



## ANNEX I — GENERAL CONDITIONS

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## PART A — LEGAL AND ADMINISTRATIVE PROVISIONS

### ARTICLE II.1 — DEFINITIONS

The following definitions apply for the purpose of the Agreement:

**‘Project’:** the set of activities or the actions for which the grant is awarded, to be implemented by the beneficiaries as described in Annex II.

**‘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, or any other shared interest with the Agency, 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 project 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 project, as specified in Article I.2.2;



**‘Indirect costs’:** those costs which are not specific costs directly linked to the implementation of the project 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 project, 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 project;

**‘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 person who has the power to represent the beneficiary or to take decisions on its behalf;

**‘Starting date’:** the date on which the implementation of the project 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 project as described in Annex II;

## **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 *project* in accordance with the Agreement. If a beneficiary fails to implement its part of the *project*, 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 *project* 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.
- (d) maintain up-to-date books of account, in accordance with the usual accounting conventions imposed on them by law and existing regulations;



- (e) not act, in the context of the project, as sub-contractor or supplier to any other beneficiary;
- (f) contribute financially to the project;

### **II.2.2 General obligations and role of each beneficiary**

Each associated beneficiary must:

- (a) inform the coordinating beneficiary immediately of any change likely to affect or delay the implementation of the project of which the beneficiary is aware, and, for LIFE Nature Integrated projects, of any activity by third parties that is likely to have a significant negative impact on the sites/species targeted in the project, and if appropriate to take measures to persuade third parties to refrain from such activities;
- (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 coordinating beneficiary:
  - (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 Agency under the Agreement, except if the Agreement requires such information to be submitted directly by the beneficiary to the Agency.

### **II.2.3 General obligations and role of the coordinating beneficiary**

The coordinating beneficiary:

- (a) must monitor the implementation of the *project* in order to make sure that is implemented in accordance with the terms of the Agreement;
- (b) is the intermediary for all communications between the beneficiaries and the Agency, except if provided otherwise in the Agreement. In particular, the coordinating beneficiary:
  - (i) must immediately inform the Agency:
    - 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 coordinating beneficiary is aware, that are likely to affect or delay the implementation of the *project*.

- for LIFE Nature Integrated projects, of any activity by third parties that is likely to have a significant negative impact on the sites/species targeted in the project, and if appropriate to take measures to persuade third parties to refrain from such activities;

(ii) is responsible for supplying the Agency 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 coordinating beneficiary is responsible for obtaining and verifying this information before passing it on to the Agency;

(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 within 30 days of the receipt of the funds paid by the Agency unless there is a justified delay. The coordinating beneficiary shall inform the Agency of the distribution of the Union contribution;

(f) bear responsibility for providing all the necessary documents in the event of checks and audits initiated before the payment of the balance, and in the event of evaluation in accordance with Article II.27 as well as for retaining copies of all supporting documents of all the associated beneficiaries for at least five years after the balance payment.

The coordinating beneficiary may not subcontract any part of its tasks described in points (a) to (f) to the other beneficiaries or to any other party.

#### **II.2.4 The role of the external monitoring team**

To follow up the project, the Agency selected an external monitoring team (hereinafter “*the external monitoring team*”) to assist it by following and assessing the projects progress and their coherence with the actual costs incurred.

*The external monitoring team* shall not be authorised to take any decision on behalf of the Agency. A recommendation or a statement provided by the external monitoring team to the beneficiaries cannot be interpreted as representing a position of the Agency.

### **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 the acronym; and
- (c) be made using the communication details identified in Article I.6.

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.

Before communicating directly with the Agency, the coordinating beneficiary shall consult *the external monitoring team*. Any correspondence relating to the Agreement or to its implementation sent by the coordinating beneficiary to the Agency shall be sent in parallel to *the external monitoring team*.

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

### **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 successful dispatch of that email, provided that it is sent to the email address indicated in Article I.6. 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 Agency using the postal or courier services is considered to have been received by the Agency on the date on which it is registered by the unit identified in Article I.6.2 or on the date on which it is received by the *external monitoring team*, whichever of these dates is later.

*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 Agency 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 *project*.

**II.4.2** Except in cases of *force majeure*, the beneficiaries must compensate the Agency for any damage it sustains as a result of the implementation of the *project* or because the *project* 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 Agency 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 Agency 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 *project* 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
- (d) the Agency shares *confidential information or documents* with the European Commission.

**II.6.4** *The external monitoring team* shall act under the same confidentiality rules as those stipulated for the beneficiaries and the Agency.

## **ARTICLE II.7 — PROCESSING OF PERSONAL DATA**

### **II.7.1 Processing of personal data by the Agency**

Any personal data included in the Agreement must be processed by the Agency in accordance with Regulation (EC) No 2018/1725.<sup>3</sup>

Such data must be processed by the data controller identified in Article I.6.1 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.

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<sup>3</sup> 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



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;
- (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.
- (f) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (g) design their organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.8 — VISIBILITY OF UNION FUNDING**

### **II.8.1 Information on Union funding and use of the LIFE Programme and Natura 2000 logos**

- a) Unless the Agency requests or agrees otherwise, any communication or publication made by the beneficiaries jointly or individually that relates to the project, including at



conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must:

- i. indicate that the project has received funding from the Union; and
- ii. display the *LIFE Programme logo* (Annex II to the LIFE Regulation, <https://ec.europa.eu/easme/en/life-communication>). For audio-visual material, the credits at the beginning and/or at the end shall include an explicit audible and readable mention to the LIFE financial support (e.g. “With the contribution of the LIFE Programme of the European Union”).

All durable goods acquired in the frame of the project shall bear the LIFE logo unless otherwise specified by the Agency

When displayed in association with another logo, the *LIFE Programme logo* must have appropriate prominence.

The obligation to display the *LIFE Programme logo* does not confer on the beneficiaries a right of exclusive use. The beneficiaries may not appropriate the *LIFE Programme logo* 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 *LIFE Programme logo* without first obtaining permission from the Agency.

For projects in Natura 2000 sites or contributing to the integrity of the Natura 2000 network, the obligations regarding the LIFE Programme logo also apply for the Natura 2000 logo (<https://ec.europa.eu/easme/en/life-communication>). The project’s importance in terms of establishing the Natura 2000 network must be described in the notice boards and on the websites.

- b) The coordinating beneficiary shall create a *project website* or use an existing website in at least one official language of the European Union for the dissemination of project activities, progress and results. The web address where the main results of the project are available to the public shall be indicated in the reports. This website shall be online at the latest six months after the starting date as specified in Article 1.2.2, shall be regularly updated and shall be kept for at least five years after the end of the project. A summary of the project in English language, including name and contact information of the coordinating beneficiary, will be placed on the LIFE website and made available to the general public.
- c) The beneficiaries shall erect and maintain *notice boards* describing the project at the locations where it is implemented, at strategic places accessible and visible to the public.

### **II.8.2 Disclaimers excluding Agency responsibility**

Any communication or publication that relates to the project, 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 Agency 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 project, including industrial and intellectual property rights, and of the reports and other documents relating to it, unless stipulated otherwise in the Agreement.

With a view to promoting the use of techniques or models favourable to the environment, the beneficiaries are encouraged to make available throughout the Union all documents, patents and know-how directly resulting from the project implementation , on non-discriminatory and reasonable commercial conditions.

### **II.9.2 Pre-existing rights**

If the Agency 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 Agency 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 and the Commission/Agency the following rights to use the results of the project:

- (a) for its own purposes and in particular to make available to persons working for the Agency/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 Agency/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.
- (i) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription of the LIFE Key Project Indicators collected by the beneficiaries in relation to the project.

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 project. 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 project, 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 Agency/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 PROJECT**

**II.10.1** If the implementation of the *project* requires the beneficiaries to procure goods, works or services, they must award the contract 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*. Tendering procedures shall comply with the principles of transparency and equal treatment of potential contractors. The beneficiaries must maintain a written record of the procedure used to ensure that these conditions are fulfilled in the tendering procedure in accordance with their usual procurement policy and/or practise.

The beneficiaries must ensure that the Agency/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.



Where the value of a contract exceeds EUR 139,000, all beneficiaries shall use an open tendering procedure, including a publication of the call for tender(s) in the relevant media. To establish the relevant threshold, the beneficiary shall consider together the value of all linked items.

Below the threshold of EUR 139,000 or the threshold set out in the applicable public national procurement rules, the beneficiary shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests and maintain written evidence of how the criterion of best value for money was met in accordance with the usual procurement policy and/or practise of the beneficiary.

**II.10.2** Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2014/24/EU<sup>4</sup> or ‘contracting entities’ within the meaning of Directive 2014/25/EU<sup>5</sup> 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 *project* 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.

## **ARTICLE II.11 — SUBCONTRACTING OF TASKS FORMING PART OF THE PROJECT**

**II.11.1** Beneficiaries may subcontract tasks forming part of the *project*. 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 *project*;
- (b) recourse to subcontracting is justified because of the nature of the *project* 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;

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<sup>4</sup> 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

<sup>5</sup> 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



any recourse to subcontracting, if not provided for in Annex II and III, is communicated by the coordinating beneficiary and approved by the Agency. The Agency may grant approval after recourse to subcontracting if the subcontracting:

- is specifically justified in the mid term 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;

(d) the beneficiaries ensure that

- i. the conditions applicable to them under Article II.8 are also applicable to the subcontractors.
- ii. all invoices issued by subcontractors are sufficiently detailed as to allow identification of single items covered by the service delivered (i.e. clear description and cost of each item).

**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** Where the implementation of the project requires giving financial support to third parties, the beneficiaries shall give such financial support in accordance with the conditions specified in Annex II, which shall at least contain:

- (a) the maximum amount of financial support, which shall not exceed EUR 15 000 for each third party and a total of EUR 100 000 for the project period;
- (b) the criteria for determining the exact amount of the financial support;
- (c) the different types of activity that may receive financial support, on the basis of a fixed list;
- (d) the definition of the persons or categories of persons which may receive financial support;
- (e) the criteria for giving the financial support.

**II.12.2** Financial support in the form of prizes is not allowed.

**II.12.3** The beneficiaries shall ensure that the conditions applicable to them under Articles II.3, II.4, II.5, II.7, II.8 and II.27 are also applicable to the third parties receiving financial support.





## **ARTICLE II.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.

Only substantial changes require a formal amendment of the Agreement and will only be accepted in duly justified cases.

Three months before the end of each project phase as specified in Annex II, the coordinating beneficiary submits an amendment request to update the implementation plan including the budget for the following project phase.

**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 coordinating beneficiary. If a change of coordinating beneficiary is requested without its agreement, the request must be submitted by all other beneficiaries and must be accompanied by the opinion of the coordinating beneficiary 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 Agency to any third party, except if approved by the Agency on the basis of a reasoned, written request by the coordinating beneficiary made on behalf of the beneficiaries.

If the Agency 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 Agency.

## **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 *project* 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 PROJECT**

### **II.16.1 Suspension of implementation by the beneficiaries**

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

The coordinating beneficiary must immediately inform the Agency, 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 *project*, the coordinating beneficiary must inform the Agency 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 Agency**

#### **II.16.2.1 Grounds for suspension**

The Agency may suspend the implementation of the *project* or any part thereof:

- (a) if the Agency 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 Agency 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 errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (c) if the Agency 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 *project*, the Agency must send a *formal notification* to the coordinating beneficiary:

- (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 Agency does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinating beneficiary 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 coordinating beneficiary must immediately inform the other beneficiaries of the suspension. The suspension takes effect five calendar days after the *formal notification* is received by the coordinating beneficiary or on a later date specified in the *formal notification*.

Otherwise, the Agency must send a *formal notification* to the coordinating beneficiary 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 Agency of any progress made.

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

- (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 *project* 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 *project* is to be resumed;
- (b) extend the duration of the *project*; and
- (c) make other changes necessary to adapt the *project* 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 *project* or the suspended part of it may not be reimbursed or covered by the grant.

Suspending implementation of the *project* does not affect the Agency'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 coordinating beneficiary**

The beneficiaries may terminate the Agreement.

The coordinating beneficiary must send a *formal notification* of termination to the Agency, 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 coordinating beneficiary does not state the reasons for the termination or if the Agency 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 coordinating beneficiary**

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

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



If the coordinating beneficiary's participation is terminated without its agreement, the *formal notification* must be submitted by another associated beneficiary (acting on behalf of the other associated 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 coordinating beneficiary or beneficiary does not state the reasons for the termination or if the Agency 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 Agency**

#### **II.17.3.1 Grounds for termination**

The Agency 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 *project* as described in Annex II;
- (d) the implementation of the *project* 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 Agency 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 or breach of obligations* in the award procedure or while implementing the Agreement, including if that beneficiary or *related person* or natural person has submitted false information or failed to provide required information;
- (h) the Agency 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 or any natural person who is essential for the award or for the implementation of the Agreement has been created with the intend referred to in point (i) or
- (k) the Agency has sent a beneficiary, through the coordinating beneficiary, 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 Agency must send a *formal notification* to the coordinating beneficiary:

- (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 Agency of the measures to ensure compliance with the obligations under the Agreement.

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

Otherwise, the Agency must send a *formal notification* to the coordinating beneficiary 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), (g), (h) and (i) of Article II.17.3.1: on the day after the coordinating beneficiary 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 coordinating beneficiary must submit a request for payment of the balance as provided for in Article I.4.4.

If the Agency does not receive the request for payment of the balance by the above deadline, only costs 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 Agency because the coordinating beneficiary has breached its obligation to submit the request for payment, the coordinating beneficiary may not submit any request for payment after termination. In that case the second subparagraph applies.

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

- (a) improper termination of the Agreement by the coordinating beneficiary within the meaning of Article II.17.1; or
- (b) termination of the Agreement by the Agency on any of the grounds set out in points (c), (f), (g), (h) and (i) 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 coordinating beneficiary 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 Agency terminates the participation of a beneficiary, the coordinating beneficiary must submit the request for amendment within 60 calendar days from the day on which the termination takes effect.

If the coordinating beneficiary 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 coordinating beneficiary. In this case, the request for amendment must propose a new coordinating beneficiary.

If the request for amendment is rejected by the Agency, 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 coordinating beneficiary:
  - (i) a technical report; and
  - (ii) a financial statement covering the period from the end of the last reporting period to the date when termination takes effect.

The coordinating beneficiary 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 Agency 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 coordinating beneficiary within the meaning of Article II.17.2 or
- (b) termination of the participation of a beneficiary by the Agency 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 Agency/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 *project* 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;

A cost shall be considered as incurred in the *implementation period* when the legal obligation to pay was contracted after the starting date and before the end date of the project, or after the signature of the grant agreement by the Agency in case this signature takes place before the project starting date;

- (b) they are indicated in the estimated budget of the *project*. The estimated budget is set out in Annex III;
- (c) they are incurred in connection with the *project* as described in Annex II 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 *project* 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 *project*, 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;

The sum of the public contributions as beneficiaries to the project budget must exceed by at least 2 % the sum of the salary costs charged to the project described in Annex III for public body employees who are not considered 'additional'.

'Additional' personnel includes all employees – permanent or temporary – of public bodies whose contracts or contract renewals:

- start on or after the start date of the project or on or after the date of signature of the grant agreement by the Agency in case this date takes place before the project start date, and
- specifically second/assign them to the project.

(b) **costs of travel and related subsistence allowances**, provided that these costs are in line with the beneficiary's usual practices on travel;

(c) ***Depreciation costs and prototypes***

(i) the **depreciation costs of durable goods** or other assets (new or second-hand equipment or infrastructure) as recorded in the beneficiary's accounting statements (i.e. placed on its inventory or other type of registry of durable goods/other assets or treated as capital expenditure in accordance with the applicable tax and accounting rules), 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 *project* may be taken into account when determining the eligible costs.



The calculation basis for the eligible depreciation costs may not exceed the following ceilings:

- Equipment costs: 50% of the total purchase cost,
- Infrastructure costs: 25% of the total purchase cost;

By way of exception, the full cost of purchase of durable goods may be eligible under the Special Conditions, if this is justified by the nature of the *project* and the context of the use of the equipment or assets;

Costs incurred for the purchase of durable goods, including notice boards, can only be eligible if they bear the LIFE logo (and the Natura 2000 logo, when applicable);

A *prototype* is equipment or infrastructure specifically created for the implementation of the project and that has never been commercialised and/or is not available as a serial product. The prototype must play a crucial role in the demonstration activities of the project.

- (d) costs of consumables and supplies with the exception of general office consumables and supplies, provided that they:
  - (i) are purchased in accordance with Article II.10.1; and
  - (ii) are directly assigned to the *project*;
- (e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the *project*, 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* (also referred to as external assistance costs) 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
- (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.

Non-deductible VAT is eligible as expenditure, save for those activities matching the concept of sovereign powers exercised by Member States;

- (i) Costs incurred for *land purchase or long-term lease of land or one-off compensations for land use rights* regarding a plot of land which is intrinsically connected with implementation of the project and explicitly envisaged therein, shall be considered eligible in full provided that:
  - (aa) in and beyond the project the purchase will contribute to improving, maintaining and restoring the integrity of the Natura 2000 network, including through



improving connectivity by the creation of corridors, stepping stones, or other elements of green infrastructure;

- (bb) the land or land use rights acquired are owned by an entity or natural person who is not a project beneficiary or staff thereof and in relation to whom a conflict of interest can be excluded;
- (cc) land purchase is the only or most cost-effective way of achieving the desired conservation outcome and the purchase price is based on market terms;
- (dd) the land purchased is reserved in the long term for uses consistent with the objectives set out in Articles 11, 14 or 15 of the LIFE Regulation; and
- (ee) the Member State concerned shall, by way of transfer or otherwise, ensure the long-term assignment of such land to nature conservation purposes.
- (ff) the land/rights seller is not a public authority, with the exception of short-term leases by local authorities;
- (gg) for land purchased as provided for in the project, the coordinating beneficiary shall ensure the entry in the land register includes a guarantee that the land will be assigned definitively to nature conservation. If in a given Member State the land register does not exist or it does not provide a sufficient legal guarantee, the coordinating beneficiary shall have a clause for the definitive assignment of the land to nature conservation included in the land sale contract. For countries where it would be illegal to include such a guarantee both in the land register and in the sale contract, the Agency may accept an equivalent guarantee in this connection, provided it offers the same legal level of protection in the long term and complies with the requirement contained in Article 20(3) of Regulation No 1293/2013;
- (hh) in addition, for land purchased by private organisations, the entry in the land register (or the sales contract if accepted in lieu thereof if accepted as per the previous paragraph) includes a guarantee that the land property will be transferred to a legal body primarily active in the field of nature protection, in case of dissolution of the private organisation or its incapacity to manage the land according to nature conservation requirements. For countries where it would be illegal to include such a guarantee in the land register or sales contract, the Agency may accept an equivalent guarantee in this connection, provided it offers the same legal level of protection in the long term and complies with the requirement contained in Article 20(3) of Regulation No 1293/2013;
- (ii) for the purchase of rights, the entry in the land register must be duly amended;
- (jj) in case of land purchased to be exchanged at a later date for another parcel on which project projects will be undertaken, the exchange is carried out before the end of the project at the latest and the provisions of the present Article shall apply to the lands received through the exchange. The land purchased to be exchanged shall be exempt, at the stage of the mid-term reporting, from the guarantee that the land will be assigned definitively to nature conservation.

The duration of a *land lease* shall either be restricted to the duration of the project (short term lease), in which case it is considered subcontracting, or be at least of 20 years (long-term lease) and shall be compatible with the needs of habitat and species protection. In the case of long-term lease of land, the lease contract shall clearly include



all the provisions and commitments that will permit the achievement of its objectives in terms of habitat and species protection.

The LIFE Land Purchase Database (LPD) stores electronic data of land parcels financed by LIFE. The coordinating beneficiary is responsible for entering and validating the land purchase data (both descriptive and spatial) in the LPD at the stage of the final report submission. The data format will have to be adapted to the GIS standards used in the LPD. The coordinating beneficiary will be provided access to the LPD six months before the project end date as specified in Article I.2.2.

Costs incurred for payment of compensation for foregone income shall be eligible provided that the expense was necessary for reaching the objectives of a LIFE Nature, LIFE Climate Change Mitigation or LIFE Climate Change Adaptation Integrated project, and that the payment of compensation:

- corresponds to market prices;
- is formalised through a legal document; and
- compensation is not paid to a public authority, with the exception of compensation to a local authority if explicitly authorised by the Agency as being essential to achieving the goals of the project.

- (j) Costs incurred for the production of communication material, including websites, can only be eligible if they are bearing the LIFE logo (and the Natura 2000 logo, when applicable).

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

To be eligible, *indirect costs* of the *project* (also referred to as 'overheads') 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 shall be declared on the basis of a flat rate as specified in Annex III in accordance with Article I.3.2 (a) (iv) and shall not exceed 7% of the eligible direct costs of the beneficiary, excluding costs of land purchase/long-term lease of land/one-off compensations for land use rights.

### **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 Agency charged by the bank of a beneficiary;
- (h) costs declared by the beneficiary under another project 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 Agency for the purpose of implementing the Union budget. In particular, beneficiaries receiving an operating grant financed by the EU or Euratom budget cannot 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 project.
- (i) contributions in kind from third parties, including voluntary work;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.
- (l) any costs related to actions that may be considered as compensatory or mitigation measures for damages<sup>6</sup> caused to nature or biodiversity by permitted plans or projects;
- (m) unless explicitly foreseen in the project description in Annex II, any costs related to management plans, action plans and similar plans<sup>7</sup>, drafted or modified in the context of a LIFE project, if the related plan is not adopted and operational before the project end date. This includes the completion, before the project end date, of all procedural/legal steps in Member States where such procedures are foreseen;
- (n) costs for major infrastructure or fundamental scientific research unless explicitly foreseen in the project description in Annex II;

## **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 *project*;
- (b) for unit costs or unit contributions: Not applicable;
- (c) for lump sum costs or lump sum contributions: Not applicable;
- (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 unit costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (f) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (g) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;

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<sup>6</sup> Unless such damages would be caused by the objectives of the LIFE project itself.

<sup>7</sup> Obligatory "After-LIFE plans" are not included in this category.



## **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: Not applicable;
- (c) for lump sum costs or lump sum contributions: Not applicable;
- (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 unit costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (f) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (g) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;

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

**Not applicable**

### **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 up to a limit of 20% of the overall eligible costs between the different budget categories, if the *project* is implemented as described in Annex II. 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 I, unless such additional *subcontracts* are approved by the Agency 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 coordinating beneficiary must request an amendment as provided for in Article II.13.

## **ARTICLE II.23 — NON-COMPLIANCE WITH REPORTING OBLIGATIONS**

The Agency 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 coordinating beneficiary:

- (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 90 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 Agency.

## **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 Agency 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 Agency has evidence that a beneficiary has committed *irregularities, fraud or breach of obligations* in the award procedure or while implementing the Agreement or if a beneficiary fails to comply with its obligations under the Agreement;
- (b) if the Agency 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* have a material impact on this grant; or
- (c) if the Agency 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 Agency must send a *formal notification* to the coordinating beneficiary:

- (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 Agency does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinating beneficiary 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 coordinating beneficiary must immediately inform the other beneficiaries of the suspension. The suspension takes effect on the day the Agency sends *formal notification* of suspension (Step 2).

Otherwise, the Agency must send a *formal notification* to the coordinating beneficiary 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 coordinating beneficiary 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 *project*.

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 coordinating beneficiary to suspend the implementation of the *project* 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 Agency to resume payments, the beneficiaries must meet the notified conditions as soon as possible and must inform the Agency of any progress made.



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

## **II.24.2 Suspension of the time limit for payments**

**II.24.2.1** The Agency may at any moment suspend the time limit for payment specified in Articles I.4.9, I.4.10 and I.4.11 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 Agency must send a *notification* to the coordinating beneficiary informing it of:

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

The suspension takes effect on the day the Agency sends the *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 coordinating beneficiary may request the Agency 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 Agency 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 *project* has been implemented in accordance with the terms of the Agreement.

The final amount of the grant is calculated by the Agency 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 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 or breach of other obligations.



### **II.25.1 Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions**

This step is applied as follows:

- (a) If, as provided for in Article I.3.2(a), the grant takes the form of the reimbursement of eligible costs, the reimbursement rate specified in that Article is applied to the eligible costs of the *project* approved by the Agency for the corresponding categories of costs, beneficiaries and affiliated entities;
- (b) 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 Agency for the beneficiary and its affiliated entities;
- (c) If, as provided for in Article I.3.2(c), the grant takes the form of a lump sum contribution, the Agency applies the lump sum specified in that Article for the beneficiary and its affiliated entities if it finds that the corresponding tasks or part of the *project* were implemented properly in accordance with Annex I;
- (d) 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 Agency for the beneficiary and its affiliated entities.

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

The total amount paid to the beneficiaries by the Agency 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.

### **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 project, over the total eligible costs of the project, as follows:
  - { receipts of the project
  - minus
  - consolidated total eligible costs and contributions approved by the Agency corresponding to the amounts determined in accordance with Article II.25.1 }

The receipts of the project are calculated as follows:

- { the revenue generated by the *project* 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 *project* 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 *project* approved by the Agency for the categories of costs referred to in Article I.3.2(a)(i).

#### **II.25.4 Step 4 — Reduction due to improper implementation or breach of other obligations**

The Agency may reduce the *maximum amount of the grant* if the *project* has not been implemented properly as described in Annex II (i.e. if it has not been implemented or has been implemented poorly, partially or late), or if another obligation under the Agreement has been breached.

The amount of the reduction will be proportionate to the degree to which the *project* has been implemented improperly or to the seriousness of the breach.

Before the Agency reduces the grant and except when the reduction is due to the non-respect of the 2% rule in Article II.19.2(a)(iii), it must send a *formal notification* to the coordinating beneficiary:

- (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 Agency does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a *formal notification* informing the coordinating beneficiary of its decision.

If the grant is reduced, the Agency must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the *project* or to the seriousness of the 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 coordinating beneficiary must repay the Agency the amount in question, even if it was not the final recipient of the amount due. However, the Agency reserves the right, where appropriate, to recover the amount due directly from the final recipient.

### **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 Agency the amount in question. Where the audit findings do not concern a specific beneficiary (or its affiliated entities), the coordinating beneficiary must repay the Agency 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 Agency as a contribution towards the costs incurred by its affiliated entities.

### **II.26.3 Recovery procedure**

Before recovery, the Agency 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 Agency decides to pursue the recovery procedure, the Agency 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 Agency/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 Agency, 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 Agency 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.4.9 ('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.4.13 from the day following the date for payment in the debit note up to and including the date the Agency 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/EC<sup>8</sup> applies.

### **ARTICLE II.27 — CHECKS, AUDITS AND EVALUATIONS**

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

The Agency may, during the implementation of the *project* or afterwards, carry out technical and financial checks and audits to determine that the beneficiaries are implementing the *project* 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 Agency may carry out an interim or final evaluation of the impact of the *project*, measured against the objective of the Union programme concerned.

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

The Agency 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.

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<sup>8</sup> Directive 2007/64/EC<sup>\*</sup> 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.



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 Agency 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 coordinating beneficiary must provide any information, including information in electronic format, requested by the Agency or by any other outside body authorised by the Agency. Where appropriate, the Agency 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 Agency may consider:

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

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

During an on-the-spot visit, the beneficiaries must allow Agency staff and outside personnel authorised by the Agency to have access to the sites and premises where the *project* 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 Agency may consider:

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

#### **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 Agency 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 Agency 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 *project*.

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

**II.27.7.1** The Agency 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 *project* implementation as provided for in Article II.16.2;
- (f) termination as provided for in Article II.17.3.



**II.27.7.2** The Agency 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 Agency 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 Agency in justified cases.

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

If the beneficiary proposes an alternative correction method and the Agency accepts it, the Agency 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 Agency 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 Agency 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 *project*;



(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 Agency 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 Agency 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 Agency 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 *project*.

## II.27.8 Rights of OLAF

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

Under Council Regulation (Euratom, EC) No 2185/96<sup>9</sup> and Regulation (EU, Euratom) No 883/2013<sup>10</sup> OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against *fraud* and other *irregularities*.

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<sup>9</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

<sup>10</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).



Where appropriate, OLAF findings may lead to the Agency 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) 2017/1939<sup>11</sup> ('the EPPO') has the same rights as the Agency, particularly the right of access, for the purpose of checks and audits.

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<sup>11</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office