



MARCO POLO GRANT AGREEMENT¹

AGREEMENT NUMBER – [INSERT REFERENCE NUMBER]

The Executive Agency for Competitiveness and Innovation (EACI) (hereinafter referred to as "the Agency"), acting under powers delegated by the Commission (hereinafter referred to as "the European Commission") of the European Union (hereinafter referred to as "the Union"), and represented for the purposes of signature of the present agreement by Mr Patrick Lambert, Director, or his duly authorised representative, Mr Patrick Vankerckhoven, Head of Unit,

of the one part,

and

[full official name] [ACRONYM]

[official legal form]

[official registration No]

[official address in full]

[VAT number]

hereinafter called "the coordinator", represented for the purposes of signature of the agreement by [title, name, forename and function]

and the following "co-beneficiaries":

[full official name] [ACRONYM]

[official legal form]

[official registration No]

[official address in full]

[VAT number]

represented by [title, name, forename and function of legal representative of co-beneficiary]

¹ This is a model of agreement which is subject to changes at the time of signature.

who have conferred powers of attorney for the purposes of the signature of the agreement to the representative of the coordinator,

collectively "the beneficiaries", and each individually identified as "beneficiary" for purposes of this agreement where a provision applies without distinction to the coordinator or a co-beneficiary

of the other part,

HAVE AGREED

the **Special Conditions, General Conditions** and **Annexes** below:

- Annex I** Description of the action
- Annex II** Estimated budget of the action (comprising a consolidated version together with a breakdown of costs and receipts between each beneficiary)
- Annex III** Technical implementation reports and financial statements to be submitted
- Annex IV** Model letter of guarantee from the financial organisation to the European Union
- Annex V** Mandates conferring powers of attorney from the co-beneficiaries to the coordinator

which form an integral part of this agreement ("the agreement").

The terms set out in the Special Conditions shall take precedence over those in the other parts of the agreement.

The terms of the General Conditions shall take precedence over those in the Annexes.

Annex I (description of the action) shall take precedence over the other annexes.

I – SPECIAL CONDITIONS

ARTICLE I.1 – PURPOSE OF THE GRANT

- I.1.1 The Agency has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the agreement, which the beneficiaries hereby declare that they have taken note of and accept, for the action entitled [Insert title] [Insert acronym] ("the action").
- I.1.2 The beneficiaries accept the grant and undertake to do everything in their power to carry out the action as described in Annex I, acting on their own responsibility.

ARTICLE I.2 – DURATION

- I.2.1 The agreement shall enter into force on the date when the last contracting party signs ("the date of entry into force of the agreement").
- I.2.2 The action shall run for [insert the figures and words] [months/days] from [insert date] ("the starting date of the action").

ARTICLE I.3 – ROLE OF THE BENEFICIARIES

- I.3.1 The coordinator shall:
- a) have full responsibility for ensuring that the action is implemented in accordance with the agreement;
 - b) be the intermediary for all communication between the co-beneficiaries and the Agency in accordance with Article I.8. Any claims that the Agency might have in respect of the agreement shall be addressed to, and answered by, the coordinator, save where specifically stated otherwise in the agreement;
 - c) be responsible for supplying all documents and information to the Agency which may be required under the agreement, in particular in relation to the requests for payment. The coordinator shall not delegate any part of this task to the co-beneficiaries or to any other party. Where information from the co-beneficiaries is required, the coordinator shall be responsible for obtaining and verifying this information and for passing it on to the Agency;
 - d) inform the co-beneficiaries of any event of which the coordinator is aware that is liable to substantially affect the implementation of the action;
 - e) inform the Agency of transfers between items of eligible costs as provided in Article I.4.4;
 - f) make the appropriate arrangements for providing the financial guarantee or the joint guarantee of the beneficiaries participating in the action, when requested, under the provisions of Article I.5;

- g) establish the payment requests on behalf of the beneficiaries, detailing the exact share and amount assigned to each beneficiary, in accordance with the agreement, the estimated eligible costs as foreseen in Annex II, and the actual costs incurred. All payments by the Agency are made to the bank account(s) referred to in Article I.7.1;
- h) where designated the sole recipient of payments on behalf of all of the beneficiaries, ensure that all the appropriate payments are made to the co-beneficiaries within 30 days upon receipt of the funds paid by the Agency, unless there is a justified delay, in accordance with Article I.5 and in accordance with Annex II;
- i) be responsible, in the event of audits, checks or evaluations, as described in Articles II.20 and II.6, for providing all the necessary documents, including the accounts of the co-beneficiaries, the original accounting documents and signed copies of sub-contracts, if any have been concluded by the beneficiaries in accordance with Article II.9.

I.3.2 The co-beneficiaries shall:

- a) agree upon appropriate arrangements between themselves for the proper performance of the action as described in Annex I;
- b) forward to the coordinator the data needed to draw up the reports, financial statements and other documents provided for in the agreement including its Annexes;
- c) ensure that all information to be provided to the Agency is sent via the coordinator, save where the agreement specifically stipulates otherwise;
- d) inform the coordinator immediately of any event liable to substantially affect or delay the implementation of the action of which they are aware;
- e) inform the coordinator of transfers between items of eligible costs, as provided in Article I.4.4;
- f) provide the coordinator with all the necessary documents in the event of audits, checks or evaluations, as described in Articles II.20 and II.6.

ARTICLE I.4 – BREAKDOWN OF COSTS – FINANCING THE ACTION

- I.4.1 The total cost of the action is estimated at EUR [insert amount in figures and words...], as shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for Union funding under the terms of Article II.14, of any other costs that the action may entail, and of all receipts, so that receipts and costs balance.
- I.4.2 The total eligible costs of the action for which the Agency grant is awarded are estimated at EUR [insert amount in figures and words] as shown in the estimated budget in Annex II.

