit for payment specified in Article 4.2 of the Specific agreement or in Article II.24.2 at any time by formally notifying the partner that its request for payment cannot be met, either because it does not comply with the provisions of the Framework agreement and the Specific agreement, or because the appropriate supporting documents have not been produced, or because there is doubt about the eligibility of the costs declared in the financial statement.

The partner shall be notified as soon as possible of any such suspension, together with the reasons thereof.

Suspension shall take effect on the date when notification is sent by the Commission. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension exceeds two months, the partner may request a decision by the Commission on whether the suspension is to be continued.

Where the time limit for payment has been suspended following the rejection of one of the technical reports or financial statements provided for by Article II.23 and the new report or statement submitted is also rejected, the Commission reserves the right to terminate the Specific agreement in accordance with Article II.16.2.2(b), with the effects described in Article II.16.3.

#### **II.24.6 Suspension of payments**

The Commission may, at any time during the implementation of a Specific agreement, suspend the pre-financing payments, interim payments or payment of the balance:

- (a) if the Commission has evidence that the partner has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if the partner fails to comply with its obligations under the Framework agreement or the Specific agreement;
- (b) if the Commission has evidence that the partner has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or by the European Atomic Energy Community which were awarded to that partner under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on a specific grant awarded under the Framework agreement; or
- (c) if the Commission suspects substantial errors, irregularities, fraud or breach of obligations committed by the partner in the award procedure or in the implementation

of the Framework agreement or the Specific agreement and needs to verify whether they have actually occurred.

Before suspending payments, the Commission shall formally notify the partner of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a) and (b) of the first subparagraph, the necessary conditions for resuming payments. The partner shall be invited to make any observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the partner, the Commission decides to stop the procedure of payment suspension, the Commission shall formally notify the partner thereof.

If no observations have been submitted or if, despite the observations submitted by the partner, the Commission decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the partner, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of the first subparagraph, the definitive conditions for resuming payments or, in the case referred to in point (c) of the first subparagraph, the indicative date of completion of the necessary verification.

The suspension of payments shall take effect on the date when the notification is sent by the Commission.

In order to resume payments, the partner shall endeavour to meet the notified conditions as soon as possible and shall inform the Commission of any progress made in this respect.

The Commission shall, as soon as it considers that the conditions for resuming payments have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify the partner thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation in accordance with Article II.15.1 or to terminate the Specific agreement in accordance with Article II.16.1, the partner is not entitled to submit any requests for payments and supporting documents referred to in Article II.23.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article 4 of the Specific agreement.

#### **II.24.7 Notification of amounts due**

The Commission shall formally notify the amounts due, specifying whether it is a further pre-financing payment, an interim payment or the payment of the balance. In the case of payment of the balance, it shall also specify the final amount of the grant determined in accordance with Article II.25.

### **II.24.8 Interest on late payment**

On expiry of the time limits for payment specified in Article 4.2 of the Specific agreement and in Articles II.24.1 and II.24.2, and without prejudice to Articles II.24.5 and II.24.6, the partner is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros ("the reference rate"), plus three and a half points. The reference rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

The first subparagraph shall not apply where the partner is a Member State of the Union, including regional and local government authorities and other public bodies acting in the name and on behalf of the Member State.

The suspension of the time limit for payment in accordance with Article II.24.5 or of payment by the Commission in accordance with Article II.24.6 may not be considered as late payment.

Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article II.24.10. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of Article II.25.3.

By way of derogation from the first subparagraph, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the partner only upon request submitted within two months of receiving late payment.

### **II.24.9 Currency for payments**

Payments by the Commission shall be made in euro.

### **II.24.10 Date of payment**

Payments by the Commission shall be deemed to be effected on the date when they are debited to the Commission's account.

### **II.24.11 Costs of payment transfers**

Costs of the payment transfers shall be borne in the following way:

- (a) costs of transfer charged by the bank of the Commission shall be borne by the Commission;
- (b) costs of transfer charged by the bank of the partner shall be borne by the partner;
- (c) all costs of repeated transfers caused by one of the parties shall be borne by the party which caused the repetition of the transfer.

## **ARTICLE II.25 – DETERMINING THE FINAL AMOUNT OF A SPECIFIC GRANT**

### **II.25.1 Calculation of the final amount**

Without prejudice to Articles II.25.2, II.25.3 and II.25.4, the final amount of the specific grant shall be determined as follows:

- (a) where, in accordance with Article 3(a) of the Specific agreement, the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate specified in that Article to the eligible costs of the action approved by the Commission for the corresponding categories of costs, for the partner and its affiliated entities;
- (b) where, in accordance with Article 3(b) of the Specific agreement, the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified that Article by the actual number of units approved by the Commission for the partner and its affiliated entities;
- (c) where, in accordance with Article 3(c) of the Specific agreement, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the partner and its affiliated entities, subject to approval by the Commission of the proper implementation of the corresponding tasks or part of the action in accordance with Annex I of the Specific agreement;
- (d) where, in accordance with Article 3(d) of the Specific agreement, the grant takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Commission for the partner and its affiliated entities.

