



TENDER SPECIFICATIONS FOR SUBCONTRACTING

EXTERNAL EXPERTISE: 1 external expert/researcher

Reducing Respirable Crystalline Silica Dust Effectively VS/2020/0005

A. Summary of the project

The EU provides a relatively comprehensive legislative framework for the protection of workers' health. High attention is paid to hazardous substances and they are regulated in a number of Directives. The high importance of the topic is also proven by the fact that the EU Commission gave the fight against work related cancer diseases priority in its strategic framework and by the decision of EU-OSHA to choose Dangerous Substances as the topic for their 2018 – 2019 campaign.

With the revision of the Carcinogens and Mutagens Directive an Occupational Exposure Limit Value (OELV) of 0.1 mg/m³ for respirable crystalline silica was established. The European Social Partner organisations for the Construction sector consider the practical implementation of this new limit value as a challenge. The proper implementation of the legal framework remains difficult, especially in a work environment that permanently changes. This continuous change is one of the main characteristics of construction work. Furthermore, construction work presents a very high diversity in types of work processes or equipment used, to name the most relevant aspects. Therefore, the levels and circumstances of exposure can vary significantly as well.

With respect to this situation, the European social partners EFBWW and FIEC established an ad-hoc working group to support the implementation of the new occupational limit value for Respirable Crystalline Silica. The working group elaborated the concept for this project, which constitutes one initiative as part of further implementation activities.

Good practices and experiences are available at national level and we can build our project on these experiences as well as on some guidance material already existing on national levels.

In a first step we will map the diversity of construction activities and processes. Each activity shall be marked as green (limit values is to keep), orange (difficult to keep the limit value) or red (currently not possible to keep the limit value). The guidance part shall describe the technical and organisational measures to achieve the best level of prevention. The main deliverable, a 'Guidance –Map', shall be available on 10 languages and will be directed to social partner organisation on national levels but especially to company level.

The overall action shall be carried out by the European Social partner organisations EFBWW and FIEC in collaboration with some national prevention institutions, directly involved in the project steering group.

B. Background

Being aware of the importance of the role hazardous substances play at the workplace, the European legislator adopted, amongst others:

- The OSH framework directive (directive 89/391/EEC)
- The carcinogens and mutagens directive (directive 2004/37/EC)
- The chemical agents directive (directive 1998/24/EC)
- The construction site directive (directive 92/57/EEC)
- The work equipment directive (directive 2009/104/EC)

Today the EU provides a comprehensive legislative framework for the protection of workers' health. Various types of hazardous dust are regulated in a number of Directives and providing a basis for social partner action.

The high importance of the topic is also proven by the decision of EU-OSHA to choose Dangerous Substances as the topic for their 2018 – 2019 campaign in which both FIEC and EFBWW are campaign partners.

The proper implementation of the above legal frameworks remains a challenge especially in a work environment that permanently changes. This permanent change is one of the main characteristics of construction work. Furthermore, construction work presents a very high diversity of types of processes or equipment used, to name the most relevant aspects. Therefore, the levels and circumstances of exposure can vary significantly as well.

Workers and employers are equally concerned and therefore the topic of dangerous substances, even though it is highly complex and not easy to deal with, was put on the agenda of the European social partner organisations and other institutions already a long time ago. The EFBWW and FIEC already did joint activities in the field of asbestos dust and, more recently, the social partners established an ad-hoc working group to support the implementation of the new occupational limit value for Respirable Crystalline Silica. The working group elaborated the concept for this project, which constitutes one initiative as part of a broader willingness of cooperation on implementation activities.

With the revision of the Carcinogens and Mutagens Directive an Occupational Exposure Limit (OEL) of 0.1 mg/m³ for respirable crystalline silica was established. The European Social Partners organisations for the Construction sector consider the practical implementation of this new limit value as a challenge.

To understand the complexity of the issue, one needs to take into account the main characteristics of construction work. Unlike other (stationary) workplaces, a construction site and each of its workplaces are continuously changing and requires collaboration between workers of various professions and occupations. Construction comprises a high number of different occupations. Furthermore, construction activities are executed under ever changing climate conditions, construction itself is permanently changing the environment (distinct to many other industrial and work activities). Construction is moreover confronted with various types of technology, often not standardised, and a broad range of machinery. In consequence, it is highly difficult to provide guidance regarding the management of dust prevention which fits all construction activities. Instead, we need tailor-made provisions for the various types of construction work. The above characteristics have implications for occupational safety and health provisions and each demand a specific approach.

Nevertheless, good practices and experiences are available at national level and we can build our project on these experiences and on the available material. Some prevention institutions at national level have developed material and guidance documents that deal with the topic. This project shall aim at providing state of the art guidance and support to construction companies and workers in view of a proper implementation of the European occupational exposure limit value for Respirable Crystalline Silica. In this respect, the project aims at a precise mapping of construction activities and the elaboration of specific corresponding guidance. The guidance shall focus on technical and organisational measures specific for the various occupations, as well as on identifying more problematic activities for which it is difficult or not possible to meet the new limit value with the tools/technologies and protective equipment available today.

C. Goals of the project

The project partners believe that, based on the technical state of the art, solutions for sound prevention of exposure to RCS are achievable for most construction activities. So as to reach those levels, a dialogue between social partners from various countries, the respective prevention bodies and other stakeholders (amongst others the providers of technical equipment) is crucial and a good starting point. We are aiming at bringing together those stakeholders in the framework of this project.

This is a precondition to figure out the state of the art in terms of prevention against RCS exposure.

The goals of the project are to:

1. Bring together stakeholders for a better prevention against RCS exposure in construction works;
2. Map various types of construction works and evaluate their level of RCS exposure;
3. Evaluate the level of protection needed for the different types of construction works identified and the feasibility of keeping the exposure below the limit value (traffic light system);
4. Describe technical and organisational measures to reach the best achievable level of protection;
5. Make the information available in as many languages as possible;
6. Provide guidance on the needed technical innovations for those activities for which the new limit value is more complicated or impossible to achieve;

On a second level, the project aims at fostering discussions and activities at national level. This shall be ensured through the active involvement of our respective members at national level, the involvement of experts from, amongst others, national prevention institutions and the continuous reporting within the structures of the European Social Dialogue.

In addition to the deliverables listed below, we aim at designing a precise dissemination and follow-up activity plan, guaranteeing a long-lasting impact of the project.

The project partners intend to organise a one-day workshop (dealing with goals 1, 2, and 3) at the beginning of the project and a final conference to present the project results and deliverables at the end. The workshop shall be followed by further compiling existing material, desk research and the evaluation of the existing material. All these activities as well as the drafting of the mapping and the technical guidance paper shall be elaborated by an external expert.

The planned deliverables are the following:

- Mapping of construction activities/Traffic Light System indicating the level of potential exposure according to the type of activity, of process, of material or protective equipment used, etc.
- Guidance for technical and organisational measures to comply with the new limit value for the various construction activities – (Mapping and Technical Guidance will be jointly presented in a printed “Guidance-Map”;
- Identification of those construction activities for which it is complicated or not possible to achieve the limit value with the current state of the art, together with proposals for measures to improve the situation.

D. Project activities

The subject matter of the contract between the EFBWW and the external expert/researcher will be to:

- 1) Compile an overview on the technical state of the art in preventing exposure to Crystalline Silica Dust for various construction activities, including a collection of data on actual emission levels in selected occupations;
- 2) Prepare the Guidance map with the categorisation of construction activities according to a traffic light system and with advice for technical and organisational measures ensuring to keep the green respectively the yellow light mark for each activity;
- 3) Prepare and execute (in collaboration with the project steering group) a workshop and the final conference as well as participate in the steering group meetings;
- 4) Collect and assist in the evaluation of existing relevant concepts for the planning and evaluation of psychosocial hazards at work and in the evaluation of good practice examples;
- 5) Assist with the design of a Guidance Map;
- 6) Draft the project report on Reducing Respirable Crystalline Silica Dust Effectively:

Documents to be elaborated:

- A Guidance Map with a categorization of specific construction activities of all main sub-sectors of construction, such as road construction, housing or tunnel construction
- A description of technical and organisational measures an employer has to take to keep the lowest possible level of exposure for each of the construction activities.

E. Guidance regarding performance of the tasks and regarding the methodology

Performance of the tasks will have to be carried out within the contract period specified in the contract European Commission-EFBWW and with due regard to the order indicated in the description of the above-mentioned tasks and the schedule of the project activities enclosed.

F. Methods of work

The general supervision and evaluation of the project will be carried out by the steering group. The steering group will be composed of representatives from the external specialists, such as prevention institutions or research institutes, EFBWW and FIEC, and the external expert.

During the project phase the steering group will meet five times. Additional meetings could be foreseen. The expert/s will assist in the preparation of and attend all the meetings of the steering group.

G. Time schedule and reporting

The schedule of activities is laid down in the project description, which could be modified by the steering group.

The expert shall finalize its activities within a maximum period in line with Commission instructions.

The expert shall consult with the project manager in EFBWW:

- a) as regards the research activities and organisation of the steering group meetings
- b) as regards the collaboration with the steering group members
- c) as regards dispatch of the draft report to the members of the steering group
- d) as regards the preparation of the workshop and the final conference

H. Contract

The Contract between EFBWW and the external expert/researcher will be based on a standard contract taking into consideration the financial regulations of the European Commission and obliging the consultant to respect the obligations laid down in the contract European Commission-EFBWW.

The successful tenderer will submit to the EFBWW a draft contract EFBWW-expert which includes “back to back” obligations from the contract European Commission-EFBWW also in the relationships tenderer-subcontractors.

I. Payment

Payment shall be made on the basis of invoices, once the tasks have been performed and the results of the work have been accepted by the steering group.

J. Selection criteria

The expert will be selected on the basis of the following criteria

(as mentioned in the public procurement directive 2014/24/EU, Article 58):

- a) personal situation of the tenderer
- b) economic and financial standing
- c) technical and/or professional ability

Tenders failing to satisfy all the criteria will be excluded from the further procedure.