Indirect costs are eligible for flat-rate funding of a maximum of 7% of the total direct costs eligible, subject to the conditions laid down in Article II.14.3.

[Option 1 (for Modal shift actions):

I.4.3 The Agency shall contribute to a maximum amount of EUR [...] [insert amounts in figures and words].

The Union financial assistance will be limited to EUR 2 for each 500 tonne-kilometres or 2000 cubic metre-kilometres (in case the volumetric equivalent is used) of freight shifted off the road. However, the Union financial contribution shall not exceed 35,00% of the total actual eligible costs approved by the Agency.

Ancillary infrastructure costs are eligible.² Only the portion of the infrastructure's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account. However, the eligible costs for ancillary infrastructure shall not exceed 20% of the total actual eligible costs of the action.

Where the Union financial contribution is given in addition to other legitimate public funding³, the combined public contributions shall not exceed 35,00% of the total actual eligible costs approved by the Agency.]

[Option 2 (for Catalyst actions):

I.4.3 The Agency shall contribute to a maximum amount of EUR [...] [insert amounts in figures and words].

The Union financial assistance will be limited to EUR 2 for each 500 tonne-kilometres or 2000 cubic metre-kilometres (in case the volumetric equivalent is used) of freight shifted off the road. However, the Union financial contribution shall not exceed 35,00% of the total actual eligible costs approved by the Agency.

Ancillary infrastructure costs are eligible⁴. Only the portion of the infrastructure's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account. However, the eligible costs for ancillary infrastructure shall not exceed 20% of the total actual eligible costs of the action.

Where the Union financial contribution is given in addition to other legitimate public funding⁵, the combined public contributions shall not exceed 35,00% of the total actual eligible costs approved by the Agency.]

² Ancillary infrastructure is the necessary and sufficient infrastructure to achieve the goals of actions including freight passenger installations. See Article 2 (h) and Annex of Regulation (EC) n.1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme (OJ L 328 of 24.11.2006) as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

³ See State Aid rules as mentioned in Article 7 of Regulation (EC) n. 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme, OJ L 328 of 24.11.2006, as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

⁴ Ancillary infrastructure is the necessary and sufficient infrastructure to achieve the goals of actions including freight passenger installations. See Article 2 (h) and Annex of Regulation (EC) n.1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme (OJ L 328 of 24.11.2006) as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

⁵ See State Aid rules as mentioned in Article 7 of Regulation (EC) n. 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme, OJ L 328 of 24.11.2006, as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

[Option 3 (for Common learning actions):

I.4.3 The Agency shall contribute to a maximum amount of EUR [...] [insert amounts in figures and words]. However, the Union financial contribution shall not exceed 50,00% of the total actual eligible costs approved by the Agency.

Where the Union financial contribution is given in addition to other legitimate public funding⁶, the combined public contributions shall not exceed 50,00% of the total actual eligible costs approved by the Agency.]

[Option 4 (for Motorways of the sea actions):

I.4.3 The Agency shall contribute to a maximum amount of EUR [...] [insert amounts in figures and words].

The Union financial assistance will be limited to EUR 2 for each 500 tonne-kilometres or 2000 cubic metre-kilometres (in case the volumetric equivalent is used) of freight shifted off the road.. However, the Union financial contribution shall not exceed 35,00% of the total actual eligible costs approved by the Agency.

Ancillary infrastructure costs are eligible⁷. Only the portion of the infrastructure's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account. However, the eligible costs for ancillary infrastructure shall not exceed 20,00% of the total actual eligible costs of the action.

Where the Union financial contribution is given in addition to other legitimate public funding⁸, the combined public contributions shall not exceed 35,00% of the total actual eligible costs approved by the Agency.]

⁶ See State Aid rules as mentioned in Article 7 of Regulation (EC) n. 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme, OJ L 328 of 24.11.2006, as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

⁷ Ancillary infrastructure is the necessary and sufficient infrastructure to achieve the goals of actions including freight passenger installations. See Article 2 (h) and Annex of Regulation (EC) n.1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme (OJ L 328 of 24.11.2006) as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

⁸ See State Aid rules as mentioned in Article 7 of Regulation (EC) n. 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme, OJ L 328 of 24.11.2006, as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

[Option 5 (for Traffic avoidance actions):

I.4.3 The Agency shall contribute to a maximum amount of EUR [...] [insert amount in figures and words].

The Union financial assistance will be limited to EUR 2 for each avoidance of 500 tonne-kilometres or 2000 cubic metre-kilometres (in case the volumetric equivalent is used) or 25 vehicle-kilometres of road freight. However, the Union financial contribution shall not exceed 35,00% of the total actual eligible costs approved by the Agency.]

Ancillary infrastructure costs are eligible⁹. Only the portion of the infrastructure's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account. However, the eligible costs for ancillary infrastructure shall not exceed 20,00% of the total eligible costs of the action.

Where the Union financial contribution is given in addition to other legitimate public funding¹⁰, the combined public contributions shall not exceed 35,00% of the total actual eligible costs approved by the Agency.]

The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.

The Union grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from Union funds shall be set out in the estimated budget referred to in Article I.4.1.

I.4.4 By way of derogation from Article II.13, the coordinator may, in agreement with the co-beneficiaries, when carrying out the action, adjust the estimated budget by transfers between items of eligible costs, provided that this adjustment of expenditure does not affect implementation of the action and it does not exceed 10% of the total eligible costs of the action indicated in Article I.4.2. The coordinator shall inform the Agency in writing as soon as possible, and at the latest, at the time of submission of the final technical implementation report and financial statement, as indicated in Article I.6.

