

## **GENERAL CONDITIONS**

**Submission of a grant application implies the acceptance of these General Conditions. These General Conditions bind the beneficiary to whom the grant is awarded and shall constitute an annex to the Grant Decision.**

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

### **GENERAL CONDITION N° 1 – GENERAL OBLIGATIONS OF THE BENEFICIARY**

The beneficiary shall:

- (a) be responsible for carrying out the action in accordance with the terms and conditions of the Grant Decision;
- (b) be responsible for complying with any legal obligations incumbent on it;
- (c) inform the Office immediately of any change likely to affect or delay the implementation of the action of which the beneficiary is aware;
- (d) inform the Office immediately of any change in its legal, financial, technical, organisational or ownership situation or of its affiliated entities and of any change in its name, address or legal representative or of its affiliated entities;

### **GENERAL CONDITION N° 2 – COMMUNICATIONS BETWEEN THE OFFICE AND THE BENEFICIARY**

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

Any communication relating to the Grant Decision or to its implementation shall be made in writing (in paper or electronic form), shall bear the number of the Grant Decision and shall be made using the communication details identified in Article 6 of the Grant Decision.

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by the Office or the beneficiary 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.

#### **2.2 Date of communications**

Any communication is deemed to have been made when it is received by the addressee, unless the Grant Decision refers to the date when the communication was sent.

Electronic communication is deemed to have been received by the addressee on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in Article 6 of the Grant Decision. Dispatch shall be deemed unsuccessful if the sender receives a message of non-delivery. In this case, the sender shall immediately send again such communication to any of the other addresses listed in Article 6 of the Grant Decision. In case of unsuccessful dispatch, the sender shall not be held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Office using the postal services is considered to have been received by the Office on the date on which it is registered by the department identified in Article 6.2 of the Grant Decision.

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 addressee on the date of receipt indicated on the return receipt or equivalent.

### **GENERAL CONDITION N° 3 – LIABILITY FOR DAMAGES**

- 3.1 The Office shall not be held liable for any damage caused or sustained by the beneficiary, including any damage caused to third parties as a consequence of or during the implementation of the action.
- 3.2 Except in cases of force majeure, the beneficiary shall compensate the Office for any damage sustained by it as a result of the implementation of the action or because the action was not implemented or implemented poorly, partially or late.

### **GENERAL CONDITION N° 4 - CONFLICT OF INTERESTS**

- 4.1 The beneficiary shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Grant Decision is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (“conflict of interests”).
- 4.2 Any situation constituting or likely to lead to a conflict of interests during the implementation of the Grant Decision shall be notified to the Office, in writing, without delay. The beneficiary shall immediately take all the necessary steps to rectify this situation. The Office reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

### **GENERAL CONDITION N° 5 – CONFIDENTIALITY**

- 5.1 The Office and the beneficiary 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 Grant Decision and which are explicitly indicated in writing as confidential.
- 5.2 The beneficiary shall not use confidential information and documents for any reason other than fulfilling its obligations under the Grant Decision, unless otherwise agreed with the Office in writing.
- 5.3 The Office and the beneficiary shall be bound by the obligations referred to in General Conditions n° 5.1 and 5.2 during the implementation of the Grant Decision and for a period of five years starting from the payment of the balance, unless:
  - (a) the Office or the beneficiary agrees to release the other 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 Office or by the beneficiary.
  - (c) the disclosure of the confidential information is required by law.

## **GENERAL CONDITION N° 6 – PROCESSING OF PERSONAL DATA**

### **6.1 Processing of personal data by the Office**

Any personal data included in the Grant Decision shall be processed by the Office pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Such data shall be processed by the data controller identified in Article 6.1 of the Grant Decision solely for the purposes of the implementation, management and monitoring of the Grant Decision, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

The beneficiary shall have the right of access to his/her personal data and the right to rectify any such data. Should the beneficiary have any queries concerning the processing of his/her personal data, he/she shall address them to the data controller, identified in Article 6.1 of the Grant Decision.

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

### **6.2 Processing of personal data by the beneficiary**

The beneficiary shall process personal data under this Grant Decision in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The access to data that the beneficiary grants to its personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Grant Decision.

The beneficiary 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

- (e) only in the manner prescribed by the Office;  
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.

## **GENERAL CONDITION N° 7 – VISIBILITY OF UNION FUNDING**

### **7.1 Information on and use of the Office emblems**

Unless the Office requests or agrees otherwise, any communication or publication related to the action, made by the beneficiary, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall:

- (a) indicate that the action has received funding from the Office; and
- (b) display the Office emblems.

When displayed in association with another logo, the Office emblems must have appropriate prominence.

The obligation to display the Office emblems does not confer to the beneficiary a right of exclusive use. The beneficiary shall not appropriate the Office emblems 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 beneficiary is exempted from the obligation to obtain prior permission from the Office to use the Office emblems.

### **7.2 Disclaimers excluding Office responsibility**

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

## **GENERAL CONDITION N° 8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **8.1 Ownership of the results by the beneficiary**

The beneficiary retains ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, unless stipulated otherwise in the Grant Decision.