K. Award criteria

The contract will be awarded to the bidder whose bid represents the economically and in quality most advantageous tender taking into account the following criteria:

- a) Legal skills and expertise on the issue of dust prevention and Respirable Crystalline Silica (30%)
- b) Previous working experiences with social partner on national or European level (20%)
- c) Language and communication skills (20%)
- d) Experiences in work processes, work organisation and technical prevention in construction work (20%)
- e) Price (10%)

Considering that this project is co-financed by the European Commission, it will not be possible to award the contract to a bidder whose tender exceeds the amount approved by the European Commission for the tasks of the external expert/researcher, namely 48,000 € (all taxes included).

Note : the travel and accommodation costs for 1 person for participating in the Steering Group meetings, in the seminars, in the final conference and in the possible face to face interviews will be reimbursed to the selected service provider by EFBWW separately (within the limits of the European Commission's rules) on the basis of original proofs of expenses provided to EFBWW. Such costs should therefore NOT be taken into account in the price submitted to this call for tenders.

L. Content of the tenders

All interested parties are invited to present their:

- a) comments and solutions on the proposed structure of the project;
- b) comments and solutions on the proposed conceptual and methodological framework for the collection of data;
- c) a detailed offer/prices for the external expert/researcher

The content of the tender presented by the tenderer must correspond to the specifications indicated in the previous points.

M. Evaluation procedure

The economically and in quality most advantageous tender will be identified by the evaluation of each award criterion on a scale between 0 and 10. These results will be counted using the relative ponderation indicated in % behind the award criteria.

N. Submission of tenders

The tender must be sent or delivered in duplicate, under a sealed cover. The envelope should be marked "*appel d'offres – à ne pas ouvrir par le service du courrier*". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across the tape.

Interested parties should send their bid:

- a) either by registered mail posted no later than **13 March 2020** (date as postmark), to the following address:

EFBWW
Tom Deleu/Rolf Gehring
Rue Royale 45, boîte 1,
1000 Bruxelles
Belgium

- b) or delivered by hand, i.e. by delivery in person or by an authorised representative (including private courier services) **not later than 2 p.m. on 13 March 2020** to the same address.

Late delivery will lead to the exclusion of the tenderer from the award procedure for this contract.

For tenders submitted by private courier services and hand delivered requests, the EFBWW secretariat will sign a receipt stamped on the date of reception, which will serve as proof of delivery.

Annexes:

Project description and timetable.

General Conditions for grants also applying to the tenderer.



**Grant application
under Budget Heading 04 03 01 08
Industrial relations and social dialogue**

**Call for proposals 2019
VP/2019/001/0020**

Project Description and work programme

Reducing Respirable Crystalline Silica Dust Effectively

**Lead applicant: EFBWW
Co-applicant: FIEC**

Reducing Respirable Crystalline Silica Dust Effectively

CONTENT:

1. Introduction
2. Goals of the project
3. Links with the objectives and priorities of the budget heading and other EU-policies
4. Partners and staff involved
5. Timetable of activities

1. Introduction

Being aware of the importance of the role hazardous substances play at the workplace, the European legislator adopted, amongst others:

- The OSH framework directive (directive 89/391/EEC)
- The carcinogens and mutagens directive (directive 2004/37/EC)
- The chemical agents directive (directive 1998/24/EC)
- The construction site directive (directive 92/57/EEC)
- The biological agents directive (directive 2000/54/EC)

Today the EU provides a comprehensive legislative framework for the protection of workers' health. Various types of hazardous dust are regulated in a number of Directives and this provides a basis for social partner action.

The high importance of the topic is also proven by the decision of EU-OSHA to choose Dangerous Substances as the topic for their 2018 – 2019 campaign in which both FIEC and EFBWW are campaign partners.

A proper implementation of the above legal frameworks remain a challenge especially in a work environment that permanently changes. This permanent change is one of the main characteristics of construction work. Furthermore, construction work presents a very high diversity of types of processes or equipment used, to name the most relevant aspects. Therefore, the levels and circumstances of exposure can vary significantly as well.

Workers and employers are equally concerned and therefore the topic of dangerous substances, even though it is highly complex and not easy to deal with, was put on the agenda of the European social partner organisations and other institutions already a long time ago. The EFBWW and FIEC already did joint activities in the field of asbestos dust and, more recently, the social partners established an ad-hoc working group to support the implementation of the new occupational limit value for Respirable Crystalline Silica. The working group elaborated the concept for this project, which constitutes one initiative as part of a broader willingness of cooperation on implementation activities.

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construction companies and workers in view of a proper implementation of the European occupational exposure limit value for Respirable Crystalline Silica. In this respect, the project aims at a precise mapping of construction activities and the elaboration of specific corresponding guidance. The guidance shall focus on technical and organisational measures specific for the various occupations, as well as on identifying more problematic activities for which it is difficult or not possible to meet the new limit value with the tools/technologies and protective equipment available today.

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- Identification of those construction activities for which it is complicated or not possible to achieve the limit value with the current state of the art, together with proposals for measures to improve the situation.

3. Links with the objectives and priorities of the budget heading and other EU policies

As stated in the introduction, this project application meets the concerns of European policy makers and is in line with various programmes and policy actions of the European Commission. It meets some of the core activities supported by the call for Proposals ‘Support for European Social Dialogue – VP/2019/001.

The contents and goals of the project are clearly related to some of the main objectives and priorities of the call, i.e.:

- Implementing the new limit value relates to the overall topic of employment and, because of the possible needed high investments of companies, creates an economic challenge (on company level with effects for the workers)
- Quality of work
- Health and safety at work
- Active ageing and healthier and longer working lives as integral parts of the European Pillar of Social Rights.

The action is a part of the work programme of the social partners of the construction industry for 2016 to 2019 and builds on previous discussions within the social dialogue construction. We underline that the project aims at a better social dialogue in an area which is not always easy to deal with both in companies and between organisations.

This application is clearly in line with the EC Communication (COM[2014]332 final) on ‘A strategic framework on health and safety at work 2014 – 2020’. More particularly, the project intends to involve stakeholders in discussions and co-operation on several of the seven strategic priorities pointed out by the Communication:

- Contributing to national strategies in a clearly localized area;
- Facilitating compliance with OSH legislation by presenting specific solutions;
- Contributing especially to the strategic objective of preventing cancer diseases

Contributing to a better understanding of the topic and presenting tailor-made approaches for specific work constellations, the project is also contributing to a sustainable industry in Europe and therefore meets vital aspects of the EU 2020 strategy.

4. Partners and staff involved

a. Involvement of social partners at European level

The European sectoral social partners for the construction sector, namely the European Federation of Building and Woodworkers (EFBWW) and the European Construction Industry Federation (FIEC) will be partners in this project.

The EFBWW will manage and coordinate the project and both social partners will jointly execute the project activities and the decision-making processes regarding all relevant aspects of the action.

A project steering group of twelve people will be established. The steering Group shall consist on three members from each of the two social partners and five representatives from national prevention institutions (amongst those at least one should be an expert on dust measurement) plus one external expert in the area of dust prevention.

The two project partners, assisted by their affiliates, will execute the overall project activities as well as the preparation and running of the two larger gatherings. They will also jointly work on the preparation and dissemination of the project deliverables and accompany and evaluate the research work. All project activities shall be integrated in the broader framework of the Social partner's future activities on Respirable Crystalline Silica Dust.

b. Involvement of the social partners and members at national level

The role of the social partners, members of EFBWW and FIEC, at national level will be on the one hand to disseminate and promote the project results and, on the other hand, to prepare and participate in the respective workshops. Some national affiliated federations will contribute with good practice examples. Additionally, they will be represented in the project steering group and, by this, be directly involved in the collection and evaluation of existing concepts, programmes and practices in the area of dust prevention.

We consider the active involvement of some national members of both European social partner organisations as crucial for the project. Furthermore, we like to encourage national affiliated organisations to improve the social dialogue in their respective country in the field of prevention against exposure to dust.

c. External Expertise

The involvement of national prevention institutions and an expert in the field of dust measurements shall guarantee the collection of up to date information on

- the mapping of construction activities
- exposure data
- programmes for the reduction of exposure to RCS dust in construction activities with focus on technical advice and solutions
- practices in companies
- the evaluation of available data

d. Activities to be subcontracted

Sub-contracting of the research

The mapping exercise and the evaluation of existing methods, technical options and prevention practices are very much based on technical knowledge. Equally the description of processes and work activities for which the new limit value is hard or not possible to keep needs specific technical knowledge.

To achieve good results, the coordination of this research work shall be worked out by an external expert with expertise in the field of dust prevention and a good insight in construction work.

The external expert shall coordinate the above activities. He or she shall support the collection of data (desk research, expert interviews, participation in the workshop, evaluation of existing guidance papers, methods and practical approaches) and shall especially draft the mapping of construction activities and the guidance with technical and organisational advice for each of the construction activities, based on the evaluation of collected information.

Other activities to be sub-contracted

For all activities listed hereunder, the participating partners do not have the sufficient capacities or devices and machinery in their offices. Subcontracting these activities is therefore more efficient and finally less cost intensive.

- interpretation required
- translations of texts
- design and lay-out of the deliverables
- printing of deliverables

5. Timetable of activities

For carrying out the activities, a Steering Group will be established. This Steering Group shall consist of twelve members, three each from EFBWW and FIEC, five from prevention institutions and one expert on dust prevention. The EFBWW will be the overall co-ordinator.

Before each of the steering group meetings, the coordinator will arrange the necessary preparatory activities, i.e. preparing and sending invitations, documents and further information relevant for the respective meeting. Working language for the steering group meetings is English. The first workshop will work with simultaneous interpretation into six languages the final conference with eight.

The project partners intend to undertake this project according to the work-plan and timetable below.

Preparatory phase

In a first step, the project partners will appoint the twelve members of the steering group. During the preparatory phase of the project, the steering group will fine-tune and agree on the work-plan and the individual activities. Both project partners will use the preparatory phase to establish contacts to national affiliated organisations and experts (especially prevention institutions) to mobilise expertise.

1st Steering Group - 2nd month

- Agreement on the work-plan and confirmation of the project timetable
- Agreement on structure, content and responsibilities for the one-day workshop
- Draft concept for the mapping of construction activities
- Draft invitation letter to present good practice examples
- Reporting on EU activities in the area

2nd Steering Group - 5th month

- Detailed preparation of the one-day-workshop
- Discussion on internal reporting and evaluation activities
- Reporting to the European social dialogue

- Presentation and discussion of a strategy for the dissemination activities
- Possible reports on national information or activities related to the project topics
- Updating on EU activities in the related area
- Design of the research activities - to be discussed with the external expert
- Draft for the mapping of activities and attachment of traffic lights

One-day workshop - 6th month

Aim of this workshop is to:

- Gather various stakeholders (social partners and other experts) and experiences, providing contacts for the research and looking for good practice examples
- Present the project, its concept, the aims and expected deliverables
- General information on exposure to RCS dust in construction activities
- Receive information about the EU discussions on dust prevention at workplaces (for example Commission; Social Partner agreement; Bilbao Agency)
- Deal with the specifics of various types of construction activities and possible technical and organisational solutions for those activities marked in 'Green'
- Collecting needs and ideas for successful dissemination

40 Participants

6 languages

Invitation (translation)

Presentations (translations)

Main activity

The main activity will be to:

- Collect prevention guidance from national level, including data on RCS exposure (measurement data)
- Evaluate and report on various approaches of prevention against exposure to RCS
- Following discussions at EU-level
- Working out an Evaluation and risk reduction Tool/guidelines for prevention against exposure to RCS dust in some professions of the construction sector
- Collecting good practices, finalizing the mapping of some construction activities (with green, yellow and red marking and related advice for technical and organisational measures)
- Drafting the deliverables
- Preparing the final conference
- Dissemination and planning of follow-up activities

3rd Steering Group - 8th month

- Evaluation of the 1st one-day workshop
- Status report on research activities
- Work on the mapping of construction activities and the advice for technical and organisational measures
- Discussing further dissemination activities
- First internal evaluation report

4th Steering Group - 16th month

- Presentation of the draft mapping and technical advice
- Reporting on the respective dissemination activities – including further planning of dissemination activities
- Reporting (including timelines) on the upcoming activities: finalisation of documents, translation, proofreading, layout printing
- Preparation of the final conference

Final Conference - 21st month

Aim of this conference is to:

- Present research results
- Present the deliverables
- Present dissemination activities and jointly consider with the participants possible action on national/company levels
- Presentation of the following Social Partner activities in the field against the exposure to RCS dust
- Brainstorm on follow-up actions and how to ensure a lasting impact of the project
- Launch a press release

60 participants

8 languages

Invitation (translation)

Presentations (five) (translations)

Press Release (translation)

Follow-up phase

The main focus during this follow-up phase is the further dissemination of the project results and a thorough consideration about what type of follow up activities are suitable to guarantee the highest possible impact of the project results.

5th Steering Group - 22nd month

- Second report on the project evaluation
- Discussion on the draft project report for the European Commission
- Reporting on joint and individual dissemination activities and planning the future dissemination activities
- Discussing the execution of all planned follow-up activities and further actions on prevention against exposure to RCS dust
- Presentation of the project concept and results to other sectors and stakeholders

Brussels, 13 June 2019

Sam Hägglund
EFBWW General Secretary

ANNEX II — GENERAL CONDITIONS

TABLE OF CONTENTS

PART A — LEGAL AND ADMINISTRATIVE PROVISIONS.....	5
Article II.1 — Definitions	5
Article II.2 — General obligations and roles of the beneficiaries	6
II.2.1 General obligations and role of the beneficiaries	6
II.2.2 General obligations and role of each beneficiary	7
II.2.3 General obligations and role of the coordinator	7
Article II.3 — Communication between the parties	8
II.3.1 Form and means of communication	8
II.3.2 Date of communications.....	8
Article II.4 — Liability for damages.....	9
Article II.5 — Conflict of interests	9
Article II.6 — Confidentiality	9
Article II.7 — Processing of personal data	9
II.7.1 Processing of personal data by the Commission	10
II.7.2 Processing of personal data by the beneficiaries.....	10
Article II.8 — Visibility of Union funding	11
II.8.1 Information on Union funding and use of the European Union emblem	11
II.8.2 Disclaimers excluding Commission responsibility	11
Article II.9 — Pre-existing rights and ownership and use of the results (including intellectual and industrial property rights)	11
II.9.1 Ownership of the results by the beneficiaries	11
II.9.2 Pre-existing rights.....	11
II.9.3 Rights of use of the results and of pre-existing rights by the Union .	12

Article II.10 — Award of contracts necessary for the implementation of the action	13
Article II.11 — Subcontracting of tasks forming part of the action	14
Article II.12 — Financial support to third parties	14
Article II.13 — Amendments to the agreement	15
Article II.14 — Assignment of claims for payments to third parties	15
Article II.15 — <i>Force majeure</i>	16
Article II.16 — Suspension of the implementation of the action.....	16
II.16.1 Suspension of implementation by the beneficiaries	16
II.16.2 Suspension of implementation by the Commission	16
II.16.3 Effects of the suspension	18
Article II.17 — Termination of the agreement.....	18
II.17.1 Termination of the Agreement by the coordinator	18
II.17.2 Termination of the participation of one or more beneficiaries by the coordinator.....	19
II.17.3 Termination of the Agreement or the participation of one or more beneficiaries by the Commission	19
II.17.4 Effects of termination	21
Article II.18 — Applicable law, settlement of disputes and enforceable decisions ..	23
PART B — FINANCIAL PROVISIONS	24
Article II.19 — Eligible costs	24
II.19.1 Conditions for the eligibility of costs	24
II.19.2 Eligible direct costs	24
II.19.3 Eligible indirect costs	26
II.19.4 Ineligible costs.....	26
Article II.20 — Identifiability and verifiability of the amounts declared	26
II.20.1 Declaring costs and contributions	26

II.20.2	Records and other documentation to support the costs and contributions declared	27
II.20.3	Conditions to determine the compliance of cost accounting practices	28
Article II.21	— Eligibility of costs of entities affiliated to the beneficiaries	29
Article II.22	— Budget transfers	29
Article II.23	— Non-compliance with reporting obligations	29
Article II.24	— Suspension of payments and time limit for payment	29
II.24.1	Suspension of payments	29
II.24.2	Suspension of the time limit for payments	31
Article II.25	— Calculation of the final amount of the grant	32
II.25.1	Step 1 — Application of the reimbursement rate to the eligible costs and addition of the financing not linked to costs, unit, flat-rate and lump sum contributions	32
II.25.2	Step 2 — Limit to <i>maximum amount of the grant</i>	33
II.25.3	Step 3 — Reduction due to the no-profit rule	33
II.25.4	Step 4 — Reduction due to improper implementation, irregularity, fraud or breach of other obligations	34
Article II.26	— Recovery	35
II.26.1	Recovery at the time of payment of the balance	35
II.26.2	Recovery after payment of the balance	35
II.26.3	Recovery procedure	35
II.26.4	Interest on late payment	36
II.26.5	Bank charges	36
Article II.27	— Checks, audits and evaluations	36
II.27.1	Technical and financial checks, audits, interim and final evaluations	36
II.27.2	Duty to keep documents	37
II.27.3	Obligation to provide information	37

II.27.4	On-the-spot visits	37
II.27.5	Contradictory audit procedure.....	38
II.27.6	Effects of audit findings	38
II.27.7	Correction of systemic or recurrent irregularities, fraud or breach of obligations	38
II.27.8	Rights of OLAF.....	40
II.27.9	Rights of the European Court of Auditors and EPPO	41

PART A — LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 — DEFINITIONS

The following definitions apply for the purpose of the Agreement:

‘Action’: the set of activities or the project for which the grant is awarded, to be implemented by the beneficiaries as described in Annex I.

‘Breach of obligations’: failure by a beneficiary to fulfil one or more of its contractual obligations.

‘Confidential information or document’: any information or document (in any format) received by either party from the other or accessed by either party in the context of the implementation of the Agreement that any of the parties has identified in writing as confidential. It does not include information that is publicly available.

‘Conflict of interests’: a situation where the impartial and objective implementation of the Agreement by a beneficiary is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest or any other shared interest with the Commission or any third party related to the subject matter of the Agreement.

‘Direct costs’: 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;

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Agreement, which is not attributable to error or negligence on their part or on the part of the subcontractors affiliated entities or third parties in receipt of financial support and which proves to be inevitable despite their exercising due diligence. The following cannot be invoked as *force majeure*: labour disputes, strikes, financial difficulties or any default of a service, defect in equipment or materials or delays in making them available, unless they stem directly from a relevant case of *force majeure*;

‘Formal notification’: form of communication between the parties made in writing by mail or electronic mail which provides the sender with compelling evidence that the message was delivered to the specified recipient;

‘Fraud’: any act or omission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, the non-disclosure of information in violation of a specific obligation, with the same effect or the misapplication of such funds or assets for purposes other than those for which they were originally granted.

‘Grave professional misconduct’: a violation of applicable laws or regulations or ethical standards of the profession to which a person or entity belongs, or any wrongful conduct of a person or entity which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

‘Implementation period’: the period of implementation of the activities forming part of the action, as specified in Article I.2.2;

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

‘Irregularity’: any infringement of a provision of Union law resulting from an act or omission by a beneficiary, which has or would have the effect of prejudicing the Union’s budget;

‘Maximum amount of the grant’: the maximum EU contribution to the action, as defined in Article I.3.1;

‘Pre-existing material’: any materials, document, technology or know-how which exists prior to the beneficiary using it for the production of a result in the implementation of the action;

‘Pre-existing right’: any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or a right of use belonging to the beneficiary or any other third parties;

‘Related person’: any natural or legal person who is a member of the administrative, management or supervisory body of the beneficiary or who has powers of representation, decision or control with regard to the beneficiary;

‘Starting date’: the date on which the implementation of the action starts as provided for in Article I.2.2;

‘Subcontract’: a procurement contract within the meaning of Article II.10, which covers the implementation by a third party of tasks forming part of the action as described in Annex I.

ARTICLE II.2 — GENERAL OBLIGATIONS AND ROLES OF THE BENEFICIARIES

II.2.1 General obligations and role of the beneficiaries

The beneficiaries:

- (a) are jointly and severally liable for carrying out the *action* in accordance with the Agreement. If a beneficiary fails to implement its part of the *action*, the other beneficiaries become responsible for implementing this part (but without increasing the *maximum amount of the grant*);
- (b) must comply jointly or individually with any legal obligations they are bound by under applicable EU, international and national law;
- (c) must make appropriate internal arrangements to implement the *action* properly. The arrangements must be consistent with the terms of the Agreement. If provided for in the Special Conditions, those arrangements must take the form of an internal cooperation agreement between the beneficiaries.

II.2.2 General obligations and role of each beneficiary

Each beneficiary must:

- (a) inform the coordinator immediately of any events or circumstances of which the beneficiary is aware, that are likely to affect or delay the implementation of the *action*;
- (b) inform the coordinator immediately:
 - (i) of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representative;
 - (ii) of any change in the legal, financial, technical, organisational or ownership situation of its affiliated entities and of any change in their name, address or legal representative;
 - (iii) of any change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046, including for its affiliated entities;
- (c) submit in due time to the coordinator:
 - (i) the data needed to draw up the reports, financial statements and other documents provided for in the Agreement;
 - (ii) all the necessary documents required for audits, checks or evaluations as provided for in Article II.27.
 - (iii) any other information to be provided to the Commission under the Agreement, except if the Agreement requires such information to be submitted directly by the beneficiary.

II.2.3 General obligations and role of the coordinator

The coordinator:

- (a) must monitor the implementation of the *action* in order to make sure that the *action* is implemented in accordance with the terms of the Agreement;
- (b) is the intermediary for all communications between the beneficiaries and the Commission, except if provided otherwise in the Agreement. In particular, the coordinator:
 - (i) must immediately inform the Commission:
 - of any change in the name, address, legal representative of any of the beneficiaries or of their affiliated entities;
 - of any change in the legal, financial, technical, organisational or ownership situation of any of the beneficiaries or of their affiliated entities;
 - of any events or circumstances of which the coordinator is aware, that are likely to

affect or delay the implementation of the *action*;

- of any change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046, for any of the beneficiaries or their affiliated entities.

- (ii) is responsible for supplying the Commission with all documents and information required under the Agreement, except if provided otherwise in the Agreement itself. If information is required from the other beneficiaries, the coordinator is responsible for obtaining and verifying this information before passing it on to the Commission;
- (c) must make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) must draw up the requests for payment in accordance with the Agreement;
- (e) if it is designated as the sole recipient of payments on behalf of all of the beneficiaries, it must ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;
- (f) is responsible for providing all the necessary documents required for checks and audits initiated before the payment of the balance or documents required for evaluation as provided for in Article II.27.

The coordinator may not subcontract any part of its tasks to the other beneficiaries or to any other party.

ARTICLE II.3 — COMMUNICATION BETWEEN THE PARTIES

II.3.1 Form and means of communication

Any communication relating to the Agreement or to its implementation must:

- (a) be made in writing (in paper or electronic form);
- (b) bear the number of the Agreement; and
- (c) be made using the communication details identified in Article I.7.

If a party requests written confirmation of an electronic communication within a reasonable time, the sender must provide an original signed paper version of the communication as soon as possible.

II.3.2 Date of communications

Any communication is considered to have been made when the receiving party receives it, unless the Agreement states that communication is considered to have been made on the date when the communication was sent.

Email is considered to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in Article I.7. The sending party must be able to prove the date of dispatch. If the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication

by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Commission using the postal or courier services is considered to have been received by the Commission on the date on which it is registered by the department identified in Article I.7.2.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

ARTICLE II.4 — LIABILITY FOR DAMAGES

II.4.1 The Commission may not be held liable for any damage caused or sustained by any of the beneficiaries, including any damage caused to third parties as a consequence of or during the implementation of the *action*.

II.4.2 Except in cases of *force majeure*, the beneficiaries must compensate the Commission for any damage it sustains as a result of the implementation of the *action* or because the *action* was not implemented in full compliance with the Agreement.

ARTICLE II.5 — CONFLICT OF INTERESTS

II.5.1 The beneficiaries must take all necessary measures to prevent any situation of *conflict of interests*.

II.5.2 The beneficiaries must inform the Commission without delay of any situation constituting or likely to lead to a *conflict of interests*. They must take immediately all the necessary steps to rectify this situation.

The Commission may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

ARTICLE II.6 — CONFIDENTIALITY

II.6.1 During implementation of the *action* and for five years after the payment of the balance, the parties must treat with confidentiality any *confidential information and documents*.

II.6.2 The parties may only use *confidential information and documents* for a reason other than to fulfil their obligations under the Agreement if they have first obtained the prior written agreement of the other party.

II.6.3 The confidentiality obligations do not apply if:

- (a) the disclosing party agrees to release the other party from those obligations;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligations;
- (c) the disclosure of the *confidential information or documents* is required by law.

ARTICLE II.7 — PROCESSING OF PERSONAL DATA

II.7.1 Processing of personal data by the Commission

Any personal data included in the Agreement must be processed by the Commission in accordance with Regulation (EU) No 2018/1725.¹

Such data must be processed by the data controller identified in Article I.7.1 solely for implementing, managing and monitoring the Agreement or to protect the financial interests of the EU, including checks, audits and investigations in accordance with Article II.27.

The beneficiaries have the right to access, rectify or erase their own personal data and the right to restrict or, where applicable, the right to data portability or the right to object to data processing in accordance with Regulation (EU) No 2018/1725. For this purpose, they must send any queries about the processing of their personal data to the data controller identified in Article I.7.1.

The beneficiaries may have recourse at any time to the European Data Protection Supervisor.

II.7.2 Processing of personal data by the beneficiaries

The beneficiaries must process personal data under the Agreement in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The beneficiaries may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the Agreement. The beneficiary must ensure that the personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality.

The beneficiaries must adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing of the personal data concerned. This is in order to ensure, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

¹ 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.

- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

ARTICLE II.8 — VISIBILITY OF UNION FUNDING

II.8.1 Information on Union funding and use of the European Union emblem

Unless the Commission requests or agrees otherwise, any communication or publication made by the beneficiaries jointly or individually that relates to the *action*, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must:

- (a) indicate that the *action* has received funding from the Union; and
- (b) display the European Union emblem.

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

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

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the beneficiaries may use the European Union emblem without first obtaining permission from the Commission.

II.8.2 Disclaimers excluding Commission responsibility

Any communication or publication that relates to the *action*, made by the beneficiaries jointly or individually in any form and using any means, must indicate:

- (a) that it reflects only the author's view; and
- (b) that the Commission is not responsible for any use that may be made of the information it contains.

ARTICLE II.9 — PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

II.9.1 Ownership of the results by the beneficiaries

The beneficiaries retain 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 Agreement.

II.9.2 Pre-existing rights

If the Commission sends the beneficiaries a written request specifying which of the results it intends to use, the beneficiaries must:

- (a) establish a list specifying all *pre-existing rights* included in those results; and
- (b) provide this list to the Commission at the latest with the request for payment of the balance.

The beneficiaries must ensure that they or their affiliated entities have all the rights to use any *pre-existing rights* during the implementation of the Agreement.

II.9.3 Rights of use of the results and of pre-existing rights by the Union

The beneficiaries grant the Union the following rights to use the results of the *action*:

- (a) for its own purposes and in particular to make available to persons working for the Commission, other Union institutions, agencies and bodies and to Member States' institutions, as well as to copy and reproduce in whole or in part and in an 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 Commission, 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 in conformity with Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents if that Decision is applicable and if the documents fall within its scope and are not excluded by any of its provisions. For the sake of this provision, the terms 'reuse' and 'document' have the meanings given to them by Decision 2011/833/EU.

The above rights of use may be further specified in the Special Conditions.

Additional rights of use for the Union may be provided for in the Special Conditions.

The beneficiaries must ensure that the Union has the right to use any *pre-existing rights* included in the results of the *action*. The *pre-existing rights* must be used for the same

purposes and under the same conditions as applicable to the rights of use of the results of the *action*, unless specified otherwise in the Special Conditions.

Information about the copyright owner must be inserted in cases where the result is divulged by the Union. The copyright information must read: ‘© — year — name of the copyright owner. All rights reserved. Licenced to the European Union under conditions.’.

If the beneficiaries grant rights of use to the Commission, this does not affect its confidentiality obligations under Article II.6 or the beneficiaries’ obligations under Article II.2.1.

ARTICLE II.10 — AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION

II.10.1 If the implementation of the *action* requires the beneficiaries to procure goods, works or services, they may award the contract in accordance with their usual purchasing practices provided that the contract is awarded to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, they must avoid any *conflict of interests*.

The beneficiaries must ensure that the Commission, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.27 also towards the beneficiaries’ contractors.

II.10.2 Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2014/24/EU² or ‘contracting entities’ within the meaning of Directive 2014/25/EU³ must comply with the applicable national public procurement rules.

The beneficiaries must ensure that the conditions applicable to them under Articles II.4, II.5, II.6 and II.9 are also applicable to the contractors.

II.10.3 The beneficiaries remain solely responsible for carrying out the *action* and for compliance with the Agreement.

II.10.4 If the beneficiaries breach their obligations under Article II.10.1 the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (c), (d) and (e).

If the beneficiaries breach their obligations under Article II.10.2 the grant may be reduced in accordance with Article II.25.4.

² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

³ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

ARTICLE II.11 — SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION

II.11.1 Beneficiaries may subcontract tasks forming part of the *action*. If they do so, they must ensure that, in addition to the conditions specified in Article II.10, the following conditions are also complied with:

- (a) subcontracting does not cover core tasks of the *action*;
- (b) recourse to subcontracting is justified because of 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 coordinator and approved by the Commission. The Commission may grant approval:
 - (i) before any recourse to subcontracting, if the beneficiaries request an amendment as provided for in Article II.13; or
 - (ii) after recourse to subcontracting if the subcontracting:
 - is specifically justified in the interim or final technical report referred to in Articles I.4.3 and I.4.4; and
 - does not entail changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;
- (e) the beneficiaries ensure that the conditions applicable to them under Article II.8 are also applicable to the subcontractors.

II.11.2 If the beneficiaries breach their obligations under Article II.11.1 (a), (b), (c) or (d), the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (f).

If the beneficiaries breach their obligation under Article II.11.1 (e) the grant may be reduced in accordance with Article II.25.4.

ARTICLE II.12 — FINANCIAL SUPPORT TO THIRD PARTIES

II.12.1 If, while implementing the *action*, the beneficiaries have to give financial support to third parties, the beneficiaries must give such financial support in accordance with the conditions specified in Annex I. Under those conditions, the following information must be stated at least:

- (a) the maximum amount of financial support. This amount may not exceed EUR 60000 for each third party except if achieving the objective of the *action* as specified in Annex I would otherwise be impossible or overly difficult;
- (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 persons or categories of persons which may receive financial support;

(e) the criteria for giving the financial support.

II.12.2 As an exception to Article II.12.1, if the financial support takes the form of a prize, the beneficiaries must give such financial support in accordance with the conditions specified in Annex I. Under those conditions, the following information must at least be stated:

(a) the eligibility and award criteria;

(b) the amount of the prize;

(c) the payment arrangements.

II.12.3 The beneficiaries must ensure that the conditions applicable to them under Articles II.4, II.5, II.6, II.8, II.9 and II.27 are also applicable to the third parties receiving financial support.

ARTICLE II.13 — AMENDMENTS TO THE AGREEMENT

II.13.1 Any amendment to the Agreement must be made in writing.

II.13.2 An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.

II.13.3 Any request for amendment must:

(a) be duly justified;

(b) be accompanied by appropriate supporting documents; and

(c) be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the *implementation period*.

Point (c) does not apply in cases duly substantiated by the party requesting the amendment if the other party agrees.

II.13.4 A request for amendment on behalf of the beneficiaries must be submitted by the coordinator. If a change of coordinator is requested without its agreement, the request must be submitted by all other beneficiaries and must be accompanied by the opinion of the coordinator or proof that this opinion has been requested in writing.

II.13.5 Amendments enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

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

ARTICLE II.14 — ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES

II.14.1 The beneficiaries may not assign any of their claims for payment against the Commission to any third party, except if approved by the Commission on the basis of a reasoned, written request by the coordinator made on behalf of the beneficiaries.

If the Commission does not accept the assignment or the terms of it are not complied with, the assignment has no effect on it.

II.14.2 In no circumstances may an assignment release the beneficiaries from their obligations towards the Commission.

ARTICLE II.15 — *FORCE MAJEURE*

II.15.1 A party faced with *force majeure* must send a *formal notification* to the other party without delay, stating the nature of the situation or of the event, its likely duration and foreseeable effects.

II.15.2 The parties must take the necessary measures to limit any damage due to *force majeure*. They must do their best to resume the implementation of the *action* as soon as possible.

II.15.3 The party faced with *force majeure* may not be considered in breach of its obligations under the Agreement if it has been prevented from fulfilling them by *force majeure*.

ARTICLE II.16 — SUSPENSION OF THE IMPLEMENTATION OF THE ACTION

II.16.1 Suspension of implementation by the beneficiaries

The coordinator, on behalf of the beneficiaries, may suspend the implementation of the *action* or any part of it, if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*.

The coordinator must immediately inform the Commission, stating:

- (a) the reasons for suspension, including details about the date or period when the exceptional circumstances occurred; and
- (b) the expected date of resumption.

Once the circumstances allow the beneficiaries to resume implementing the *action*, the coordinator must inform the Commission immediately and present a request for amendment of the Agreement as provided for in Article II.16.3. This obligation does not apply if the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.17.1, II.17.2 or points (c) or (d) of Article II.17.3.1.

II.16.2 Suspension of implementation by the Commission

II.16.2.1 Grounds for suspension

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

- (a) if the Commission has evidence that a beneficiary has committed *irregularities, fraud* or *breach of obligations* in the award procedure or while implementing the Agreement;
- (b) if the Commission has evidence that a beneficiary has committed systemic or recurrent *irregularities, fraud* or serious *breach of obligations* in other grants funded by the Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and the *irregularities, fraud* or *breach of obligations* have a material impact on this grant; or
- (c) if the Commission suspects *irregularities, fraud* or *breach of obligations* committed by a beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

II.16.2.2 Procedure for suspension

Step 1 — Before suspending implementation of the *action*, the Commission must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to suspend the implementation;
 - (ii) the reasons for suspension;
 - (iii) the necessary conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.16.2.1; and
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

Step 2 — If the Commission does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinator informing it of:

- (a) the suspension of the implementation;
- (b) the reasons for suspension; and
- (c) the final conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.16.2.1.; or
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.16.2.1.,

The coordinator must immediately inform the other beneficiaries of the suspension. The suspension takes effect five calendar days after the *formal notification* is received by the coordinator or on a later date specified in the *formal notification*.

Otherwise, the Commission must send a *formal notification* to the coordinator informing it that it is not continuing the suspension procedure.

II.16.2.3 Resuming implementation

In order to resume the implementation, the beneficiaries must meet the notified conditions as soon as possible and must inform the Commission of any progress made.

If the conditions for resuming the implementation are met or the necessary verifications are carried out, the Commission must send a *formal notification* to the coordinator:

- (a) informing it that the conditions for lifting the suspension are met; and
- (b) requiring it to present a request for amendment of the Agreement as provided for in Article II.16.3. This obligation does not apply if the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.17.1, II.17.2 or points (c), (g) or (h) of Article II.17.3.1.

II.16.3 Effects of the suspension

If the implementation of the *action* can be resumed and the Agreement has not been terminated, an amendment to the Agreement must be made in accordance with Article II.13 in order to:

- (a) set the date on which the *action* is to be resumed;
- (b) extend the duration of the *action*; and
- (c) make other changes necessary to adapt the *action* to the new situation.

The suspension is lifted with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

Costs incurred during the period of suspension that relate to the implementation of the suspended *action* or the suspended part of it may not be reimbursed or covered by the grant.

Suspending implementation of the *action* does not affect the Commission's right to terminate the Agreement or to terminate the participation of a beneficiary in accordance with Article II.17.3, reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party may claim damages due to suspension by the other party.

ARTICLE II.17 — TERMINATION OF THE AGREEMENT

II.17.1 Termination of the Agreement by the coordinator

The beneficiaries may terminate the Agreement.

The coordinator must send a *formal notification* of termination to the Commission, stating:

- (a) the reasons for termination; and
- (b) the date on which the termination takes effect. This date must be set after the *formal notification*.

If the coordinator does not state the reasons for the termination or if the Commission considers that the reasons do not justify termination, the Agreement is considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

II.17.2 Termination of the participation of one or more beneficiaries by the coordinator

The participation of one or more beneficiaries may be terminated by the coordinator at the request of the beneficiary concerned or on behalf of the other beneficiaries.

The coordinator must send a *formal notification* of termination to the Commission and inform the beneficiary concerned by termination.

If the coordinator's participation is terminated without its agreement, the *formal notification* must be submitted by another beneficiary (acting on behalf of the other beneficiaries).

The *formal notification* must include:

- (a) the reasons for termination;
- (b) the opinion of the beneficiary concerned by termination (or proof that this opinion has been requested in writing);
- (c) the date on which the termination takes effect. This date must be set after the *formal notification*; and
- (d) a request for amendment as provided for in Article II.17.4.2(a).

If the coordinator or beneficiary does not state the reasons for the termination or if the Commission considers that the reasons do not justify termination, the participation will be considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

II.17.3 Termination of the Agreement or the participation of one or more beneficiaries by the Commission

II.17.3.1 Grounds for termination

The Commission may terminate the Agreement or the participation of any one or several beneficiaries, if:

- (a) a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Agreement substantially or calls into question the decision to award the grant, or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046, that calls into question the decision to award the grant;
- (b) following the termination of the participation of any one or several beneficiaries, the necessary modifications to the Agreement would call into question the decision awarding the grant or would result in unequal treatment of applicants;
- (c) the beneficiaries, any *related person* or any natural person who is essential for the award or for the implementation of the Agreement have committed serious *breach of obligations*, including improper implementation of the *action* as described in Annex I;
- (d) the implementation of the *action* is prevented or suspended due to *force majeure* or exceptional circumstances and either:

- (i) resumption is impossible; or
 - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;
- (e) a beneficiary or a natural or legal person that assumes unlimited liability for the debts of that beneficiary:
 - (i) is declared bankrupt, is subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a Court, has entered into an agreement with creditors, has suspended business activities or is in any analogous situation arising from a similar procedure provided for under the Union or national law;
 - (ii) is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- (f) a beneficiary or any *related person* or any natural person who is essential for the award or for the implementation of the Agreement has committed:
 - (i) *grave professional misconduct* proven by any means;
 - (ii) fraud;
 - (iii) corruption;
 - (iv) conduct related to criminal organisations;
 - (v) money laundering;
 - (vi) terrorism-related crimes (including terrorism financing);
 - (vii) child labour or other offences concerning trafficking of human beings;
- (g) the Commission has evidence that a beneficiary or any *related person* or any natural person who is essential for the award or for the implementation of the Agreement has committed *irregularities, fraud or breach of obligations* in the award procedure or while implementing the Agreement, including if that beneficiary, *related person* or natural person has submitted false information or failed to provide required information;
- (h) the Commission has evidence that a beneficiary has committed systemic or recurrent *irregularities, fraud* or serious *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;
- (i) a beneficiary or any *related person* or any natural person who is essential for the award or for the implementation of the Agreement has created an entity under a different jurisdiction with the intend to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business;
- (j) a beneficiary or any *related person* has been created with the intend referred to in point (i) or
- (k) the Commission has sent a beneficiary, through the coordinator, a *formal notification* asking it to end the participation of its affiliated entity because that entity is in a situation provided for in points (e) to (j) and that beneficiary has failed to request an amendment ending the participation of the entity and reallocating its tasks.

II.17.3.2 Procedure for termination

Step 1 — Before terminating the Agreement or participation of one or more beneficiaries, the Commission must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to terminate;
 - (ii) the reasons for termination; and
- (b) requiring it, within 45 calendar days of receiving the formal notification, :
 - (i) to submit observations on behalf of all beneficiaries; and
 - (ii) in the case of point (c) of Article II.17.3.1, to inform the Commission of the measures to ensure compliance with the obligations under the Agreement.

Step 2 — If the Commission does not receive observations or decides to pursue the procedure despite the observations it has received, it will send a *formal notification* to the coordinator informing it of the termination and the date on which it takes effect. The coordinator must immediately inform the other beneficiaries of the termination.

Otherwise, the Commission must send a *formal notification* to the coordinator informing it that the termination procedure is not continued.

The termination takes effect:

- (a) for terminations under points (a), (b), (c) and (e) of Article II.17.3.1: on the day specified in the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above);
- (b) for terminations under points (d), (f) and points (g) to (k) of Article II.17.3.1: on the day after the coordinator receives the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above).

II.17.4 Effects of termination

II.17.4.1 Effects of terminating the Agreement:

Within 60 calendar days from the day on which the termination takes effect, the coordinator must submit a request for payment of the balance as provided for in Article I.4.4.

If the Commission does not receive the request for payment of the balance by the above deadline, only costs or contributions which are included in an approved technical report and, where relevant, in an approved financial statement, are reimbursed or covered by the grant.

If the Agreement is terminated by the Commission because the coordinator has breached its obligation to submit the request for payment, the coordinator may not submit any request for payment after termination. In that case the second subparagraph applies.

The Commission calculates the final grant amount as referred to in Article II.25 and the balance as referred to in Article I.5.4 on the basis of the reports submitted. Only activities

undertaken before the date when the termination takes effect or the end date of the *implementation period* as specified in Article I.2.2, whichever is the earliest, must be taken into account. Where the grant takes the form of reimbursement of costs actually incurred as provided for in Article I.3.2(a)(i), only costs incurred before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not taken into account and are not reimbursed or covered by the grant.

The Commission may reduce the grant in accordance with Article II.25.4 in case of:

- (a) improper termination of the Agreement by the coordinator within the meaning of Article II.17.1; or
- (b) termination of the Agreement by the Commission on any of the grounds set out in points (c), (f) and points (g) to (j) of Article II.17.3.1.

Neither party may claim damages on the grounds that the other party terminated the Agreement.

After termination, the beneficiaries' obligations continue to apply, in particular those under Articles I.4, II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions.

II.17.4.2 Effects of terminating the participation of one or more beneficiaries:

(a) The coordinator must submit a request for amendment including:

- (i) a proposal to reallocate the tasks of the beneficiary or beneficiaries concerned by the termination; and
- (ii) if necessary, the addition of one or more new beneficiaries to succeed the beneficiary or beneficiaries concerned in all their rights and obligations under the Agreement.

If the Commission terminates the participation of a beneficiary, the coordinator must submit the request for amendment within 60 calendar days from the day on which the termination takes effect.

If the coordinator terminates the participation of a beneficiary, the request for amendment must be included in the *formal notification* of termination referred to in Article II.17.2.

If termination takes effect after the end of the *implementation period*, no request for amendment must be provided unless the beneficiary concerned is the coordinator. In this case, the request for amendment must propose a new coordinator.

If the request for amendment is rejected by the Commission, the Agreement may be terminated in accordance with Article II.17.3.1 (b). The request for amendment may be rejected if it calls into question the decision awarding the grant or is contrary to the equal treatment of applicants.

(b) The beneficiary concerned by termination must submit to the coordinator:

- (i) a technical report; and

- (ii) where applicable, a financial statement covering the period from the end of the last reporting period to the date when termination takes effect.

The coordinator must include this information in the payment request for the next reporting period.

Only activities undertaken before the date when the termination takes effect must be taken into account. Where the grant takes the form of reimbursement of costs actually incurred as provided for in Article I.3.2(a)(i), only costs incurred by the beneficiary concerned before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not reimbursed or covered by the grant.

The Commission may reduce the grant in accordance with Article II.25.4. in case of:

- (a) improper termination of the participation of a beneficiary by the coordinator within the meaning of Article II.17.2 or
- (b) termination of the participation of a beneficiary by the Commission on any of the grounds set out in points (c), (f), (g), (h) or (i) of Article II.17.3.1.

Neither party may claim damages on the grounds that the other party terminated the participation of a beneficiary.

After termination, the concerned beneficiary's obligations continue to apply, in particular those under Articles I.4, II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions.

ARTICLE II.18 — APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISIONS

II.18.1 The Agreement is governed by the applicable Union law, complemented, where necessary, by the law of Belgium.

II.18.2 In accordance with Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, has sole jurisdiction to hear any dispute between the Union and any beneficiary concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably.

II.18.3 In accordance with Article 299 TFEU, for the purposes of recovery within the meaning of Article II.26, the Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States.

An *action* may be brought against such decision before the General Court of the European Union in accordance with Article 263 TFEU.

PART B — FINANCIAL PROVISIONS

ARTICLE II.19 — ELIGIBLE COSTS

II.19.1 Conditions for the eligibility of costs

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

- (a) they are incurred within the *implementation period*, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article I.4.4;
- (b) they are indicated in the estimated budget of the *action*. The estimated budget is 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 they are recorded in the beneficiary's accounting records and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the beneficiary's usual cost accounting practices;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified and comply with the principle of sound financial management, in particular regarding economy and efficiency.

II.19.2 Eligible direct costs

To be eligible, the *direct cost* of the *action* must comply with the eligibility conditions set out in Article II.19.1.

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

- (a) the costs of personnel working under an employment contract with the beneficiary or an equivalent appointing act and assigned to the *action*, provided that these costs are in line with the beneficiary's usual policy on remuneration.

Those costs include actual salaries plus social security contributions and other statutory costs included in the remuneration. They may also comprise 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 or who are seconded to the beneficiary by a third party against payment may also be included under such personnel costs, provided that the following conditions are fulfilled:

- (i) the person works under conditions similar to those of an employee (in particular regarding the way the work is organised, the tasks that are performed and the premises where they are performed);

- (ii) the result of the work belongs to the beneficiary (unless exceptionally agreed otherwise); 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 beneficiary's accounting statements, provided that the asset:
 - (i) is written off in accordance with the international accounting standards and the beneficiary's usual accounting practices; and
 - (ii) has been purchased in accordance with Article II.10.1 if the purchase occurred within the *implementation period*;

The costs of renting or leasing 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 *implementation period* and the rate of actual use for the purposes of the *action* may be taken into account when determining the eligible costs. By way of exception, the full cost of purchase of equipment may be eligible under the Special Conditions, if this is 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:
 - (i) are purchased in accordance with Article II.10.1; and
 - (ii) are directly assigned to the *action*;
- (e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the *action*, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.10.1;
- (f) costs entailed by *subcontracts* within the meaning of Article II.11, provided that the conditions laid down in Article II.11.1 (a), (b), (c) and (d) are met;
- (g) costs of financial support to third parties within the meaning of Article II.12, provided that the conditions laid down in that Article 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 Agreement.

II.19.3 Eligible indirect costs

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

Eligible *indirect costs* must be declared on the basis of a flat rate of 7 % of the total eligible *direct costs* unless otherwise specified in Article I.3.2.

II.19.4 Ineligible costs

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

- (a) return on capital and dividends paid by a beneficiary;
- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) doubtful debts;
- (f) exchange losses;
- (g) costs of transfers from the Commission charged by the bank of a beneficiary;
- (h) costs declared by the beneficiary under another action receiving a grant financed from the Union budget. Such grants include grants awarded by a Member State and financed from the Union budget and grants awarded by bodies other than the Commission for the purpose of implementing the Union budget. In particular, beneficiaries receiving an operating grant financed by the EU or Euratom budget may not declare indirect costs for the period(s) covered by the operating grant, unless they can demonstrate that the operating grant does not cover any costs of the action.
- (i) contributions in kind from third parties;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.

ARTICLE II.20 — IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED

II.20.1 Declaring costs and contributions

Each beneficiary must declare as eligible costs or as a requested contribution:

- (a) for actual costs: the costs it actually incurred for the *action*;
- (b) for unit costs or unit contributions: the amount obtained by multiplying the amount per unit specified in Article I.3.2(a)(ii) or (b) by the actual number of units used or produced;
- (c) for lump sum costs or lump sum contributions: the global amount specified in Article I.3.2(a)(iii) or (c), if the corresponding tasks or part of the *action* as described in Annex I have been implemented properly;
- (d) for flat-rate costs or flat-rate contributions: the amount obtained by applying the flat rate specified in Article I.3.2(a)(iv) or (d);
- (e) for financing not linked to costs: the global amount specified in Article I.3.2(e), if the corresponding results or conditions as described in Annex I have been properly achieved or fulfilled;

- (f) for unit costs declared on the basis of the beneficiary's usual cost accounting practices: the amount obtained by multiplying the amount per unit calculated in accordance with the beneficiary's usual cost accounting practices by the actual number of units used or produced;
- (g) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: the global amount calculated in accordance with its usual cost accounting practices, if the corresponding tasks or part of the *action* have been implemented properly;
- (h) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: the amount obtained by applying the flat rate calculated in accordance with the beneficiary's usual cost accounting practices.

For the forms of grant referred to in points (b), (c), (d), (f), (g) and (h), the amounts declared must comply with the conditions specified in points (a) and (b) of Article II.19.1.

II.20.2 Records and other documentation to support the costs and contributions declared

Each beneficiary must provide the following if requested to do so in the context of the checks or audits described in Article II.27:

- (a) for actual costs: 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 and with the amounts indicated in the supporting documents;

- (b) for unit costs or unit contributions: adequate supporting documents to prove the number of units declared.

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared per unit;

- (c) for lump sum costs or lump sum contributions: adequate supporting documents to prove that the *action* has been properly implemented.

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared as a lump sum;

- (d) for flat-rate costs or flat-rate contributions: adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies.

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, for the flat rate applied;

- (e) for financing not linked to costs: adequate supporting documents to prove that the *action* has been properly implemented;

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared as a financing not linked to costs;

- (f) for unit costs declared on the basis of the beneficiary's usual cost accounting practices: adequate supporting documents to prove the number of units declared;
- (g) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: adequate supporting documents to prove that the *action* has been properly implemented;
- (h) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: adequate supporting documents to prove the eligible costs to which the flat rate applies.

II.20.3 Conditions to determine the compliance of cost accounting practices

II.20.3.1 In the case of points (f),(g) and (h) of Article II.20.2, 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 as provided for in Article I.3.2.

II.20.3.2 If the Special Conditions so provide, the beneficiary may submit to the Commission a request asking it to assess the compliance of its usual cost accounting practices. If required by the Special Conditions, the request must 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 must be:

- (a) produced by an approved auditor or, if the beneficiary is a public body, by a competent and independent public officer; and
- (b) drawn up in accordance with Annex VIII.

The certificate must certify that the beneficiary's cost accounting practices used for the purpose of declaring eligible costs comply with the conditions laid down in Article II.20.3.1 and with the additional conditions that may be laid down in the Special Conditions.

II.20.3.3 If the Commission has confirmed that the beneficiary's usual cost accounting practices are in compliance, costs declared in application of these practices may not be challenged *ex post*, if:

- (a) the practices actually used comply with those approved by the Commission; and

- (b) the beneficiary did not conceal any information for the purpose of the approval of its cost accounting practices.

ARTICLE II.21 — ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARIES

If the Special Conditions contain a provision on entities affiliated to the beneficiaries, costs incurred by such an entity are eligible, if:

- (a) they satisfy the same conditions under Articles II.19 and II.20 as apply to the beneficiary; and
- (b) the beneficiary to which the entity is affiliated ensures that the conditions applicable to the beneficiary under Articles II.4, II.5, II.6, II.8, II.10, II.11 and II.27 are also applicable to the entity.

ARTICLE II.22 — BUDGET TRANSFERS

Beneficiaries are allowed to adjust the estimated budget set out in Annex III by transfers between themselves and between the different budget categories, if the *action* is implemented as described in Annex I. This adjustment does not require an amendment of the Agreement as provided for in Article II.13.

However, the beneficiaries may not add costs relating to *subcontracts* not provided for in Annex 1, unless such additional *subcontracts* are approved by the Commission in accordance with Article II.11.1(d).

As an exception to the first subparagraph, if beneficiaries want to change the value of the contribution to which each of them is entitled, as referred to in point (c) of the third subparagraph of II.26.3, the coordinator must request an amendment as provided for in Article II.13.

The first three subparagraphs do not apply to amounts which, as provided for in Article I.3.2(a)(iii) or (c), take the form of lump sums or which, as provided for in Article I.3.2(e), take the form of financing not linked to cost.

ARTICLE II.23 — NON-COMPLIANCE WITH REPORTING OBLIGATIONS

The Commission may terminate the Agreement as provided for in Article II.17.3.1(c) and may reduce the grant as provided for in Article II.25.4 if the coordinator:

- (a) did not submit a request for interim payment or payment of the balance accompanied by the documents referred to in Articles I.4.3 or I.4.4 within 60 calendar days following the end of the corresponding reporting period; and
- (b) still fails to submit such a request within further 60 calendar days following a written reminder sent by the Commission.

ARTICLE II.24 — SUSPENSION OF PAYMENTS AND TIME LIMIT FOR PAYMENT

II.24.1 Suspension of payments

II.24.1.1 Grounds for suspension

The Commission may at any moment suspend, in whole or in part, the pre-financing payment and interim payments for one or more beneficiaries or the payment of the balance for all beneficiaries:

- (a) if the Commission has evidence that a beneficiary has committed *irregularities, fraud or breach of obligations* in the award procedure or while implementing the Agreement;
- (b) if the Commission has evidence that a beneficiary has committed systemic or recurrent *irregularities, fraud* or serious *breach of obligations* in other grants funded by the Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and such *irregularities, fraud or breach of obligations* have a material impact on this grant; or
- (c) if the Commission suspects *irregularities, fraud or breach of obligations* committed by a beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

II.24.1.2 Procedure for suspension

Step 1 — Before suspending payments, the Commission must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to suspend payments;
 - (ii) the reasons for suspension;
 - (iii) in the cases referred to in points (a) and (b) of Article II.24.1.1, the conditions that need to be met for payments to resume; and
- (b) inviting it to submit observations within 30 calendar days of receiving the *formal notification*.

Step 2 — If the Commission does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinator informing it of:

- (a) the suspension of payments;
- (b) the reasons for suspension;
- (c) the final conditions under which payments may resume in the cases referred to in points (a) and (b) of Article II.24.1.1;
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.24.1.1.

The coordinator must immediately inform the other beneficiaries of the suspension. The suspension takes effect on the day the Commission sends *formal notification* of suspension (Step 2).

Otherwise, the Commission must send a *formal notification* to the coordinator informing it that it is not continuing with the suspension procedure.

II.24.1.3 Effects of suspension

During the period of suspension of payments the coordinator is not entitled to submit:

- (a) any requests for payments and supporting documents referred to in Articles I.4.2, I.4.3 and I.4.4; or
- (b) where the suspension concerns the pre-financing payments or interim payments for one or several beneficiaries only, any requests for payments and supporting documents relating to the participation of the concerned beneficiary or beneficiaries in the *action*.

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 I.4.1.

The suspension of payments does not affect the right of the coordinator to suspend the implementation of the *action* as provided for in Article II.16.1 or to terminate the Agreement or the participation of a beneficiary as provided for in Articles II.17.1 and II.17.2.

II.24.1.4 Resuming payments

In order for the Commission to resume payments, the beneficiaries must meet the notified conditions as soon as possible and must inform the Commission of any progress made.

If the conditions for resuming payments are met, the suspension will be lifted. The Commission will send a *formal notification* to the coordinator informing it of this.

II.24.2 Suspension of the time limit for payments

II.24.2.1 The Commission may at any moment suspend the time limit for payment specified in Articles I.5.2, I.5.3 and I.5.4 if a request for payment cannot be approved because:

- (a) it does not comply with the Agreement;
- (b) the appropriate supporting documents have not been produced; or
- (c) there is a doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

II.24.2.2 The Commission must send a *formal notification* to the coordinator informing it of:

- (a) the suspension; and
- (b) the reasons for the suspension.

The suspension takes effect on the day the Commission sends the *formal notification*.

II.24.2.3 If the conditions for suspending the payment deadline are no longer met, the suspension will be lifted and the remaining period will resume.

If the suspension exceeds two months, the coordinator may request the Commission if the suspension will continue.

If the payment deadline has been suspended because the technical reports or financial statements do not comply with the Agreement and the revised report or statement is not submitted or was submitted but is also rejected, the Commission may terminate the Agreement or the participation of the beneficiary as provided for in Article II.17.3.1(c) and reduce the grant as provided for in Article II.25.4.

ARTICLE II.25 — CALCULATION OF THE FINAL AMOUNT OF THE GRANT

The final amount of the grant depends on the extent to which the *action* has been implemented in accordance with the terms of the Agreement.

The final amount of the grant is calculated by the Commission at the time of the payment of the balance. The calculation involves the following steps:

Step 1 — Application of the reimbursement rate to the eligible costs and addition of the financing not linked to costs, unit, flat-rate and lump sum contributions

Step 2 — Limit to the *maximum amount of the grant*

Step 3 — Reduction due to the no-profit rule

Step 4 — Reduction due to improper implementation, *irregularity*, *fraud* or breach of other obligations.

II.25.1 Step 1 — Application of the reimbursement rate to the eligible costs and addition of the financing not linked to costs, unit, flat-rate and lump sum contributions

This step is applied as follows:

- (a) If, as provided for in Article I.3.2(a)(i), the grant takes the form of the reimbursement of eligible costs actually incurred, the reimbursement rate specified in that Article is applied to those eligible costs as approved by the Commission for the corresponding categories of costs, beneficiaries and affiliated entities
- (b) If, as provided for in Article I.3.2(a) (ii) to (v), the grant takes the form of the reimbursement of eligible unit costs, lump sum costs or flat rate costs, the reimbursement rate specified in that Article is applied to those eligible costs as approved by the Commission for the corresponding categories of costs, beneficiaries and affiliated entities;

The accepted amount of volunteers' work for the corresponding beneficiaries and affiliated entities must be limited to the following amount, whichever is the lowest:

- (i) the total sources of financing as indicated in the estimated budget set out in Annex III and as accepted by the Commission multiplied by fifty per cent; or
 - (ii) the amount of volunteers' work as indicated in the final financial statement.
- (c) If, as provided for in Article I.3.2(b), the grant takes the form of a unit contribution, the unit contribution specified in that Article is multiplied by the actual number of

units approved by the Commission for the corresponding beneficiaries and affiliated entities;

- (d) If, as provided for in Article I.3.2(c), the grant takes the form of a lump sum contribution, the Commission applies the lump sum specified in that Article for the corresponding beneficiaries and affiliated entities if it finds that the corresponding tasks or part of the *action* were implemented properly in accordance with Annex I;
- (e) If, as provided for in Article I.3.2(d), the grant takes the form of a flat-rate contribution, the flat rate referred to in that Article is applied to the eligible costs or to the contribution approved by the Commission for the corresponding beneficiaries and affiliated entities;
- (f) If, as provided for in Article I.3.2(e), the grant takes the form of financing not linked to costs, the Commission applies the amount specified in that Article for the corresponding beneficiaries and affiliated entities if it finds that [the conditions specified in Annex I were fulfilled][and][the results specified in Annex I were achieved].

If Article I.3.2 provides for a combination of different forms of grant, the amounts obtained must be added together.

II.25.2 Step 2 — Limit to *maximum amount of the grant*

The total amount paid to the beneficiaries by the Commission may in no circumstances exceed the *maximum amount of the grant*.

If the amount obtained following Step 1 is higher than this maximum amount, the final amount of the grant is limited to the latter.

If volunteers' work is declared as part of direct eligible costs, the final amount of the grant is limited to the amount of total eligible costs and contributions approved by the Commission minus the amount of volunteers' work approved by the Commission.

II.25.3 Step 3 — Reduction due to the no-profit rule

The grant may not produce a profit for the beneficiaries, unless specified otherwise in the Special Conditions.

The profit must be calculated as follows:

- (a) calculate the surplus of the total receipts of the action, over the total eligible costs of the action, as follows:

{ receipts of the action

minus

consolidated total eligible costs and contributions approved by the Commission
corresponding to the amounts determined in accordance with Article II.25.1 }

The receipts of the action are calculated as follows:

- { the revenue generated by the *action* for beneficiaries and affiliated entities other than non-profit organisations
- plus
- the amount obtained following Steps 1 and 2 }

where the revenue generated by the *action* is the consolidated revenue established, generated or confirmed for beneficiaries and affiliated entities other than non-profit organisations on the date on which the request for payment of the balance is drawn up by the coordinator.

In-kind and financial contributions by third parties are not considered receipts.

- (b) If the amount calculated under point (a) is positive, this amount will be deducted from the amount calculated following Steps 1 and 2, in proportion to the final rate of reimbursement of the actual eligible costs of the *action* approved by the Commission for the categories of costs referred to in Article I.3.2(a)(i).

II.25.4 Step 4 — Reduction due to improper implementation, irregularity, fraud or breach of other obligations

The Commission may reduce the *maximum amount of the grant* if the *action* has not been implemented properly as described in Annex I (i.e. if it has not been implemented or has been implemented poorly, partially or late), or in case of *irregularity, fraud* or breach of an obligation under the Agreement.

The amount of the reduction will be proportionate to the degree to which the *action* has been implemented improperly or to the seriousness of the *irregularity, fraud* or *breach of obligation*.

Before the Commission reduces the grant, it must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to reduce the *maximum amount of the grant*;
 - (ii) the amount by which it intends to reduce the grant;
 - (iii) the reasons for reduction;
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

If the Commission does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a *formal notification* informing the coordinator of its decision.

If the grant is reduced, the Commission must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the

action or to the seriousness of the *irregularity, fraud* or *breach of obligations*) from the *maximum amount of the grant*.

The final amount of the grant will be the lower of the following two:

- (a) the amount obtained following Steps 1 to 3; or
- (b) the reduced grant amount following Step 4.

ARTICLE II.26 — RECOVERY

II.26.1 Recovery at the time of payment of the balance

Where the payment of the balance takes the form of a recovery, the coordinator must repay the Commission the amount in question, even if it was not the final recipient of the amount due.

II.26.2 Recovery after payment of the balance

Where an amount is to be recovered as provided for in Articles II.27.6, II.27.7 and II.27.8, the beneficiary concerned by the audit or OLAF findings must repay the Commission the amount in question. Where the audit findings do not concern a specific beneficiary (or its affiliated entities), the coordinator must repay the Commission the amount in question, even if it was not the final recipient of the amount due.

Each beneficiary is responsible for the repayment of any amount unduly paid by the Commission as a contribution towards the costs incurred by its affiliated entities.

II.26.3 Recovery procedure

Before recovery, the Commission must send a *formal notification* to the beneficiary concerned:

- (a) informing it of its intention to recover the amount unduly paid;
- (b) specifying the amount due and the reasons for recovery; and
- (c) 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 Commission decides to pursue the recovery procedure, the Commission may confirm recovery by sending a *formal notification* to the beneficiary consisting of a debit note, specifying the terms and the date for payment.

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

- (a) by offsetting it, without the beneficiary's prior consent, against any amounts owed to the beneficiary by the Commission or an executive agency (from the Union or the European Atomic Energy Community (Euratom) budget) ('offsetting');

In exceptional circumstances, to safeguard the financial interests of the Union, the Commission may offset before the due date.

An action may be brought against such offsetting before the General Court of the European Union in accordance with Article 263 TFEU;

- (b) by drawing on the financial guarantee where provided for in accordance with Article I.5.2 ('drawing on the financial guarantee');
- (c) by holding the beneficiaries jointly and severally liable up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (Annex III as last amended);
- (d) by taking legal action as provided for in Article II.18.2 or in the Special Conditions or by adopting an enforceable decision as provided for in Article II.18.3.

II.26.4 Interest on late payment

If payment is not made by the date in the debit note, the amount to be recovered will be increased by late-payment interest at the rate set out in Article I.5.6 from the day following the date for payment in the debit note up to and including the date the Commission receives full payment of the amount.

Partial payments must first be credited against charges and late-payment interest and then against the principal.

II.26.5 Bank charges

Bank charges incurred in the recovery process must be borne by the beneficiary concerned, unless Directive 2007/64/EC⁴ applies.

ARTICLE II.27 — CHECKS, AUDITS AND EVALUATIONS

II.27.1 Technical and financial checks, audits, interim and final evaluations

The Commission may, during the implementation of the *action* or afterwards, carry out technical and financial checks and audits to determine that the beneficiaries are implementing the *action* properly and are complying with the obligations under the Agreement. It may also check the beneficiaries' statutory records for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided as part of checks or audits must be treated on a confidential basis.

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

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

⁴ 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.

The Commission may initiate such checks, audits or evaluations during the implementation of the Agreement and during a period of five years starting from the date of payment of the balance. This period is limited to three years if the *maximum amount of the grant* is not more than EUR 60 000.

The check, audit or evaluation procedures are considered to be initiated on the date of receipt of the letter of the Commission announcing it.

If the audit is carried out on an affiliated entity, the beneficiary concerned must inform that affiliated entity.

II.27.2 Duty to keep documents

The beneficiaries must keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, during a period of five years starting from the date of payment of the balance.

The period during which documents must be kept is limited to three years if the *maximum amount of the grant* is not more than EUR 60 000.

The periods set out in the first and second subparagraphs are longer if there are ongoing audits, appeals, litigation or pursuit of claims concerning the grant, including in the cases referred to in Article II.27.7. In such cases, the beneficiaries must keep the documents until such audits, appeals, litigation or pursuit of claims have been closed.

II.27.3 Obligation to provide information

Where a check, audit or evaluation is initiated before the payment of the balance, the coordinator must provide any information, including information in electronic format, requested by the Commission or by any other outside body authorised by the Commission. Where appropriate, the Commission may request that a beneficiary provides such information directly.

Where a check or audit is initiated after payment of the balance, the information referred to in the previous subparagraph must be provided by the beneficiary concerned.

If the beneficiary concerned does not comply with the obligations set out in the first and second subparagraphs, the Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any financing not linked to costs, unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.4 On-the-spot visits

During an on-the-spot visit, the beneficiaries must allow Commission staff and outside personnel authorised by the Commission 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.

They must 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.

If the beneficiary concerned refuses to provide access to the sites, premises and information as required in the first and second subparagraphs, the Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any financing not linked to costs, unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.5 Contradictory audit procedure

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

II.27.6 Effects of audit findings

On the basis of the final audit findings, the Commission may take the measures it considers necessary, including recovery at the time of payment of the balance or after payment of the balance of all or part of the payments made by it, as provided for in Article II.26.

In the case of final audit findings after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the grant, determined in accordance with Article II.25, and the total amount paid to the beneficiaries under the Agreement for the implementation of the *action*.

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

II.27.7.1 The Commission may extend audit findings from other grants to this grant if:

- (a) the beneficiary concerned is found to have committed systemic or recurrent *irregularities, fraud or breach of obligations* in other EU or Euratom grants awarded under similar conditions and such *irregularities, fraud or breach of obligations* have a material impact on this grant; and
- (b) the final audit findings are sent to the beneficiary concerned through a *formal notification*, together with the list of grants affected by the findings within the period referred to in Article II.27.1.

The extension of findings may lead to:

- (a) the rejection of costs as ineligible;
- (b) reduction of the grant as provided for in Article II.25.4;
- (c) recovery of undue amounts as provided for in Article II.26;
- (d) suspension of payments as provided for in Article II.24.1;
- (e) suspension of the *action* implementation as provided for in Article II.16.2;
- (f) termination as provided for in Article II.17.3.

II.27.7.2 The Commission must send a *formal notification* to the beneficiary concerned informing it of the systemic or recurrent *irregularities, fraud or breach of obligations* and of its intention to extend the audit findings, together with the list of grants affected.

(a) If the findings concern eligibility of costs the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to submit observations on the list of grants affected by the findings;
- (ii) a request to submit revised financial statements for all grants affected;
- (iii) where possible, the correction rate for extrapolation established by the Commission to calculate the amounts to be rejected on the basis of the systemic or recurrent *irregularities, fraud or breach of obligations*, if the beneficiary concerned:
 - considers that the submission of revised financial statements is not possible or practicable; or
 - will not submit revised financial statements.

Step 2 — The beneficiary concerned has 60 calendar days from when it receives the *formal notification* to submit observations and revised financial statements or to propose a duly substantiated alternative correction method. This period may be extended by the Commission in justified cases.

Step 3 — If the beneficiary concerned submits revised financial statements that take account of the findings the Commission will determine the amount to be corrected on the basis of those revised statements.

If the beneficiary proposes an alternative correction method and the Commission accepts it, the Commission must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it accepts the alternative method;
- (ii) of the revised eligible costs determined by applying this method.

Otherwise the Commission must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it does not accept the observations or the alternative method proposed;
- (ii) of the revised eligible costs determined by applying the extrapolation method initially notified to the beneficiary.

If the systemic or recurrent *irregularities, fraud or breach of obligations* are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by the Commission or on the basis of the revised eligible costs after extrapolation; and
- (ii) the total amount paid to the beneficiaries under the Agreement for the implementation of the *action*;

- (b) If the findings concern improper implementation or a breach of another obligation the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to the beneficiary to submit observations on the list of grants affected by the findings and
- (ii) the correction flat rate the Commission intends to apply to the *maximum amount of the grant* or to part of it, according to the principle of proportionality.

Step 2 — The beneficiary concerned has 60 calendar days from receiving the *formal notification* to submit observations or to propose a duly substantiated alternative flat-rate.

Step 3 — If the Commission accepts the alternative flat rate proposed by the beneficiary, it must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it accepts the alternative flat-rate;
- (ii) of the corrected grant amount by applying this flat rate.

Otherwise the Commission must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it does not accept the observations or the alternative flat rate proposed;
- (ii) of the corrected grant amount by applying the flat rate initially notified to the beneficiary.

If the systemic or recurrent *irregularities, fraud* or *breach of obligations* are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant after flat-rate correction; and
- (ii) the total amount paid to the beneficiaries under the Agreement for the implementation of the *action*.

II.27.8 Rights of OLAF

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

Under Council Regulation (Euratom, EC) No 2185/96⁵ and Regulation (EU, Euratom) No 883/2013⁶ 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*.

⁵ 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.

⁶ 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).

Where appropriate, OLAF findings may lead to the Commission recovering amounts from beneficiaries.

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

II.27.9 Rights of the European Court of Auditors and EPPO

The European Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939⁷ ('the EPPO') have the same rights as the Commission, particularly the right of access, for the purpose of checks, audits and investigations.

⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office