⁹ Ancillary infrastructure is the necessary and sufficient infrastructure to achieve the goals of actions including freight passenger installations. See Article 2 (h) and Annex of Regulation (EC) n.1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme (OJ L 328 of 24.11.2006) as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

¹⁰ See State Aid rules as mentioned in Article 7 of Regulation (EC) n. 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme, OJ L 328 of 24.11.2006, as amended by Regulation (EC) n. 923/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 266 of 09.10.2009).

ARTICLE I.5 – PAYMENT ARRANGEMENTS

I.5.1 Pre-financing

Within (30) thirty calendar days of the date when the signed agreement is officially received [and receipt of a financial guarantee of an amount equivalent to the amount of pre-financing granted,] a pre-financing payment of EUR [...] [insert amount in figures and words] shall be made to the coordinator, representing [0%] [30%] or [70%] of the amount specified in Article I.4.3.

I.5.2. Second pre-financing [for payment option: 30% - 40%- 30%]

The coordinator may request a second pre-financing payment provided that 100% of the first pre-financing payment has been used up.

The aggregate amount of the pre-financing payments shall represent 70% of the maximum amount of the grant specified in Article I.4.3.

The request for payment of a second pre-financing shall be drawn up in accordance with the provisions of Article I.3.1 (g) and Article II.15.2 and shall be accompanied by the following documents:

- an interim technical implementation report on the action
- interim financial statements of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- copies of bank statements showing the transfer to the co-beneficiaries of the first pre-financing paid by the Agency.

The amount of the second pre-financing shall be paid to the coordinator upon approval by the Agency of the interim technical implementation report in accordance with the procedure laid down in Article II.15.2.

The Agency shall have 90 (ninety) days to approve or reject the report and to pay the second pre-financing, or to request additional supporting documents or information under the procedure laid down in Article II.15.2. The coordinator shall have 20 (twenty) calendar days in which to submit additional information or a new report.

The payment of the amount of the second pre-financing may be suspended by the Agency in accordance with the procedure in Article II.16.2.

I.5.2. Interim payment [for payment option: 0% - max 70% - 30%]

Any request for interim payment shall be accompanied by the interim technical implementation report and financial statement, including a consolidated statement and a breakdown between each beneficiary, as specified in Article II.15.3 and by a certificate on the action's financial statements and underlying accounts for each amount of Union financial contribution exceeding EUR 150 000,00 per beneficiary.

The amount of the interim payment shall be determined on the basis of the eligible costs actually incurred, as shown in the interim statement and validated by the Agency in accordance with Article I.4.3. In no circumstances may the interim payment exceed 70% of the maximum amount of the grant specified in Article I.4.3.

The Agency shall have 90 (ninety) days to approve or reject the report and to pay the interim payment, or to request additional supporting documents or information under the procedure laid down in Article II.15.3. The coordinator shall have 20 (twenty) days in which to submit the additional information requested or a new report.

The Agency may suspend the period for payment in accordance with the procedure in Article II.16.2.

I.5.3 Payment of the balance

The request for payment of the balance shall be accompanied by the final technical implementation report and financial statement, including a consolidated statement and a breakdown between each beneficiary, as specified in Article II.15.4 and by a certificate on the action's financial statements and underlying accounts for each amount of Union financial contribution exceeding EUR 150 000,00 per beneficiary.

The amount of the final payment shall be determined on the basis of the eligible costs actually incurred, as shown in the final statement and validated by the Agency in accordance with article I.4.3. The amount of any pre-financing previously paid to the beneficiary shall be deducted.

The Agency shall have 90 (ninety) days to approve or reject the technical implementation and to pay the balance in accordance with Article II.17 or to request additional supporting documents or information under the procedure laid down in Article II.15.4. The beneficiary shall have 20 (twenty) days in which to submit additional information or a new report.

The Agency may suspend the period for payment in accordance with the procedure in Article II.16.2.

ARTICLE I.6 – SUBMISSION OF REPORTS AND OTHER DOCUMENTS

The provisions relating to the submission of the technical implementation reports, financial statements and other documents referred to in Article I.5 are contained in Annex III.

The technical implementation reports, financial statements and other documents referred to in Article I.5 must be submitted by the coordinator in two (2) paper copies and one (1) electronic version in English on the following dates:

[- progress report(s) on the action's implementation, before [insert date], covering the period [insert dates]].

- interim technical implementation report and financial statement, including a consolidated statement and a breakdown between each beneficiary: before [insert date], covering the period [insert dates].

- final technical implementation report and financial statement, including a consolidated statement and a breakdown between each beneficiary: within (3) three months following the closing date of the action specified in Article I.2.2, covering the period [insert dates].

ARTICLE I.7 – BANK ACCOUNT

I.7.1 All payments shall be made to the coordinator's bank account or sub-account denominated in euros, as indicated below:

Name of bank: [...]

Address of branch: [...]

Precise denomination of the account holder: [...]

Full account number (including bank codes): [...]

IBAN/BIC account code: [...]

I.7.2. This account or sub-account must identify the payments made by the Agency.

ARTICLE I.8 – GENERAL ADMINISTRATIVE PROVISIONS

I.8.1. Any communication addressed to the Agency in connection with the agreement shall be in writing, indicating the number of the agreement, and shall be sent to the following address:

Executive Agency for Competitiveness
and Innovation (EACI)
Unit 5 – Marco Polo
To the attention of Mr. Patrick Vankerckhoven
Head of Unit
Office: COV2 12/077
B-1049 Brussels

I.8.2. Ordinary mail shall be considered to have been received by the Agency on the date on which it is formally registered by the Agency unit responsible referred to above.

I.8.3 Any communication from the Agency to the coordinator and/or co-beneficiaries and vice versa shall be in writing and shall be made via the coordinator, save where specifically indicated otherwise in the agreement. It shall indicate the number of the agreement and shall be sent to the following address:

[Title, name, forename]

[Function]

[full official name]

[Full official address]

I.8.4 Any change of address by the beneficiary shall be communicated in writing to the Agency.

ARTICLE I.9 – LAW APPLICABLE AND COMPETENT COURT

The grant is governed by the terms of the agreement, the Union rules applicable and, on a subsidiary basis, by the law of Belgium relating to grants.

The beneficiaries may bring legal proceedings regarding decisions by the Agency concerning the application of the provisions of the agreement and the arrangements for implementing it before the General Court of the European Union and, in the event of appeal, the Court of Justice.

ARTICLE I.10 – DATA PROTECTION

All personal data contained in the agreement, including its execution, or related to it shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council 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 solely in connection with the implementation and follow-up of the agreement by the department mentioned in point I.8.1, without prejudice to the possibility of passing the data to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union.

Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to the Executive Agency for Competitiveness and Innovation, to the attention of the Head of Unit 5 "Marco Polo". Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

ARTICLE I.11 – OTHER SPECIAL CONDITIONS

The following special conditions apply to this agreement:

I.11.1 In addition to the circumstances referred to in Article II.11.3, if during the lifetime of the action as specified in Article I.2.2 of the agreement, the Union finds that the action leads to distortions of competition in the relevant markets, in particular between modes of transport alternative to road transport alone or within each mode, to an extent contrary to the common interest, it may decide to terminate the agreement without any indemnity on its part.

The procedure is initiated by registered letter, with acknowledgement of receipt or equivalent. The coordinator shall ensure that all beneficiaries are duly informed.

The coordinator, in consultation with the co-beneficiaries, shall have 30 (thirty) days to submit observations. The Agency shall confirm acceptance or refusal of these observations within 30 (thirty) days. The absence of a reply within this time limit shall not constitute a tacit acceptance of these observations by the Agency.

Where notice is given in accordance with this article, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Agency's decision to terminate the agreement or the participation of a beneficiary is received. The effects of the termination under this provision shall be determined by Article II.11.5.

I.11.2 Exchange rate applicable for the conversion of currencies into euros

The coordinator shall submit the payment requests in accordance with Article I.5, including the underlying financial statements, in euro. By way of derogation from Article II.16.1, any conversion of actual costs into euro shall be made by the beneficiary at the monthly accounting rate established by the Commission and published on its website applicable on the day when the cost was incurred, or at the monthly accounting rate established by the Commission and published on its website applicable on the first working of the month following the period covered by the financial statement concerned.

I.11.3 Reporting of Modal shift actions, Motorways of the sea, Catalyst and Traffic avoidance actions

The beneficiary shall put in place an information system (or registration tool) allowing the specific reporting of shifted tonne.kilometres/vehicle.kilometres to the Agency. This system, which shall run from the starting date of the action, shall specifically identify the actual modal shift/traffic avoidance achieved as foreseen in Annex I. This reporting system shall be certified by an approved auditor and the certificate shall be sent to the EACI within three months from the date of the entry into force of the grant agreement. The audit certificate shall provide assurance of the reliability of the registration system.

Upon completion of the action, a certificate on the modal shift/traffic avoidance achieved produced by an approved auditor shall accompany the request for payment of the balance as specified in Article 1.5.3. The certificate shall certify that the tonne.kilometres/vehicle.kilometres declared by the beneficiary during the total duration of the action are accurate and correctly recorded. Audit costs arising from the modal-shift/traffic avoidance reporting requirements shall be eligible on the basis of Article 11.14 of the grant agreement.

For the purpose of determining the final grant on the basis of Article 11.17, only the tonne.kilometres/vehicle.kilometres declared by the beneficiary and duly certified as provided above will be taken into account.

For actions with a total EU contribution not exceeding € 300,000.00 as foreseen under the Grant Agreement, a freight registration system audit certificate is not required at the start of the action. In this case, only one final audit certificate covering the reliability of the registration system as well as the tkm/vkm declared is to be submitted upon completion of the action.

I.11.4 Subcontracting costs arising outside the territory of the Union or of fully participating countries

Notwithstanding the criteria set in the fifth indent of Article II.14.2 and the conditions referred to in Article II.9 of the grant agreement, costs entailed by other contracts awarded by a beneficiary, for the purposes of carrying out the action, to legal or natural persons established outside the territory of the Union or of fully participating countries¹¹ shall be duly justified in view of the technical and economic necessity. Subcontracting may not be used to circumvent the eligibility rules applicable to project partners.

[Optional clause for sole beneficiaries]

I.11.5 Sole beneficiaries of the grant agreement

For the purposes of this agreement, where the action is carried out by a sole beneficiary, all references to the "beneficiaries", the "co-beneficiaries" or to the "coordinator" in the grant agreement and in the annexes thereto shall be interpreted as references to the "beneficiary".]

[Optional clause for Common learning actions]

I.11.6 Additional payment arrangement for Common learning actions

Without prejudice to articles I.5.2 and I.5.3, if the milestones foreseen in Annex I are partially achieved, the amount of the interim and final payment shall be reduced accordingly.]

¹¹ Croatia and EEA countries (Norway, Iceland and Liechtenstein)

II – GENERAL CONDITIONS

PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – LIABILITY

- II.1.1 The beneficiaries shall be responsible for complying with any legal obligations incumbent on them.
- II.1.2 The Agency shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to any damage caused during the action's execution. Consequently, the Agency will not entertain any request for indemnity or reimbursement accompanying any such claim.
- II.1.3 Except in cases of *force majeure*, the beneficiaries shall make good any damage sustained by the Agency as a result of the execution or faulty execution of the action.
- II.1.4 The beneficiaries shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the action is being carried out.

ARTICLE II.2 – CONFLICT OF INTERESTS

- II.2.1 The beneficiaries undertake to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.
- II.2.2 Any situation constituting or likely to lead to a conflict of interests during the performance of the agreement must be brought to the attention of the Agency, in writing, without delay. The beneficiaries shall undertake to take whatever steps are necessary to rectify this situation at once.
- II.2.3 The Agency reserves the right to check that the measures taken are appropriate and may demand that the beneficiaries take additional measures, if necessary, within a certain time.

ARTICLE II.3 – OWNERSHIP/USE OF THE RESULTS

- II.3.1 Unless stipulated otherwise in the agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiaries.
- II.3.2 Without prejudice to paragraph 1, the beneficiaries grant the Agency the right to make free use of the results of the action as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

ARTICLE II.4 – CONFIDENTIALITY

The Agency and the beneficiaries undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the agreement that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the closing date of the action.

ARTICLE II.5 – PUBLICITY

II.5.1 Unless the Agency requests otherwise, any communication or publication by the beneficiaries collectively or any one of the beneficiaries individually about the action, including at a conference or seminar, shall indicate that the action has received funding from the Union.

Any communication or publication by the beneficiaries collectively or any one of the beneficiaries individually, in any form and medium, shall indicate that sole responsibility lies with the author and that the Agency is not responsible for any use that may be made of the information contained therein.

II.5.2 The beneficiaries authorise the Agency to publish the following information in any form and medium, including via the Internet:

- the beneficiaries' names and addresses,
- the subject and purpose of the grant,
- the amount and rate of the Union financial contribution granted for the action; after the final payment, the amount and rate of the Union financial contribution paid by the Agency for the action.

Upon a reasoned and duly substantiated request by the coordinator, the Agency may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiaries' security or prejudicing their commercial interests.

ARTICLE II.6 – EVALUATION

Whenever the Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the Union programme concerned, the coordinator with the support of the co-beneficiaries undertake to make available to the Commission and/or persons authorised by it all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.20.

ARTICLE II.7 – SUSPENSION

II.7.1 The coordinator, in agreement with the co-beneficiaries, may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of force majeure. The coordinator shall inform the Agency without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

- II.7.2 If the Agency does not terminate the agreement under Article II.11.3, the beneficiaries shall resume implementation of the action as initially planned once circumstances allow and the coordinator shall inform the Agency accordingly. The duration of the action might be extended by a period equivalent to the length of the suspension. In accordance with Article II.13, a supplementary written agreement shall be concluded to extend the duration of the action and to make any amendments that may be necessary to adapt the action to the new implementing conditions.

ARTICLE II.8 – FORCE MAJEURE

- II.8.1 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents them from fulfilling any of their obligations under the agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party.
- II.8.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.
- II.8.3 The party faced with force majeure shall not be held in breach of his obligations under the agreement if he's prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.
- II.8.4 The action may be suspended in accordance with Article II.7.

ARTICLE II.9 – AWARD OF CONTRACTS

- II.9.1 If the beneficiaries have to conclude contracts in order to carry out the action and they constitute costs of the action under an item of eligible direct costs in the estimated budget, they shall award the contract to the bid offering best value for money; in doing so they shall take care to avoid any conflict of interests.
- II.9.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:
- a) they may only cover the execution of a limited part of the action;
 - b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
 - c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
 - d) any recourse to the award of contracts while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the Agency;
 - e) the beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The beneficiaries must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Agency under the agreement;
 - f) the beneficiaries must undertake to ensure that the conditions applicable to them under Articles II.1, II.2, II.3, II.4, II.5, II.6, II.10 and II.20 of the agreement are also applicable to the contractor.

ARTICLE II.10 – ASSIGNMENT

II.10.1 Claims for payments to be carried out by the Agency may not be transferred.

II.10.2 In exceptional circumstances, where the situation warrants it, the Agency may authorise the assignment of the agreement, or part thereof, and payments flowing from it to a third party, following a written request to that effect, giving reasons, from the coordinator in agreement with the co-beneficiaries. If the Agency agrees, it must make its agreement known in writing to the coordinator before the proposed assignment takes place. In the absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Agency.

II.10.3 In no circumstances shall such an assignment release the beneficiaries from their obligations to the Agency.

ARTICLE II.11 – TERMINATION OF THE AGREEMENT

II.11.1 Termination by the coordinator

In duly justified cases, the coordinator, in agreement with the co-beneficiaries, may withdraw the beneficiaries' request for a grant and terminate the agreement at any time by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account.

If no reasons are given or if the Agency does not accept the reasons, the agreement shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of paragraph 5.

II.11.2 Termination of the participation of a beneficiary

In duly justified cases, the coordinator may request to terminate the participation of a beneficiary by giving 60 days written notice. The coordinator shall include with any such request to the Agency the remaining beneficiaries' proposal to reallocate the tasks of that beneficiary or where relevant to nominate a replacement, the reasons for the termination of the participation and the opinion of the beneficiary whose participation is requested to be terminated.

In duly justified cases, any beneficiary may request the termination of his participation in the agreement. The request must be submitted to the Agency by the coordinator by giving 60 days written notice stating the reasons.

If no reasons are given or if the Agency does not accept the reasons, the participation shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of paragraph 5.

The termination of the participation of the beneficiary concerned shall take effect on the date of the Agency's approval. A written additional agreement shall be concluded to make any amendments necessary to adapt the action to the new implementing conditions resulting from the partial termination.

II.11.3 Termination by the Agency

The Agency may decide to terminate the agreement or the participation of any one or several beneficiaries participating in the action without any indemnity on its part, in the following circumstances:

- a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- b) if a beneficiary fails to fulfill a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- c) in the event of *force majeure*, notified in accordance with Article II.8, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- d) if the beneficiary is declared bankrupt, is being wound up, is having his 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) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of professional misconduct;
- f) if the beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- g) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- h) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- i) if the beneficiary has made false declarations or submits reports inconsistent with reality to obtain the grant provided for in the agreement.

In the cases referred to in points (e), (g) and (h) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

II.11.4 Termination procedure

The procedure is initiated by registered letter, with acknowledgement of receipt or equivalent. The coordinator shall ensure that all beneficiaries are duly informed.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the coordinator, in consultation with the co-beneficiaries, shall have 30 days to submit observations and take any measures necessary to ensure continued fulfillment of the beneficiaries' obligations under the agreement. If the Agency fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the termination procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Agency's decision to terminate the agreement or the participation of a beneficiary is received.

Where notice is not given in the cases referred to in points (c), (f) and (i) above, termination shall take effect from the day following the date on which notification of the Agency's decision to terminate the agreement or the participation of a beneficiary is received.

II.11.5 Effects of termination

In the event of termination of the agreement, payments by the Agency shall be limited to the eligible costs actually incurred by the beneficiaries up to the date when termination takes effect, in accordance with Article II.17. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The coordinator shall have 60 days from the date when termination of the agreement takes effect, as notified by the Agency, to produce a request for final payment in accordance with Article II.15.4. If no request for final payment is received within this time limit, the Agency shall not reimburse the expenditure incurred by the beneficiaries up to the date of termination and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Agency.

Where termination affects the participation of a beneficiary, only those eligible costs actually incurred by the beneficiary concerned up to the date when termination of his participation takes effect, in accordance with Article II.17 shall be considered eligible. Costs relating to current commitments that were not due to be executed until after termination shall not be taken into account. The request for payment of the eligible costs incurred up to the date when the termination of the participation of the beneficiary concerned takes effect shall be included in the following payment request due according to the schedule laid down in Article I.6.

By way of exception, at the end of the period of notice referred to in paragraph 4, where the Agency is terminating the agreement on the grounds that the coordinator has failed to produce the final technical implementation report and financial statement within the deadline stipulated in Article I.6 and the coordinator has still not complied with this obligation within two months following the written reminder sent by the Agency by registered letter with acknowledgement of receipt or equivalent, the Agency shall not reimburse the expenditure incurred by the beneficiaries up to the date on which the action ended and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Agency.

By way of exception, in the event of improper termination of the agreement by the coordinator, or a beneficiary's participation in the action, or termination by the Agency on the grounds set out in points (a), (e), (g), (h) or (i) above, the Agency may require the partial or total repayment of sums already paid under the agreement on the basis of technical implementation reports and financial statements approved by the Agency, in proportion to the gravity of the failings in question and after allowing the coordinator, and where relevant co-beneficiaries concerned, to submit their observations.

ARTICLE II.12 – FINANCIAL PENALTIES

- II.12.1 By virtue of the Financial Regulation applicable to the general budget of the European Union, any one or several of the beneficiaries declared to be in grave breach of their obligations under the agreement shall be liable to financial penalties of between 2% and 10% of the value of their share of the grant in question, with due regard for the principle of proportionality.
- II.12.2 This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the establishment of the first.
- II.12.3 The beneficiary concerned shall be notified in writing of any decision by the Agency to apply such financial penalties.

ARTICLE II.13 – SUPPLEMENTARY AGREEMENTS

- II.13.1 Any amendment to the grant conditions must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.
- II.13.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.
- II.13.3 Where the request for amendment is made by the coordinator, in agreement with the co-beneficiaries, he must send the request to the Agency in good time before it is due to take effect and at all events one month before the closing date of the action, except in cases duly substantiated by the coordinator and accepted by the Agency.

PART B – FINANCIAL PROVISIONS

ARTICLE II.14 – ELIGIBLE COSTS

II.14.1 Eligible costs of the action are costs actually incurred by a beneficiary, which meet the following criteria:

- they are incurred during the duration of the action as specified in Article I.2.2 of the agreement, with the exception of costs relating to final reports and certificates on the action's financial statements and underlying accounts;
- they are connected with the subject of the agreement and they are indicated in the estimated overall budget of the action;
- they are necessary for the implementation of the action which is the subject of the grant;
- they are identifiable and verifiable, in particular being recorded in the accounting records of a beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The beneficiaries' accounting and internal auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

II.14.2 The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out in Article II.14.1, are identifiable as specific costs directly linked to performance of the action and which can therefore be booked to it direct. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration.

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;

- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;

- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Agency, except where the nature and/or the context of its use justifies different treatment by the Agency;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- costs entailed by other contracts awarded by a beneficiary for the purposes of carrying out the action, provided that the conditions laid down in Article II.9 are met;
- costs arising directly from requirements imposed by the agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees). Such costs may also include specific costs incurred by the coordinator for fulfilling his responsibilities in his capability of the body responsible for the overall management of the action and the co-ordination of the beneficiaries.

II.14.3 The eligible indirect costs for the action are those costs which, with due regard for the conditions of eligibility described in Article II.14.1, are not identifiable as specific costs directly linked to performance of the action which can be booked to it direct, but which can be identified and justified by the coordinator or a co-beneficiary using their accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

By way of derogation from Article II.14.1, the indirect costs incurred in carrying out the action may be eligible for flat-rate funding fixed at not more than 7% of the total eligible direct costs. If provision is made in Article I.4.2 for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.

II.14.4 The following costs shall not be considered eligible:

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the beneficiary can show that he is unable to recover it according to the applicable national legislation;
- costs declared by a beneficiary and covered by another action or work programme receiving a Union grant;
- excessive or reckless expenditure.

II.14.5 Contributions in kind shall not constitute eligible costs. However, the Agency can accept, if considered necessary and appropriate, that the co-financing of the action referred to in Article I.4.3 should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be covered by this possibility.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the action as ineligible costs and in receipts from the action as co-financing in kind. The beneficiaries shall undertake to obtain these contributions as provided for in the agreement.

II.14.6 By way of derogation from paragraph 3, indirect costs shall not be eligible under a grant for an action awarded to a beneficiary who already receives an operating grant from the Union budget during the period in question.

ARTICLE II.15 – REQUESTS FOR PAYMENT

Payments shall be made in accordance with Article I.5 of the Special Conditions.

II.15.1 – PRE-FINANCING

Pre-financing is intended to provide the beneficiaries with a float.

Where required by the provisions of Article I.5 on pre-financing, the coordinator shall provide a financial guarantee from a bank or an approved financial institution established in one of the Member States of the Union.

The guarantor shall stand as first call guarantor and shall not require the Agency to have recourse against the principal debtor.

The financial guarantee shall remain in force until final payments by the Agency match the proportion of the total grant accounted for by pre-financing. The Agency undertakes to release the guarantee within 60 days following that date.

II.15.2 – FURTHER PRE-FINANCING PAYMENTS

The coordinator may request a further pre-financing payment once the percentage of the previous payment specified in the provisions of Article I.5 on second pre-financing has been used up. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred, including a consolidated statement and a breakdown between each beneficiary;
- where required by the above-mentioned provisions of Article I.5, a financial guarantee in accordance with paragraph 1;

- where required by the above-mentioned provisions of Article I.5, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer, for each beneficiary as specified under Article I.5;
- any other documents in support of his request that may be required in support of the request for further pre-financing payments.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.6 and the annexes.

II.15.3 – INTERIM PAYMENTS

Interim payments are intended to reimburse the beneficiaries for expenditure on the basis of a detailed statement of the costs incurred, once the action has reached a certain level of completion. It may clear all or part of any pre-financing.

By the appropriate deadline indicated in Article I.6, the coordinator shall submit a request for interim payment accompanied by the following documents:

- an interim report on implementation of the action;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- where required by the provisions of Article I.5 on interim payment, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer, for each beneficiary as specified under Article I.5. The certificate shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiaries in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.6 and the annexes. The coordinator shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that the request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Agency shall have the period specified in Article I.5 in order to:

- approve the interim report on implementation of the action;
- ask the coordinator for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Agency within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the beneficiary in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The coordinator shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The coordinator shall have the period laid down in Article I.5 to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this article shall apply.

In the event of renewed rejection, the Agency reserves the right to terminate the agreement by invoking Article II.11.3 (b).

II.15.4 – PAYMENT OF THE BALANCE

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of the costs actually incurred by the beneficiaries in carrying out the action. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article II.17.

By the appropriate deadline indicated in Article I.6, the coordinator shall submit a request for payment of the balance accompanied by the following documents:

- a final report on the implementation of the action;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- a full summary statement of the receipts and expenditure of the action including a consolidated statement and a breakdown between each beneficiary;
- where required by the provisions of Article I.5 on payment of the balance, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor for each beneficiary as specified under Article I.5. The certificate shall certify that the costs declared by the beneficiaries in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.6 and the annexes. The coordinator shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that the request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Agency shall have the period specified in Article I.5 in order to:

- approve the final report on implementation of the action;
- ask the coordinator for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Agency within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the beneficiary in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The coordinator shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The coordinator shall have the period laid down in Article I.5 to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this article shall apply.

In the event of renewed rejection, the Agency reserves the right to terminate the agreement by invoking Article II.11.3 (b).

ARTICLE II.16 – GENERAL PROVISIONS ON PAYMENTS

II.16.1 Payments shall be made by the Agency in euros. Any conversion of actual costs into euros shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Agency, unless the Special Conditions of the agreement lay down specific provisions.

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

II.16.2 The Agency may suspend the period for payment laid down in Article I.5 at any time for the purposes of additional checks by notifying the coordinator that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the financial statement are not eligible.

The Agency may suspend its payments at any time if a beneficiary is found or presumed to have infringed the provisions of the agreement, in particular in the wake of the audits and checks provided for in Article II.20.

The Agency may also suspend its payments:

- if there is a suspicion of irregularity committed by a beneficiary in the implementation of the grant agreement;
- if there is a suspected or established irregularity committed by a beneficiary in the implementation of another grant agreement or grant decision funded by the General Budget of the Union or by any other budget managed by it. In such cases, suspension of the payments will only proceed where the suspected or established irregularity can affect the implementation of the current grant agreement.

The Agency shall inform the coordinator as soon as possible of any such suspension by registered letter with acknowledgement of receipt or equivalent, setting out the reasons for suspension.

Suspension shall take effect on the date when notice is sent by the Agency. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Agency.

- II.16.3 On expiry of the period for payment specified in Article I.5, and without prejudice to paragraph 2 of this Article, the beneficiaries are entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the Union.

Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 1, inclusive. The interest shall not be treated as a receipt for the action for the purposes of determining the final grant within the meaning of Article II.17.4. The suspension of payment by the Agency may not be considered as late payment.

By way of exception, when the interest calculated in accordance with the provisions of the first and second subparagraphs is lower than or equal to EUR 200,00, it shall be paid to the coordinator only upon demand submitted within two months of receiving late payment.

- II.16.4 The Agency shall deduct the interest yielded by pre-financing which exceeds EUR 50 000,00 as provided for in Article I.5 from the payment of the balance of the amount due to the beneficiaries. The interest shall not be treated as a receipt for the action within the meaning of Article II.17.4.

Where the pre-financing payments exceed EUR 750 000,00 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the Agency may recover the interest generated by pre-financing lower than EUR 750 000,00 at least once a year.

Where the interest yielded exceeds the balance of the amount due to the beneficiaries as indicated in Article II.15.4, or is generated by pre-financing referred to in the previous subparagraph, the Agency shall recover it in accordance with Article II.19.

Interest yielded by pre-financing paid to Member States is not due to the Agency.

- II.16.5 The coordinator shall have two months from the date of notification by the Agency of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.17, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests will no longer be considered. The Agency undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply.

This procedure is without prejudice to the beneficiaries' right to appeal against the Agency's decision pursuant to Article I.9. Under the terms of Union law in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

ARTICLE II.17 – DETERMINING THE FINAL GRANT

- II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.20, the Agency shall adopt the amount of the final payment to be granted to the beneficiaries on the basis of the documents referred to in Article II.15.4 which it has approved.
- II.17.2 The total amount paid by the Agency may not in any circumstances exceed the maximum amount of the grant laid down in Article I.4.3, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article I.4.2.
- II.17.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Agency's contribution shall be limited to the amount obtained by applying the Union grant percentage specified in Article I.4.3 to the actual eligible costs approved by the Agency.

- II.17.4 The beneficiaries hereby agree that the grant shall be limited to the amount necessary to balance the action's receipts and expenditure and that it may not in any circumstances produce a profit for them.

Profit shall mean any surplus of total actual receipts attributable to the action over the total actual costs of the action. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the coordinator for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this article. For the purposes of this article, only actual costs falling within the categories set out in the estimated budget referred to in Article I.4.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-Union resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.

- II.17.5 Without prejudice to the right to terminate the agreement under Article II.11, and without prejudice to the right of the Agency to apply the penalties referred to in Article II.12, if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in the agreement.
- II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Agency shall set the amount of the payment of the balance as being the amount still owing to the beneficiaries. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Agency shall issue a recovery order for the surplus.

ARTICLE II.18 – FINANCIAL RESPONSIBILITY

- II.18.1 The beneficiaries agree to be irrevocably and unconditionally, jointly and severally responsible for any amount due to the Agency by one of them which could not be honoured by the latter. The amount due to the Agency will not exceed the maximum value of the contribution that could be granted to the beneficiaries in accordance with Article I.4.3, increased where applicable by interest on late payment.
- II.18.2 The beneficiaries are not jointly responsible for financial penalties which could be imposed on any defaulting beneficiary in accordance with Article II.12.

ARTICLE II.19 – RECOVERY

II.19.1 Where an amount, paid by the Agency to the coordinator in his capacity of recipient of all payments, is to be recovered under the terms of the agreement, the coordinator undertakes to repay the Agency the sum in question, on whatever terms and by whatever date it may specify, even if he has not been the final recipient of the amount due. In the latter case, if payment has not been made by the due date, the Agency reserves the right to recover directly the amount due from the final recipient.

Where such an amount to be recovered under the terms of the agreement was directly paid by the Agency to a beneficiary, or if recovery is justified under Article II.12 of the agreement, the beneficiary concerned undertakes to pay the Agency the sum in question, on whatever terms and by whatever date it may specify.

II.19.2 If the obligation to pay the amount due is not honoured by the date set by the Agency, the amount due shall bear interest at the rate indicated in Article II.16.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Agency receives full payment of the amount owed, inclusive.

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

II.19.3 If payment has not been made by the due date, sums owed to the Agency may be recovered by offsetting them against any sums owed to the concerned beneficiary after informing him accordingly by registered letter with acknowledgment of receipt or equivalent, or, depending on the terms of the Special conditions, by calling in the financial guarantee provided in accordance with Article II.15.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Agency may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required. If the recovery remains unsuccessful under the provisions above, the Agency shall hold all the beneficiaries collectively jointly responsible for the amount due in accordance with Article II.18.

II.19.4 Bank charges occasioned by the recovery of the sums owed to the Agency shall be borne by the concerned beneficiary.

II.19.5 The beneficiaries understand that under Article 299 of the Treaty on the functioning of the European Union, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the General Court of the European Union.

ARTICLE II.20 – CHECKS AND AUDITS

II.20.1 The coordinator undertakes to provide any detailed information requested by the Agency and/or the Commission or by any other outside body authorised by the Agency and/or the Commission to check that the action and the provisions of the agreement are being properly implemented. Where the Agency and/or the Commission so wishes, it may request such information to be provided directly by a co-beneficiary.

- II.20.2 The beneficiaries shall keep at the Agency and/or the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement, stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of five years from the date of payment of the balance specified in Article I.5.
- II.20.3 The beneficiaries agree that the Agency and/or the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
- II.20.4 The beneficiaries undertake to allow Agency and/or Commission staff and outside personnel authorised by the Agency and/or the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
- II.20.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (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, the inspection findings may lead to recovery decisions by the Commission.
- II.20.6 The Court of Auditors shall have the same rights as the Commission, notably right of access, as regards checks and audits.

SIGNATURES

For the coordinator

[Title, name/forename]

[signature]

Done at [place], [date]

For the Agency

Mr Patrick Vankerckhoven,
Head of Unit

[signature]

Done in Brussels, [date]

In duplicate in English