Where Article 3 of the Specific agreement provides for a combination of different forms of grant, these amounts shall be added.

### **II.25.2 Maximum amount**

The total amount paid to the partner by the Commission may in no circumstances exceed the maximum amount specified in Article 3 of the Specific agreement.

Where the amount determined in accordance with Article II.25.1 exceeds this maximum amount, the final amount of the grant shall be limited to the maximum amount specified in Article 3 of the Specific agreement.

### **II.25.3 No-profit rule and taking into account of receipts**

**II.25.3.1** The specific grant may not produce a profit for the partner, unless specified otherwise in the Special Conditions or in the Specific agreement. "Profit" shall mean a surplus of the receipts over the eligible costs of the action.

**II.25.3.2** The receipts to be taken into account are the receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the partner, which fall within one of the following two categories:

- (a) income generated by the action; or
- (b) financial contributions specifically assigned by the donors to the financing of the eligible costs of the action reimbursed by the Commission in accordance with Article 3(a)(i) of the Specific agreement.

**II.25.3.3** The following shall not be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the partner:

- (a) financial contributions referred to in point (b) of Article II.25.3.2, which may be used by the partner to cover costs other than the eligible costs under the Specific agreement;
- (b) financial contributions referred to in point (b) of Article II.25.3.2, the unused part of which is not due to the donor at the end of period set out in Article 2.2 of the Specific agreement;
- (c) in case of a specific operating grant, amounts dedicated to the building up of reserves.

**II.25.3.4** The eligible costs to be taken into account are the eligible costs approved by the Commission for the categories of costs reimbursed in accordance with Article 3(a) of the Specific agreement.

**II.25.3.5** Where the final amount of the grant determined in accordance with Articles II.25.1 and II.25.2 would result in a profit for the partner, the profit shall be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the action approved by the Commission for the categories of costs referred to in Article 3(a)(i) of the Specific agreement. This final rate shall be calculated on the basis of the final amount of the grant in the form referred to in Article 3(a)(i) of the Specific agreement, as determined in accordance with Articles II.25.1 and II.25.2.

## **II.25.4 Reduction for poor, partial or late implementation**

If the action is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for, in line with the actual implementation of the action according to the terms laid down in the Framework agreement and the Specific agreement.

## **ARTICLE II.26 – RECOVERY**

### **II.26.1 Financial responsibility**

Where an amount is to be recovered under the terms of the Framework agreement and any Specific agreement, the partner shall repay the Commission the amount in question. The partner shall be responsible for the repayment of any amount unduly



paid by the Commission as a contribution towards the costs incurred by its affiliated entities.

### **II.26.2 Recovery procedure**

Before recovery, the Commission shall formally notify the partner of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and inviting the partner to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the partner, the Commission decides to pursue the recovery procedure, the Commission may confirm recovery by formally notifying to the partner a debit note (“debit note”), specifying the terms and the date for payment.

If payment has not been made by the date specified in the debit note, the Commission shall recover the amount due:

- (a) by offsetting it against any amounts owed to the partner by the Union or the European Atomic Energy Community (Euratom) (“offsetting”); in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Commission may recover by offsetting before the due date; the partner’s prior consent shall not be required; an action may be brought against such offsetting before the General Court of the European Union pursuant to Article 263 TFEU;
- (b) by drawing on the financial guarantee where provided for in accordance with Article 4.1 of the Specific agreement (“drawing on the financial guarantee”);
- (c) by taking legal action in accordance with Article II.18.2 or with the Special Conditions or by adopting an enforceable decision in accordance with Article II.18.3.

### **II.26.3 Interest on late payment**

If payment has not been made by the date set out in the debit note, the amount due shall bear interest at the rate established in Article II.24.8. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when the Commission actually receives payment in full of the outstanding amount.

Any partial payment shall first be appropriated against charges and interest on late payment and then against the principal.

### **II.26.4 Bank charges**

Bank charges incurred in connection with the recovery of the sums owed to the Commission shall be borne by the partner except where Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services

in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC applies.

## **ARTICLE II.27 – CHECKS, AUDITS AND EVALUATION**

### **II.27.1 Technical and financial checks or audits and interim and final evaluations**

The Commission may carry out technical and financial checks and audits in relation to the use of a specific grant. It may also check the statutory records of the partner for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided in the framework of checks or audits shall be treated on a confidential basis.

In addition, the Commission may carry out interim or final evaluation of the impact of an action measured against the objective of the Union programme concerned.