### **8.2 Pre-existing rights**

Where industrial and intellectual property rights, including rights of third parties, exist prior to the notification of the Grant Decision, the beneficiary must 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 Office at the latest before the commencement of implementation.

The beneficiary must 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 Grant Decision.

### **8.3 Rights of use of the results and of pre-existing rights by the Office**

Without prejudice to General Conditions n° 1, 3 and 8.1, the beneficiary grants the Office the right to use the results of the action for the following purposes:

- (a) for its own purposes, and in particular, to make available to persons working for the Office, 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) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;
- (d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;
- (e) adaptation: the right to modify the results;
- (f) translation;
- (g) the right to store and archive the results in line with the document management rules applicable to the Office including digitisation or converting the format for preservation or new use purposes;
- (h) where the results are documents, the right to authorise the reuse of the documents, to the extent that it is applicable and the documents fall within its scope and are not excluded by any of its provisions.

Additional rights of use for the Office may be provided for in the Grant Decision.

The beneficiary shall warrant that the Office has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of the action. Unless specified otherwise in the Grant Decision, 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 Office. The copyright information shall read: "© – year – name of the copyright owner. All rights reserved. Licenced to the EUIPO under conditions."

### **GENERAL CONDITION N° 9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION**

- 9.1** Where the implementation of the action requires the procurement of goods, works or services, the beneficiary 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.

The beneficiary shall ensure that the Office, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under General Condition n° 27 also towards its contractors.

- 9.2** A beneficiary that is a "contracting authority" within the meaning of Directive 2004/18/EC<sup>1</sup> or a "contracting entity" within the meaning of Directive 2004/17/EC<sup>2</sup> shall comply with the applicable national public procurement rules.

The beneficiary shall ensure that the conditions applicable to it under General Conditions n° 3, 4, 5 and 8 are also applicable to the contractor.

- 9.3** The beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Grant Decision.

- 9.4** If the beneficiary breaches its obligations under General Condition n° 9.1 the costs related to the contract concerned are considered ineligible in accordance with points (d) and (e) of General Condition n° 19.2.

If the beneficiary breaches its obligations under General Condition n° 9.2 the grant may be reduced in accordance with General Condition n° 25.4.

## **GENERAL CONDITION N° 10 – SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION**

- 10.1** A "subcontract" is a procurement contract within the meaning of General Condition n° 9, which covers the implementation by a third party of tasks forming part of the action as described in Annex I.

- 10.2** The beneficiary may subcontract tasks forming part of the action, provided that, in addition to the conditions specified in General Condition n° 9 and the Grant Decision, the following conditions are complied with:

- (a) subcontracting does not cover core tasks 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 III;
- (d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the beneficiary and approved by the Office. Such an approval may be given

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<sup>1</sup> 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

<sup>2</sup> 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



by the Office:

(i) before any recourse to subcontracting, if the beneficiary requests an amendment in accordance with General Condition n° 12 or

(ii) after recourse to subcontracting if it:

- is specifically justified in the interim or final technical report referred to in General Condition n° 23.2 and

- does not entail changes to the Grant Decision which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants;

(e) the beneficiary ensures that the conditions applicable to it under General Condition n° 7 are also applicable to the subcontractor.

**10.3** If the beneficiary breaches its obligations under points (a), (b), (c) or (d) of General Condition n° 10.2, the costs related to the contract concerned are considered ineligible in accordance with point (f) of General Condition n° 19.2.

If the beneficiary breaches its obligation under point (e) of General Condition n° 10.2 the grant may be reduced in accordance with General Condition n° 25.4.

## **GENERAL CONDITION N° 11 - FINANCIAL SUPPORT TO THIRD PARTIES**

**11.1** Where the implementation of the action requires giving financial support to third parties, the beneficiary shall give such financial support in accordance with the conditions specified in Annex I, 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;

(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.

**11.2** By way of derogation from General Condition n° 11.1, in case the financial support takes the form of a prize, the beneficiary shall give such financial support in accordance with the conditions specified in Annex I, which shall at least contain:

(a) the conditions for participation;

(b) the award criteria;

(c) the amount of the prize;

(d) the payment arrangements.

- 11.3** The beneficiary shall ensure that the conditions applicable to it under General Conditions n° 3, 4, 5, 7, 8 and 27 are also applicable to the third parties receiving financial support.

#### **GENERAL CONDITION N° 12 – AMENDMENTS TO THE GRANT DECISION**

- 12.1** Any amendment to the Grant Decision shall be made in writing by means of a modifying Decision.
- 12.2** An amendment may not have the purpose or the effect of making changes to the Grant Decision which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.
- 12.3** Any request for amendment by the beneficiary shall be duly justified and shall be sent to the Office in due time before it is due to take effect, and in any case one month before the end of the period set out in Article 2.2 of the Grant Decision, except in cases duly substantiated by the beneficiary and accepted by the Office.
- 12.4** Amendments shall take effect on the date of notification of the modifying Decision.

Amendments shall apply from the date indicated in the modifying Decision or, in the absence of such a date, on the date on which the amendment takes effect.

#### **GENERAL CONDITION N° 13 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES**

- 13.1** Claims for payments of the beneficiary against the Office 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 Office if it has accepted the assignment on the basis of a written and reasoned request to that effect made by the beneficiary. In the absence of such acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Office.

- 13.2** In no circumstances shall such an assignment release the beneficiary from its obligations towards the Office.

#### **GENERAL CONDITION N° 14 – FORCE MAJEURE**

- 14.1** "*Force majeure*" shall mean any unforeseeable exceptional situation or event beyond the Office's and/or the beneficiary's control, which prevents either of them from fulfilling any of their obligations under the Grant Decision, 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*.

- 14.2** The beneficiary faced with *force majeure* shall formally notify the Office without delay, stating the nature, likely duration and foreseeable effects.
- 14.3** The beneficiary shall take the necessary measures to limit any damage due to *force majeure*. The beneficiary shall do its best to resume the implementation of the action as soon as possible.
- 14.4** The beneficiary faced with *force majeure* shall not be held to be in breach of its obligations under the Grant Decision if it has been prevented from fulfilling them by *force majeure*.
- 14.5** The obligations under General conditions n° 14.2, 14.3 and 14.4 shall apply mutatis mutandis to the Office if faced with *force majeure*.

## **GENERAL CONDITION N° 15 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION**

### **15.1 Suspension of the implementation by the beneficiary**

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

Unless the Grant Decision is withdrawn in accordance with points (a) (c) or (d) of General Condition n° 16.1, the beneficiary shall, once the circumstances allow resuming the implementation of the action, inform the Office immediately and present a request for amendment of the Grant Decision as provided for in General Condition n° 15.3.

### **15.2 Suspension of the implementation by the Office**

**15.2.1** The Office may suspend the implementation of the action or any part thereof:

- (a) if the Office has evidence that the beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Grant Decision or if the beneficiary fails to comply with its obligations under the Grant Decision;
- (b) if the Office has evidence that the beneficiary 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 beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant; or
- (c) if the Office suspects substantial errors, irregularities, fraud or breach of obligations committed by the beneficiary in the award procedure or in the implementation of the Grant Decision and needs to verify whether they have actually occurred.

**15.2.2** Before suspending the implementation the Office shall formally notify the beneficiary of its intention to suspend, specifying the reasons thereof, and, in the

cases referred to in points (a) and (b) of General Condition n° 15.2.1, the necessary conditions for resuming the implementation. The beneficiary shall be invited to submit observations within 30 calendar days from receipt of this notification.

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

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Office decides to pursue the suspension procedure, it may suspend the implementation by formally notifying the beneficiary thereof, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of General Condition n° 15.2.1, the definitive conditions for resuming the implementation or, in the case referred to in point (c) of General Condition n° 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 beneficiary or on a later date, where the notification so provides.

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

Unless the Grant Decision is withdrawn in accordance with points (a), (c), (i) or (j) of General Condition n° 16.1, the Office 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 beneficiary thereof and invite the beneficiary to present a request for amendment of the Grant Decision as provided for in General Condition n° 15.3.

### **15.3 Effects of the suspension**

If the implementation of the action can be resumed and the Grant Decision is not withdrawn, an amendment to the Grant Decision shall be made in accordance with General Condition n° 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 is deemed lifted as from the date of resumption of the action notified by the Office in accordance with the first subparagraph. Such a date may be before the date on which the amendment takes effect.

Any costs incurred by the beneficiary, 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 Office to suspend the implementation is without prejudice to its right to withdraw the Grant Decision in accordance with General Condition n° 16.1 and its right to reduce the grant or recover amounts unduly paid in accordance with General Conditions n° 25.4 and 26.

Neither the Office nor the beneficiary shall be entitled to claim compensation on account of a suspension by the other.

## GENERAL CONDITION N° 16 –WITHDRAWAL OF THE GRANT DECISION

### 16.1 Grounds for withdrawal

The Office may withdraw the Grant Decision in the following circumstances:

- (a) if the beneficiary has requested it on duly justified grounds via a formal notification that states the reasons and indicates the date of effect;
- (b) if a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Grant Decision substantially or calls into question the decision to award the grant;
- (c) if the beneficiary does not implement the action as specified in Annex I or fails to comply with another substantial obligation incumbent on it under the terms of the Grant Decision;
- (d) in the event of force majeure, notified in accordance with General Condition n° 14, or in the event of suspension by the beneficiary as a result of exceptional circumstances, notified in accordance with General Condition n° 15, where resuming the implementation is impossible or where the necessary modifications to the Grant Decision would call into question the decision awarding the grant or would result in unequal treatment of applicants;
- (e) if the beneficiary 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;
- (f) if the beneficiary or any related person, as defined in the second subparagraph, have been found guilty of professional misconduct proven by any means;
- (g) if the beneficiary 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;
- (h) if the Office has evidence that the beneficiary 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;
- (i) if the Office has evidence that the beneficiary 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 Grant Decision, including in the event of submission of false information or failure to submit required information in order to obtain the grant provided for in the Grant Decision; or
- (j) if the Office has evidence that the beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations in other Union or Euratom grants awarded to it under similar conditions and such irregularities, fraud or breach of obligations have a material impact on this grant.

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

behalf.

## **16.2 Procedure for withdrawal**

In all cases other than point (a) of General condition n° 16.1, before withdrawing the Grant Decision the Office shall formally notify the beneficiary of its intention, specifying the reasons thereof and inviting the beneficiary, within 45 calendar days from receipt of the notification, to submit observations and, in the case of point (c) of General Condition n° 16.1, to inform the Office about the measures taken to ensure that it continues to fulfil its obligations under the Grant Decision.

If, after examination of the observations submitted by the beneficiary, the Office decides to stop the withdrawal procedure, it shall formally notify the beneficiary thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Office decides to pursue the withdrawal procedure, it may withdraw the Grant Decision by formally notifying the beneficiary thereof, specifying the reasons for the withdrawal.

In the cases referred to in points (b), (c), (e) and (g) of General Condition n° 16.1, the formal notification shall specify the date on which the withdrawal takes effect. In the cases referred to in points (d), (f), (h), (i) and (j) of General Condition n° 16.1, the withdrawal shall take effect on the day following the date on which the formal notification was received by the beneficiary.

## **16.3 Effects of the withdrawal**

Payments by the Office shall be limited to the amount determined in accordance with General Condition n° 25 on the basis of the eligible costs incurred by the beneficiary and the actual level of implementation of the action on the date when the withdrawal takes effect. Costs relating to current commitments, which are not due for execution until after the withdrawal, shall not be taken into account. The beneficiary shall have 60 days from the date when the withdrawal of the Grant Decision takes effect, as provided for in General Condition n° 16.2, to produce a request for payment of the balance in accordance with General Condition n° 23.2. If no request for payment of the balance is received within this time limit, the Office 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 General Condition n° 26, the Office 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 Office.

Where the Office, in accordance with point (c) of General Condition n° 16.1, is withdrawing the Grant Decision on the ground that the beneficiary 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 General Condition n° 23.3, the first subparagraph shall apply, subject to the following:

- (a) there shall be no additional time period from the date when the withdrawal of the Grant Decision takes effect for the beneficiary to produce a request for payment of the balance in accordance with General Condition n° 23.2; and
- (b) the Office shall not reimburse or cover any costs incurred by the beneficiary up to the date of withdrawal or up to the end of the period set out in Article 2.2 of the Grant Decision, 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 Grant Decision is withdrawn on

the grounds set out in point (a) without a justified reason or in points (c), (f), (h), (i) and (j) of General Condition n° 16.1, the Office may also reduce the grant or recover amounts unduly paid in accordance with General Conditions n° 25.4 and 26, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit its observations.

Neither the Office nor the beneficiary shall be entitled to claim compensation on account of the withdrawal.

## **GENERAL CONDITION N° 17 – ADMINISTRATIVE AND FINANCIAL PENALTIES**

**17.1** By virtue of Articles 136 to 138 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union and with due regard to the principle of proportionality, if the beneficiary 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 the application or during the implementation of the grant, or has been found in serious breach of its obligations under the Grant Decision, 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 beneficiary; and/or
- (b) financial penalties of 2% to 10% of the maximum amount of the grant set out in Article 3 of the Grant Decision.

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%.

**17.2** The Office shall formally notify the beneficiary of any decision to apply such penalties.

The Office is entitled to publish such decision under the conditions and within the limits specified in Article 140 of Regulation (EU, Euratom) 2018/1046.

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

## **GENERAL CONDITION N° 18 – APPLICABLE LAW, COMPETENT COURT AND ENFORCEABLE DECISION**

**18.1** The Grant Decision is governed by the applicable Union law, complemented, where necessary, by Spanish law.

**18.2** Pursuant to Article 263 TFEU, the beneficiary may bring an action for review of legality of decisions by the Office related to the implementation of this Grant Decision before the General Court or, on appeal, the Court of Justice of the European Union. The proceedings shall be instituted within two months of the notification of the decision to the beneficiary or, in the absence thereof, of the date

on which the decision came to its knowledge.

- 18.3** By virtue of Article 299 TFEU, for the purposes of recoveries within the meaning of General Condition n° 26 or financial penalties, the Office 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**

### **GENERAL CONDITION N° 19 – ELIGIBLE COSTS**

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

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

- (a) they are incurred in the period set out in Article 2.2 of the Grant Decision, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in General Condition n° 23.2.;
- (b) they are indicated in the estimated budget set out in Annex III;
- (c) they are incurred in connection with the action as described in Annex I and are necessary for its implementation;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary;
- (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.

#### **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 General Condition n° 19.1.

In particular, the following categories of costs are eligible direct costs, provided that they satisfy the conditions of eligibility set out in General Condition n° 19.1 as well as the following conditions:

- (a) the costs of personnel working under an employment contract with the beneficiary 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 beneficiary'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 beneficiary 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 beneficiary and, unless otherwise agreed with the beneficiary, in the premises of the beneficiary;
  - (ii) the result of the work belongs to the beneficiary; and
  - (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary;
- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the beneficiary'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 beneficiary, provided that the asset has been purchased in accordance with General Condition n° 9 and that it is written off in accordance with the international accounting standards and the usual accounting practices of the beneficiary; 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 Grant Decision and the rate of actual use for the purposes of the action may be taken into account. By way of exception, the Grant Decision 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 General Condition n° 9.1 and are directly assigned to the action;
- (e) costs arising directly from requirements imposed by the Grant Decision (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 General Condition n° 9.1;
- (f) costs entailed by subcontracts within the meaning of General Condition n° 10, provided that the conditions laid down in points (a), (b), (c) and (d) of General Condition n° 10.2 are met;
- (g) costs of financial support to third parties within the meaning of General Condition n° 11, provided that the conditions laid down in that provision are met;
- (h) duties, taxes and charges paid by the beneficiary, notably value added tax (VAT), provided that they are included in eligible direct costs, and unless specified otherwise in the Grant Decision.

### **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 beneficiary and shall comply with the conditions of eligibility set out in General Condition n° 19.1.

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

#### **19.4 Ineligible costs**

In addition to any other costs which do not fulfil the conditions set out in General Condition n° 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 Office charged by the bank of the beneficiary;
- (h) costs declared by the beneficiary 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 Office for the purpose of implementing the Union budget); in particular, indirect costs shall not be eligible under a grant for an action awarded to the beneficiary 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.

### **GENERAL CONDITION N° 20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

#### **20.1 Reimbursement of actual costs**

Where, in accordance with Article 3(a)(i) of the Grant Decision, the grant takes the form of the reimbursement of actual costs, the beneficiary 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 General Condition n° 27, the beneficiary must be able to provide adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records. In addition, the beneficiary'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.

## **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 Grant Decision, the grant takes the form of the reimbursement of unit costs or of a unit contribution, the beneficiary 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 Grant Decision by the actual number of units used or produced.

If requested to do so in the context of the checks or audits described in General Condition n° 27, the beneficiary must be able to provide adequate supporting documents to prove the number of units declared. However, the beneficiary 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.

## **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 Grant Decision, the grant takes the form of the reimbursement of lump sum costs or of a lump sum contribution, the beneficiary must declare as eligible costs or as requested contribution the global amount specified in Article 3(a)(iii) or (c) of the Grant Decision, subject to the proper implementation of the corresponding tasks or part of the action as described in Annex I.

If requested to do so in the context of the checks or audits described in General Condition n° 27, the beneficiary must be able to provide adequate supporting documents to prove the proper implementation. However, the beneficiary 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.

## **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 Grant Decision, the grant takes the form of the reimbursement of flat-rate costs or of a flat-rate contribution, the beneficiary 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 Grant Decision.

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

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

Where, in accordance with Article 3(a)(v) of the Grant Decision, the grant takes the form of the reimbursement of unit costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary 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 General Condition n° 27, the beneficiary 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 Grant Decision, the grant takes the form of the reimbursement of lump sum costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary 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 General Condition n° 27, the beneficiary must be able to provide adequate supporting documents to prove the proper implementation.

Where, in accordance with Article 3(a)(v) of the Grant Decision, the grant takes the form of the reimbursement of flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary 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 General Condition n° 27, the beneficiary 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 beneficiary 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 Grant Decision.

Where the Grant Decision provides for the possibility for the beneficiary to request the Office to assess the compliance of its usual cost accounting practices, the beneficiary may submit a request for assessment, which, where required by the Grant Decision, 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.

The certificate shall certify that the beneficiary'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 Grant Decision.

Where the Office has confirmed that the usual cost accounting practices of the beneficiary 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 Office and

that the beneficiary did not conceal any information for the purpose of their approval.

## **GENERAL CONDITION N° 21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARY**

Where the Grant Decision contains a provision on entities affiliated to the beneficiary, costs incurred by such an entity are eligible, provided that they satisfy the same conditions under General Conditions n° 19 and 20 as apply to the beneficiary, and that the beneficiary ensures that the conditions applicable to it under General Conditions n° 3, 4, 5, 7, 9, 10 and 27 are also applicable to the entity.

## **GENERAL CONDITION N° 22 – BUDGET TRANSFERS**

Without prejudice to General Condition n° 10 and provided that the action is implemented as described in Annex I, the beneficiary is allowed to adjust the estimated budget set out in Annex III, by transfers between the different budget categories, without this adjustment being considered as an amendment of the Grant Decision within the meaning of General Condition n° 12.

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

## **GENERAL CONDITION N° 23 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS**

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

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

Where, in accordance with Article 4.1 of the Grant Decision, the pre-financing shall be paid in several instalments and where Article 4.1 of the Grant Decision provides for a further pre-financing payment at the end of a reporting period, the beneficiary 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 Grant Decision, a financial guarantee.

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

The beneficiary 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 Grant Decision, 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 V; 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 Grant Decision, as well as information on subcontracting as referred to in General Condition n° 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 beneficiary and its affiliated entities; it must be drawn up in accordance with the structure of the estimated budget set out in Annex III and with Annex V and detail the amounts for each of the forms of grant set out in Article 3 of the Grant Decision 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 beneficiary and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts referred to in General Condition n° 25.3.2 for the beneficiary and its affiliated entities; it must be drawn up in accordance with Annex V;
- (d) where required by Article 4.1 of the Grant Decision or where both the total contribution in the form of reimbursement of actual costs as referred to in Article 3(a)(i) of the Grant Decision is at least EUR 750 000 and the beneficiary 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), a certificate on the financial statements and underlying accounts (“certificate on the financial statements”);

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 beneficiary or its affiliated entities for the categories of costs reimbursed in accordance with Article 3(a)(i) of the Grant Decision are real, accurately recorded and eligible in accordance with the Grant Decision. In addition, for the payment of the balance, it shall certify that all the receipts referred to in General Condition n° 25.3.2 have been declared; and

- (e) where required by Article 4.1 of the Grant Decision, an operational verification report (“operational verification report”), produced by an independent third party approved by the Office and drawn up in accordance with Annex VI.

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 Grant Decision.

The beneficiary 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 the Grant Decision 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 General Condition n° 27. In addition, for the payment of the balance, it shall certify that all the receipts referred to in General Condition n° 25.3.2 have been declared.

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

Where the beneficiary 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 beneficiary still fails to submit such a request within 60 days following a written reminder sent by the Office, the Office reserves the right to withdraw the Grant Decision in accordance with General Condition n° 16.1(c), with the effects described in the second and the third subparagraphs of General Condition n° 16.3.

### **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 beneficiary 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 beneficiary keeps its general accounts in euro, it shall convert costs incurred in another currency into euro according to its usual accounting practices.

## **GENERAL CONDITION N° 24 – PAYMENTS AND PAYMENT ARRANGEMENTS**

### **24.1 Pre-financing**

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

Without prejudice to General Conditions n° 24.5 and 24.6, where Article 4.1 of the Grant Decision provides for a pre-financing payment upon notification of the Grant Decision, the Office shall pay to the beneficiary within 30 days following that date or, where required by Article 4.1 of the Grant Decision, following receipt of the financial guarantee.

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

(a) it is provided by a bank or an approved financial institution or, at the request of the



beneficiary and acceptance by the Office, by a third party;

- (b) the guarantor stands as first-call guarantor and does not require the Office to have recourse against the principal debtor (i.e. the beneficiary); 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 Office 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 beneficiary. The Office shall release the guarantee within the following month.

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

Without prejudice to General Conditions n° 24.5 and 24.6, on receipt of the documents referred to in General Condition n° 23.1, the Office shall pay to the beneficiary the new pre-financing instalment within 60 days.

## **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 General Conditions n° 24.5 and 24.6, on receipt of the documents referred to in General Condition n° 23.2, the Office shall pay to the beneficiary the amount due as interim payment within the time limit specified in Article 4.2 of the Grant Decision.

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 Grant Decision and to General Conditions n° 24.5 and 24.6, the amount due as interim payment shall be determined as follows:

- (a) where, in accordance with Article 3(a) of the Grant Decision, 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 Office for the concerned reporting period and the corresponding categories of costs, for the beneficiary and its affiliated entities; if Article 4.1 of the Grant Decision specifies another reimbursement rate, this other rate shall be applied instead;
- (b) where, in accordance with Article 3(b) of the Grant Decision, 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 Office for the concerned reporting period for the beneficiary and its affiliated entities;
- (c) where, in accordance with Article 3(c) of the Grant Decision, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the beneficiary and its affiliated entities, subject to approval by the Office of the proper implementation during the concerned reporting period of the corresponding tasks or part of the action in accordance with Annex I;

where, in accordance with Article 3(d) of the Grant Decision, 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 Office for the concerned reporting period for the beneficiary and its affiliated entities.

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

Where Article 4.1 of the Grant Decision requires that the interim payment clears all or part of the pre-financing paid to the beneficiary, 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.

#### **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 Grant Decision the remaining part of the eligible costs incurred by the beneficiary for its implementation. Where the total amount of earlier payments is greater than the final amount of the grant determined in accordance with General Condition n° 25, the payment of the balance may take the form of a recovery as provided for by General Condition n° 26.

Without prejudice to General Conditions n° 24.5 and 24.6, on receipt of the documents referred to in General Condition n° 23.2, the Office shall pay the amount due as the balance within the time limit specified in Article 4.2 of the Grant Decision.

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 General Condition n° 25, the total amount of pre-financing and interim payments already made.

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

The Office may suspend the time limit for payment specified in Article 4.2 of the Grant Decision and in General Condition n° 24.2 at any time by formally notifying the beneficiary that its request for payment cannot be met, either because it does not comply with the provisions of the Grant Decision, 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 beneficiary 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 Office. 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 beneficiary may request a decision by the Office 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 General Condition n° 23 and the new report or statement submitted is also rejected, the Office reserves the right to withdraw the Grant Decision in accordance with General Condition n° 16.1(c), with the effects described in General Condition n° 16.3.

#### **24.6 Suspension of payments**

The Office may, at any time during the implementation of the Grant Decision, suspend the pre-financing payments, interim payments or payment of the balance:

- (a) if the Office has evidence that the beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if the beneficiary fails to comply with its obligations under the Grant Decision;
- (b) if the Office has evidence that the beneficiary 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 the beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant; or
- (c) if the Office suspects substantial errors, irregularities, fraud or breach of obligations committed by the beneficiary in the award procedure or in the implementation of the Grant Decision and needs to verify whether they have actually occurred.

Before suspending payments, the Office shall formally notify the beneficiary 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 beneficiary 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 beneficiary, the Office decides to stop the procedure of payment suspension, the Office shall formally notify the beneficiary thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Office decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the beneficiary, 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 Office. In order to resume payments, the beneficiary shall endeavour to meet the notified conditions as soon as possible and shall inform the Office of any progress made in this respect.

The Office 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 beneficiary thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation in accordance with General Condition n° 15.1 or to request a withdrawal of the Grant Decision in accordance with General Condition n° 16.1 (a), the beneficiary is not

entitled to submit any requests for payments and supporting documents referred to in General Condition n° 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 4.1 of the Grant Decision.

#### **24.7 Notification of amounts due**

The Office 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 General Condition n° 25.

#### **24.8 Interest on late payment**

On expiry of the time limits for payment specified in Article 4.2 of the Grant Decision, and in General Conditions n° 24.1 and 24.2, and without prejudice to General Conditions n° 24.5 and 24.6, the beneficiary 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 beneficiary 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 for the purpose of this Grant Decision.

The suspension of the time limit for payment in accordance with General Condition n° 24.5 or of payment by the Office in accordance with General Condition n° 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 General Condition n° 24.10. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of General Condition n° 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 beneficiary only upon request submitted within two months of receiving late payment.

#### **24.9 Currency for payments**

Payments by the Office shall be made in euro.

#### **24.10 Date of payment**

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

#### **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 Office shall be borne by the Office;
- (b) costs of transfer charged by the bank of the beneficiary shall be borne by the beneficiary;
- (c) all costs of repeated transfers caused either by the Office or by the beneficiary shall be borne by the one which caused the repetition of the transfer.

## **GENERAL CONDITION N° 25 – DETERMINING THE FINAL AMOUNT OF THE GRANT**

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

Without prejudice to General Conditions n° 25.2, 25.3 and 25.4, the final amount of the grant shall be determined as follows:

- (a) where, in accordance with Article 3(a) of the Grant Decision, 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 Office for the corresponding categories of costs, for the beneficiary and its affiliated entities;
- (b) where, in accordance with Article 3(b) of the Grant Decision, 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 Office for the beneficiary and its affiliated entities;
- (c) where, in accordance with Article 3(c) of the Grant Decision, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the beneficiary and its affiliated entities, subject to approval by the Office of the proper implementation of the corresponding tasks or part of the action in accordance with Annex I;
- (d) where, in accordance with Article 3(d) of the Grant Decision, 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 Office for the beneficiary and its affiliated entities.

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

### **25.2 Maximum amount**

The total amount paid to the beneficiary by the Office may in no circumstances exceed the maximum amount specified in Article 3 of the Grant Decision.

Where the amount determined in accordance with General Condition n° 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 Grant Decision.

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

- 25.3.1** The grant may not produce a profit for the beneficiary, unless specified otherwise in the Grant Decision. "Profit" shall mean a surplus of the receipts over the eligible costs of the action.

**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 beneficiary, 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 Office in accordance with Article 3(a)(i) of the Grant Decision.

**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 beneficiary:

(a) financial contributions referred to in point (b) of General Condition n° 25.3.2, which may be used by the beneficiary to cover costs other than the eligible costs under the Grant Decision;

(b) financial contributions referred to in point (b) of General Condition n° 25.3.2, the unused part of which is not due to the donor at the end of the period set out in Article 2.2 of the Grant Decision;

**25.3.4** The eligible costs to be taken into account are the eligible costs approved by the Office for the categories of costs reimbursed in accordance with Article 3(a) of the Grant Decision.

**25.3.5** Where the final amount of the grant determined in accordance with General Conditions n° 25.1 and 25.2 would result in a profit for the beneficiary, the profit shall be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the action approved by the Office for the categories of costs referred to in Article 3(a)(i) of the Grant Decision. 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 Grant Decision, as determined in accordance with General Conditions n° 25.1 and 25.2.

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

Without prejudice to the right to withdraw the Grant Decision referred to in General Condition n° 16 and without prejudice to the right of the Office to apply penalties referred to in General Condition n° 17, if the action is not implemented or is implemented poorly, partially or late or if another obligation under the Grant Decision has been breached, the Office may reduce the grant initially provided for, in line with the actual implementation of the action or in proportion to the seriousness of the breach.

## **GENERAL CONDITION N° 26 – RECOVERY**

### **26.1 Financial responsibility**

Where an amount is to be recovered under the terms of the Grant Decision, the beneficiary shall repay the Office the amount in question. The beneficiary shall be responsible for the repayment of any amount unduly paid by the Office as a contribution towards the costs incurred by its affiliated entities.

## **26.2 Recovery procedure**

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

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Office decides to pursue the recovery procedure, the Office may confirm recovery by formally notifying to the beneficiary 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 Office shall recover the amount due:

- (a) by offsetting it against any amounts owed to the beneficiary by the Office budget (“offsetting”); in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Office may recover by offsetting before the due date; the beneficiary’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 Grant Decision (“drawing on the financial guarantee”);
- (c) by adopting an enforceable decision in accordance with General Condition n° 18.3.

## **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 General Condition n° 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 Office 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.

## **26.4 Bank charges**

Bank charges incurred in connection with the recovery of the sums owed to the Office shall be borne by the beneficiary 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.

# **GENERAL CONDITION N° 27 – CHECKS, AUDITS AND EVALUATION**

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

The Office may carry out technical and financial checks and audits in relation to the use of the grant. It may also check the statutory records of the beneficiary 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 Office may carry out interim or final evaluation of the impact of the action measured against the objective of the Office programme concerned.

Checks, audits or evaluations made by the Office 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 Grant Decision and for a period of five years starting from the date of payment of the balance. This period shall be limited to three years in case the maximum amount specified in Article 3 of the Grant Decision 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 Office announcing it.

## **27.2 Duty to keep documents**

The beneficiary 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.

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

The periods set out in the first and second subparagraphs shall be longer if there are ongoing audits, appeals, litigation or pursuit of claims concerning the grant, including in the case referred to in General Condition n° 27.7. In such cases, the beneficiary shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

## **27.3 Obligation to provide information**

The beneficiary shall provide any information, including information in electronic format, requested by the Office, or by any other outside body authorised by it, in the context of checks, audits or evaluations as referred to in General Condition n° 27.1

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

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

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

During an on-the-spot visit, the beneficiary shall allow Office staff and outside personnel authorised by the Office to have access to the sites and premises where the action 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 beneficiary refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Office may consider:

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

## **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 Office or its authorised representative to the beneficiary, which shall have 30 days from the date of receipt to submit observations. The final report ("final audit report") shall be sent to the beneficiary within 60 days of expiry of the time limit for submission of observations.

## **27.6 Effects of audit findings**

On the basis of the final audit findings, the Office may take the measures which it considers necessary, including recovery of all or part of the payments made by it, in accordance with General Condition n° 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 grant, determined in accordance with General Condition n° 25, and the total amount paid to the beneficiary under the Grant Decision for the implementation of the action.

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

27.7.1 The Office may take all measures which it considers necessary, including recovery of all or part of the payments made by it under the Grant Decision, in accordance with General Condition n° 26, where the following conditions are fulfilled:

- a) the beneficiary 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 this grant; 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 beneficiary within the period referred to in General Condition n° 27.1.

27.7.2 The Office shall determine the amount to be corrected under the Grant Decision:

- a) wherever possible and practicable, on the basis of costs unduly declared as eligible under the Grant Decision.

For that purpose, the beneficiary shall revise the financial statements submitted under the Grant Decision taking account of the findings and resubmit them to the Office 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 grant, determined in accordance with General Condition n° 25 on the basis of the revised eligible costs declared by the beneficiary and approved by the Office, and the total amount paid to the beneficiary under the Grant Decision for the implementation of the action;

- b) where it is not possible or practicable to quantify precisely the amount of ineligible costs under the Grant Decision, 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 Office shall formally notify the extrapolation method to be applied to the beneficiary, which shall have 60 days from the date of receipt of the notification to submit observations and to propose a duly substantiated alternative method.

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

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

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 grant, determined in accordance with General Condition n° 25 on the basis of the revised eligible costs after extrapolation, and the total amount paid to the beneficiary under the Grant Decision 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 maximum amount of the grant specified in Article 3 of the Grant Decision or part thereof, having regard to the principle of proportionality.

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

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

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

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 grant after flat-rate correction and the total amount paid to the beneficiary under the Grant Decision for the implementation of the action.

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

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

Under Council Regulation (Euratom, EC) No 2185/96<sup>3</sup> and Regulation (EU, Euratom) No 883/2013<sup>4</sup> 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 Office.

Moreover, findings arising from an OLAF investigation may lead to criminal prosecutions under national law.

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

The European Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>5</sup> ('the EPPO') have the same rights as the Office, notably right of access, for the purpose of checks, audits and investigations.

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<sup>3</sup> 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.

<sup>4</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

<sup>5</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office