Checks, audits or evaluations made by the Commission may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks, audits or evaluations may be initiated during the implementation of the Specific agreement and for a period of five years starting from the date of payment of the balance for the action concerned. This period shall be limited to three years if the maximum amount specified in Article 3 of the Specific agreement is not more than EUR 60 000.

The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of the Commission announcing it.

### **II.27.2 Duty to keep documents**

The partner shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance for the action concerned.

This period shall be limited to three years if the maximum amount specified in Article 3 of the Specific agreement is not more than EUR 60 000.

The periods set out in the first and second subparagraphs shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case referred to in Article II.27.7. In such cases, the partner shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

### **II.27.3 Obligation to provide information**

The partner shall provide any information, including information in electronic format, requested by the Commission, or by any other outside body authorised by it, in the context of checks, audits or evaluations as referred to in Article II.27.1.

In case the partner does not comply with the obligation set out in the first subparagraph, the Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the partner as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the partner as undue.

#### **II.27.4 On-the-spot visits**

During an on-the-spot visit, the partner shall allow Commission staff and outside personnel authorised by the Commission to have access to the sites and premises where the action concerned is or was carried out, and to all the necessary information, including information in electronic format.

It shall ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form.

In case the partner refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the partner as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the partner as undue.

#### **II.27.5 Contradictory audit procedure**

On the basis of the findings made during the audit, a provisional report (“draft audit report”) shall be drawn up. It shall be sent by the Commission or its authorised representative to the partner, which shall have 30 days from the date of receipt to submit observations. The final report (“final audit report”) shall be sent to the partner within 60 days of expiry of the time limit for submission of observations.

#### **II.27.6 Effects of audit findings**

On the basis of the final audit findings, the Commission may take the measures which it considers necessary, including recovery of all or part of the payments made by it under the Specific agreement concerned, in accordance with Article II.26.

In the case of final audit findings made after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant, determined in accordance with Article II.25, and the total amount paid to the partner under the Specific agreement for the implementation of the action.

#### **II.27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations**

**II.27.7.1** The Commission may take all measures which it considers necessary, including recovery of all or part of the payments made by it under a Specific agreement, in accordance with Article II.26, where the following conditions are fulfilled:

- (a) the partner is found, on the basis of an audit of other grants awarded to it under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on a specific grant awarded under the Framework agreement; and
- (b) the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations is received by the partner within the period referred to in Article II.27.1.

**II.27.7.2** The Commission shall determine the amount to be corrected under the Specific agreement concerned:

- (a) wherever possible and practicable, on the basis of costs unduly declared as eligible under the Specific agreement.

For that purpose, the partner shall revise the financial statements submitted under the Specific agreement taking account of the findings and resubmit them to the Commission within 60 days from the date of receipt of the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant concerned, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the partner and approved by the Commission, and the total amount paid to the partner under the Specific agreement for the implementation of the action;

- (b) where it is not possible or practicable to quantify precisely the amount of ineligible costs under the Specific agreement, by extrapolating the correction rate applied to the eligible costs for the grants for which the systemic or recurrent errors or irregularities have been found.

The Commission shall formally notify the extrapolation method to be applied to the partner, which shall have 60 days from the date of receipt to submit observations and to propose a duly substantiated alternative method.

If the Commission accepts the alternative method proposed by the partner, it shall formally notify the partner thereof and determine the revised eligible costs by applying the accepted alternative method.

If no observations have been submitted or if the Commission does not accept the observations or the alternative method proposed by the partner, the Commission shall formally notify the partner thereof and determine the revised eligible costs by applying the extrapolation method initially notified to the partner.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant concerned,

determined in accordance with Article II.25 on the basis of the revised eligible costs after extrapolation, and the total amount paid to the partner under the Specific agreement for the implementation of the action; or

- (c) where ineligible costs cannot serve as a basis for determining the amount to be corrected, by applying a flat rate correction to the specific grant, having regard to the principle of proportionality.

The Commission shall formally notify the flat rate to be applied to the partner, which shall have 60 days from the date of receipt to submit observations and to propose a duly substantiated alternative flat rate.

If the Commission accepts the alternative flat rate proposed by the partner, it shall formally notify the partner thereof and correct the grant amount by applying the accepted alternative flat rate.

If no observations have been submitted or if the Commission does not accept the observations or the alternative flat rate proposed by the partner, the Commission shall formally notify the partner thereof and correct the grant amount by applying the flat rate initially notified to the partner.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant concerned after flat-rate correction and the total amount paid to the partner under the Specific agreement for the implementation of the action.

### **II.27.8 Checks and inspections by OLAF**

The European Anti-Fraud Office (OLAF) shall have the same rights as the Commission, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities.

Where appropriate, OLAF findings may lead to recovery by the Commission.

### **II.27.9 Checks and audits by the European Court of Auditors**

The European Court of Auditors shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits.