

## ANNEX IV- GENERAL CONDITIONS

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## Preamble

- (1) In accordance with Article 9(3) of the IPA II Regulation, where appropriate, IPA II may contribute to transnational cooperation programmes or measures that are established and implemented under Regulation (EU) No 1299/2013 and in which the beneficiaries listed in Annex I to the IPA II Regulation participate.
- (2) In accordance with Article 26 of the ETC Regulation the applicable programme implementation conditions governing the financial management as well as the programming, monitoring, evaluation and control of the participation of the IPA II beneficiary, through a contribution of IPA II to transnational and interregional cooperation programmes, shall be established in the relevant cooperation programme and also, where necessary, in the financing agreement between the Commission, the governments of the IPA II beneficiary concerned and the Member State hosting the managing authority of the relevant cooperation programme. Programme implementation conditions shall be consistent with the Union's cohesion policy rules.
- (3) The Interreg V-B Mediterranean Programme; CCI number 2004TC16M4TN001, hereinafter referred to as 'the Programme', shall be implemented under shared management. Consequently, France, the Member State hosting the managing authority, hereinafter referred to as 'the Member State', and the Commission shall be responsible for the implementation, the management and control of the Programme.
- (4) The IPA II beneficiary has confirmed, in writing, its agreement to the contents of the Programme prior to its submission to the Commission. This agreement also includes a commitment to provide the financial contribution of the IPA II beneficiary.
- (5) In accordance with Article 3 of the Special Conditions, the provisions of these General Conditions supplement and complete the provisions of the basic acts listed in Article 1(2) of the Special Conditions and of acts adopted on their basis. The programme authorities in the Member State are bound by all provisions of the basic acts, even where these General Conditions may not refer specifically to all its provisions.
- (6) The authorities and bodies of the IPA II beneficiary shall support the Member State in its responsibilities and cooperate loyally with the single programme authorities, in particular where only the authorities and bodies of the IPA II beneficiary can carry out tasks on its territory.
- (7) The purpose of these General Conditions is to lay out the rules for implementing the Programme as described in Annex I and to define rights and obligations of the IPA II beneficiary and the Commission respectively in carrying out these tasks.
- (8) These General Conditions shall apply to the obligations of the IPA II beneficiary related to the Union contribution alone or combined with the national co-financing of the IPA II beneficiary.
- (9) The IPA II beneficiary shall remain responsible for supporting the Programme authorities in the Member State in the fulfilment of its obligations stipulated in the basic acts, even if the IPA II beneficiary sub-delegates to other entities identified in the Programme to carry out certain tasks. The Commission, in particular, reserves the right to interrupt payments, and to suspend and/or terminate this Financing Agreement on the basis of the acts, omissions and/or situations of any designated entity.

**Section I - Common provisions and principles**

**Article 1 - Definitions**

1. For the purposes of these General Conditions the following definitions shall apply:
  - (a) 'IPA II beneficiary' means one of the beneficiaries listed in Annex I to the IPA II Regulation;
  - (b) 'participating countries' means the IPA II beneficiary together with the Member States participating in a multi-annual programme for transnational cooperation jointly drawn up by the participating countries;
  - (c) 'framework agreement' refers to the specific arrangement concluded between the Commission and an IPA II beneficiary applying to all IPA II policy areas and laying down the principles of the financial cooperation between the IPA II beneficiary and the Commission under the IPAII Regulation as referred to in Article 6 of the Specific Conditions;
  - (d) 'Programme' means the joint transnational co-operation programme;
  - (e) 'authorities' means public entities or bodies of an IPA II beneficiary or a Member State at national, regional or local level;
  - (f) 'financing agreement' means an annual or multi-annual agreement concluded between the Commission and an IPA II beneficiary as well as the Member State hosting the managing authority;
  - (g) 'public law body' means in the IPA II beneficiary, in accordance with national law, bodies equivalent to those in Member States (see point (o) of paragraph 2 below);
  - (h) 'economic operator' means any natural or legal person or other entity taking part in the implementation of an operation under the Programme, with the exception of a Member State or an IPA II beneficiary exercising its prerogatives as a public authority;
  - (i) 'ERDF assistance' means the Union support to the Programme from budget lines under the European Regional Development Fund, both the contribution from budget Heading 1b (Economic, social and territorial cohesion) and the contribution from budget Heading 4 (Global Europe) (IPA II), unless specified otherwise.
2. For the purposes of these General Conditions the definitions set out in Article 2 CPR shall apply, unless as adapted according to paragraph 1, and in particular:
  - (j) 'programming' means the process of organisation, decision-making and allocation of financial resources in several stages, with the involvement of partners in accordance with Article 5, intended to implement, on a multi-annual basis, joint action by the Union and the Member States to achieve the objectives of the Union strategy for smart, sustainable and inclusive growth;
  - (k) 'operation' means a project, contract, action or group of projects selected by the Joint monitoring committee or the contracting authority of the Programme, or under its responsibility, that contribute to the objectives;



- (l) 'beneficiary' means a public or private body, responsible for initiating or initiating and implementing operations;
- (m) 'Partnership Agreement' means a document prepared by a Member State with the involvement of partners in line with the multi-level governance approach, which sets out that Member State's strategy, priorities and arrangements for using the European Structural and Investment Funds in an effective and efficient way so as to pursue the Union strategy for smart, sustainable and inclusive growth, and which is approved by the Commission following assessment and dialogue with the Member State concerned;
- (n) 'public expenditure' means any public contribution to the financing of operations the source of which is the budget of national, regional or local public authorities, the budget of the Union related to IPA II assistance, the budget of public law bodies or the budget of associations of public authorities or of public law bodies;
- (o) 'public law body' means in the Member State a body governed by public law within the meaning of point 4 of Article 2(1) of Directive 2014/24/EU of the European Parliament and of the Council<sup>1</sup> and any European grouping of territorial cooperation (EGTC) established in accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council<sup>2</sup>, regardless of whether the EGTC is considered to be a public law body or a private law body under the relevant national implementing provisions;
- (p) 'document' means a paper or an electronic medium bearing information of relevance in the context of this Financing Agreement;
- (q) 'accounting year', means the period from 1 July to 30 June, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2015; the final accounting year shall be from 1 July 2023 to 30 June 2024;
- (r) 'financial year', means the period from 1 January to 31 December;
- (s) 'irregularity' means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ERDF assistance, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
- (t) 'systemic irregularity' means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund-specific rules;

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<sup>1</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 Text with EEA relevance, OJ L 94, 28.3.2014, p. 65.

<sup>2</sup> Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, OJ L 347, 20.12.2013, p. 303.

- (u) 'serious deficiency in the effective functioning of a management and control system' means a deficiency for which substantial improvements in the system are required, which exposes the ERDF assistance to a significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system;
  - (v) 'Fund-specific rules' refer to the specific provisions of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013<sup>3</sup> applicable to Regulation (EU) No 1299/2013 of the European Parliament and of the Council<sup>4</sup> (the European Territorial Cooperation Regulation, 'the ETC Regulation') and Regulation (EU) No 1301/2013 of the European Parliament and of the Council<sup>5</sup>.
3. References in this Financing Agreement to provisions of the CPR, the ETC Regulation and of acts adopted on their basis are construed as also referring to the 'IPA II beneficiary', 'the participating countries' and the 'ERDF assistance' as defined in paragraph 1.

#### **Article 2 - Calculation of time limits for Commission decisions**

Where, pursuant to Article 10(2) and (5) of this Agreement or Article 107(2) and 108(3) CPR, a time limit is set for the Commission to adopt or amend a decision, by means of an implementing act, that time limit shall not include the period which starts on the date following the date on which the Commission sends its observations to the Member State and lasts until the Member State responds to the observations.

#### **Article 3 - General principles**

1. The ERDF assistance shall support the IPA II beneficiary in adopting and implementing the political, institutional, legal, administrative, social and economic reforms required in order to comply with the Union's values and to progressively align to the Union's rules, standards, policies and practices, with a view to Union membership.

Through such support, ERDF assistance shall contribute to stability, security and prosperity in the IPA II beneficiary.

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<sup>3</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320.

<sup>4</sup> Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, OJ L 347, 20.12.2013, p. 259.

<sup>5</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006, OJ L 347, 20.12.2013, p. 289.

2. Specifically, the ERDF assistance shall
  - a) support for political reforms, inter alia through regional cooperation and good neighbourly relations;
  - b) support for economic, social and territorial development, with a view to smart, sustainable and inclusive growth; and
  - c) strengthening regional integration and territorial cooperation involving the IPA II beneficiary IPA II beneficiary and the Member States.
3. The Commission and the participating countries shall ensure, taking account of the specific context of each Member State and IPA II beneficiary, that the ERDF assistance is consistent with the relevant policies, horizontal principles referred to in Articles 3, 5 and 6 and priorities of the Union, and that it is complementary to other instruments of the Union.
4. The ERDF assistance shall be implemented in close cooperation between the Commission, the Member State and the IPA II beneficiary in accordance with the principle of subsidiarity.
5. The participating countries at the appropriate territorial level, in accordance with their institutional, legal and financial framework, and the bodies designated by them for that purpose shall be responsible for preparing and implementing the Programme and carrying out their tasks, in partnership with the relevant partners referred to in Article 7, in compliance with this financing agreement.
6. Arrangements for the implementation and use of the ERDF assistance, and in particular the financial and administrative resources required for the preparation and implementation of the Programme, in relation to monitoring, reporting, evaluation, management and control, shall respect the principle of proportionality having regard to the level of support allocated and shall take into account the overall aim of reducing the administrative burden on bodies involved in the management and control of the Programme.
7. In accordance with their respective responsibilities, the Commission, and the participating countries shall ensure coordination between this Programme and other IPA II programmes and between the ERDF and other relevant Union policies, strategies and instruments, including those in the framework of the Union's external action.
8. The part of the budget of the Union allocated to the ERDF assistance shall be implemented within the framework of shared management between the participating countries and the Commission, in accordance with Article 59 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>6</sup> ('the Financial Regulation');
9. The Commission and the participating countries shall respect the principle of sound financial management in accordance with Article 30 of the Financial Regulation.
10. The Commission and the participating countries shall ensure the effectiveness of the ERDF assistance during preparation and implementation, in relation to monitoring, reporting and evaluation.

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<sup>6</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1.



11. The Commission and the participating countries shall carry out their respective roles in relation to the ERDF assistance with the aim of reducing the administrative burden on beneficiaries.

#### **Article 4 - Compliance with Union and national law**

Operations supported by ERDF assistance shall comply with applicable Union law and the national law relating to its application ('applicable law').

#### **Article 5 - Promotion of equality between men and women and non-discrimination**

The Commission and the participating countries shall ensure that equality between men and women and the integration of gender perspective are taken into account and promoted throughout the preparation and implementation of the Programme, including in relation to monitoring, reporting and evaluation.

The Commission and the participating countries shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of the Programme. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of the Programme.

#### **Article 6 - Sustainable development**

The objectives of the ERDF assistance shall be pursued in line with the principle of sustainable development and with the Union's promotion of the aim of preserving, protecting and improving the quality of the environment, as set out in Articles 11 and 191(1) Treaty on the Functioning of the European Union (TFEU), taking into account the polluter pays principle.

The Commission and the participating countries shall ensure that environmental protection requirements, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience, and risk prevention and management are promoted in the preparation and implementation of the Programme.

#### **Article 7 - Partnership principle**

1. For the Programme, the participating countries shall in accordance with their institutional and legal framework organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners:
  - (a) competent urban and other public authorities;
  - (b) economic and social partners; and
  - (c) relevant bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.

The participating countries may also involve European groupings of territorial cooperation operating in the programme area and authorities or bodies that are involved in the development or implementation of a macro-regional or sea-basin strategy in the programme area, including priority area coordinators for macro-regional strategies.



Where public authorities, economic and social partners, and bodies representing civil society have established an umbrella organisation, they may nominate a single representative to present the views of the umbrella organisation in the partnership.

2. In accordance with the multi-level governance approach, the partners referred to in paragraph 1 shall be involved by the participating countries in the preparation of progress reports and throughout the preparation and implementation of the Programme, including through participation in the monitoring committee for the Programme in accordance with Article 15.
3. Commission Delegated Regulation (EU) No 240/2014<sup>7</sup> shall apply *mutatis mutandis* on the different elements of programming referred to in paragraph 2.

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<sup>7</sup> Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds, OJ L 74, 14.3.2014, p. 1.

## **Section II - Programming**

### **Article 8 - Geographical coverage**

The list of eligible regions shall be included in the Programme which shall be as follows:

- (a) in the Member States Nomenclature of Territorial Units for Statistics (NUTS) level 2 regions as listed in Annex III to Commission Implementing Decision 2014/388/EU of 16 June 2014<sup>8</sup>, while ensuring the continuity of such cooperation in larger coherent areas based on previous programmes, taking account, where appropriate, of macro-regional and sea-basin strategies;
- (b) in the IPA II beneficiary country Nomenclature of Territorial Units for Statistics (NUTS) level 2 regions or, in the absence of NUTS classification, equivalent areas as listed, for information purposes, in Annex III to Commission Implementing Decision 2014/388/EU, and also set out in the Programme as adopted by the Commission.

### **Article 9 - Content of the Programme and thematic concentration**

1. The Programme shall be drawn up in accordance with the partnership principle as set out in Article 7 and in accordance with Article 8 of the ETC Regulation.
2. The thematic objectives for the Programme shall be agreed between the participating countries for each border or group of borders based on the thematic objectives as defined in the first paragraph of Article 9 CPR.
3. Thematic priorities of the ERDF assistance shall be those defined in Article 5 of Regulation (EU) No 1301/2013 and in Article 7(1)(b) of the ETC Regulation.
4. At least 80 % of the ERDF allocation to this transnational programme shall be concentrated on a maximum of four of the thematic objectives set out in the first paragraph of Article 9 CPR.

### **Article 10 - Approval and amendment of the Programme**

1. The Commission shall assess the consistency of the programmes with the Common Provisions Regulation and the ETC Regulation and with the Fund-specific rules, their effective contribution to the selected thematic objectives and to the Union priorities specific to the ETC and ERDF, and as far as participating Member States are concerned, also the consistency with the Partnership Agreement, taking account of the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU as well as of the *ex ante* evaluation. The assessment shall address, in particular, the adequacy of the programme strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources.
2. The Commission shall make observations within three months of the date of submission of the programme. The participating countries shall provide to the Commission all necessary additional information and, where appropriate, revise the proposed programme.

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<sup>8</sup> Commission Implementing Decision of 16 June 2014 setting up the list of regions and areas eligible for funding from the European Regional Development Fund under the cross-border and transnational components of the European territorial cooperation goal for the period 2014 to 2020 (notified under document number C(2014) 3898), OJ L 183, 24.6.2014, p. 75.



3. The European Investment Bank (EIB) may, at the request of participating countries, participate in the preparation of, as well as in activities relating to the preparation of operations.
4. The Commission may consult the EIB before the adoption of the Programme.
5. Requests for amendment of the Programme submitted by the participating countries shall be duly substantiated and shall in particular set out the expected impact of the changes to the programme on achieving the Union strategy for smart, sustainable and inclusive growth and the specific objectives defined in the programme, taking account of the Common Provisions Regulation and the ETC Regulation, the horizontal principles referred to in Articles 5, 6 and 7, as well as of the Partnership Agreement. These requests shall be accompanied by the revised programme. Paragraphs 3 and 4 shall apply to amendments of the Programme.

**Article 11 - Community-led local development, joint action plans and integrated territorial investments**

1. The Programme may carry out actions
  - a) of community-led local development in the meaning of Articles 32 to 35 CPR,
  - b) of joint action plans in the meaning of Articles 104 to 109 CPR, drafted in accordance with Article 4 and Annex IV of Commission Implementing Regulation (EU) No 2015/207<sup>9</sup>; and
  - c) of integrated territorial investments in the meaning of Article 36 CPR.
2. Actions referred to in paragraph 1 should also take into account Articles 9 to 11 of the ETC Regulation.

**Article 12 - Selection of operations**

1. Operations under the Programme shall be selected by the monitoring committee. The monitoring committee may set up a steering committee acting under its responsibility for the selection of operations.
2. Selected operations shall involve beneficiaries from at least two participating countries, at least one of which shall be from a Member State. An operation may be implemented in a single participating country, provided that transnational impacts and benefits are identified.  
However, the participating Member States may decide in the monitoring committee one of the following, unless already otherwise agreed upon in the Programme:
  - (a) operations subject to a given call for proposals may not involve beneficiaries from the IPA II beneficiary until the IPA II beneficiary has concluded the Financing Agreement; or

<sup>9</sup> Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for the progress report, submission of the information on a major project, the joint action plan, the implementation reports for the Investment for growth and jobs goal, the management declaration, the audit strategy, the audit opinion and the annual control report and the methodology for carrying out the cost-benefit analysis and pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council as regards the model for the implementation reports for the European territorial cooperation goal, OJ L 38, 13.2.2015, p. 1.

- (b) beneficiaries from the IPA II beneficiary may only participate in a given call for proposals provided that the IPA II beneficiary has concluded this Financing Agreement by a given deadline; or
  - (c) the managing authority may postpone the signing of the grant document in terms of Article 14(7) until the IPA II beneficiary has concluded this Financing Agreement by a given deadline; or
  - (d) the managing authority may sign the grant document in terms of Article 14(7) while adding a condition with regard to the validity of the signature which refers to the date when the IPA II beneficiary has concluded this Financing Agreement.
3. Beneficiaries shall cooperate in the development and implementation of operations. In addition, they shall cooperate in either the staffing or the financing of operations.

### **Article 13 - Permits and authorization**

Any type of permit and/or authorisation required for the implementation of the Programme shall be provided by the competent authorities of the IPA II beneficiary, in accordance with national law, before the grant document referred to in Article 14(7) is provided by the managing authority to the lead beneficiary.

### **Article 14 - Beneficiaries**

1. Where there are two or more beneficiaries for an operation in the Programme, one of them shall be designated by all the beneficiaries as the lead beneficiary.
2. The lead beneficiary shall carry out the following tasks:
  - a) lay down the arrangements with other beneficiaries in an agreement comprising provisions that, inter alia, guarantee the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid;
  - b) assume responsibility for ensuring implementation of the entire operation;
  - c) ensure that expenditure presented by all beneficiaries has been incurred in implementing the operation and corresponds to the activities agreed between all the beneficiaries, and is in accordance with the document provided by the managing authority pursuant to Article 12(5) of the ETC Regulation;
  - d) ensure that the expenditure presented by other beneficiaries has been verified by a controller(s)<sup>10</sup> where this verification is not carried out by the managing authority in accordance with Article 23(1) of the ETC Regulation.
3. If not otherwise specified in the arrangements referred to in point (a) of paragraph (2), the lead beneficiary shall ensure that the other beneficiaries receive the total amount of the public support as quickly as possible and in full. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce those amounts for the other beneficiaries.

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<sup>10</sup> As defined in Article 37(3).



4. Lead beneficiaries shall be located in a Member State participating in the cooperation programme. However, Member States and the IPA II beneficiary participating in a cooperation programme may agree to the lead beneficiary being located in a the IPA II beneficiary participating in that cooperation programme, provided that the managing authority is satisfied that the lead beneficiary can carry out the tasks set out in paragraphs 2 and 3 and that the requirements for management, verification and audit are fulfilled.
5. Sole beneficiaries shall be registered in a Member State participating in the cooperation programme. However, they may be registered in a Member State not participating in the programme, provided the conditions set out in Article 12(3) of the ETC Regulation are satisfied.
6. Notwithstanding Article 12(2), an EGTC or another legal body established under the laws of one of the participating countries may apply as sole beneficiary for an operation provided that it is set up by public authorities or bodies from at least two participating countries.
7. The managing authority shall provide to the lead or sole beneficiary for each operation a document setting out the conditions for support of the operation, including the specific requirements concerning the products or services to be delivered under the operation, the financing plan and the time-limit for execution (the 'grant document').

The grant document shall also set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.

Pursuant to a decision taken by the participating Member States in the monitoring committee in accordance with the second subparagraph of Article 12, the managing authority may:

- a) postpone the signature of the grant document; or
- b) set out in the grant document a condition that the grant document only becomes valid with regard to a beneficiary in the IPA II beneficiary when the IPA II beneficiary has respected such a decision.

### **Section III – Monitoring, evaluation and technical assistance**

#### **Sub-section 1: Monitoring**

##### **Article 15 - Setting-up and composition of the Monitoring Committee**

1. Within three months of the date of notification to the Member State of the decision approving the Programme, the participating countries shall set up a Monitoring Committee ('MC') in agreement with the managing authority, to monitor implementation of the programme.
2. The MC shall draw up and adopt its rules of procedure.
3. The composition of the MC shall be agreed by the participating countries and include relevant representatives of those countries. The monitoring committee may include representatives of the EGTC carrying out activities related to the Programme within the programme area.
4. The list of the members of the MC shall be published.
5. The Commission shall participate in the work of the MC in an advisory capacity.
6. If the EIB contributes to the Programme, it may participate in the work of the MC in an advisory capacity.
7. The MC shall be chaired by a representative of the Member State or of the managing authority.

##### **Article 16 - Functions of the monitoring committee**

1. The MC shall meet at least once a year and shall review implementation of the programme and progress made towards achieving its objectives. In doing so, it shall have regard to the financial data, common and programme-specific indicators, including changes in the value of result indicators and progress towards quantified target values, and the milestones defined in the performance framework referred to in Article 21(1) CPR, and, where relevant, the results of qualitative analyses.
2. The monitoring committee shall examine all issues that affect the performance of the programme, including the conclusions of the performance review.
3. The MC shall examine in particular:
  - a) any issues that affect the performance of the operational programme;
  - b) progress made in implementation of the evaluation plan and the follow-up given to findings of evaluations;
  - c) implementation of the communication strategy;
  - d) implementation of joint action plans;
  - e) actions to promote equality between men and women, equal opportunities, and non-discrimination, including accessibility for persons with disabilities;
  - f) actions to promote sustainable development.



4. The MC committee shall examine and approve:
  - a) the methodology and criteria used for selection of operations;
  - b) the annual and final implementation reports;
  - c) the evaluation plan for the Programme and any amendment of the evaluation plan pursuant to Article 21(6) CPR;
  - d) the communication strategy for the Programme and any amendment of the strategy;
  - e) any proposal by the managing authority for any amendment to the Programme.
5. The monitoring committee may make observations to the managing authority regarding implementation and evaluation of the programme including actions related to the reduction of the administrative burden on beneficiaries. The monitoring committee shall monitor actions taken as a result of its observations.

#### **Article 17 – Reporting**

1. By 31 May 2016 and by the same date of each subsequent year until and including 2023, the managing authority shall submit to the Commission an annual implementation report in accordance with Article 50(1) CPR.

The implementation report submitted in 2016 shall cover the financial years 2014 and 2015.

2. For the reports submitted in 2017 and 2019, the deadline referred to in paragraph 1 shall be 30 June.
3. Annual implementation reports shall set out key information on implementation of the Programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, including changes in the value of result indicators where appropriate, and, beginning from the annual implementation report to be submitted in 2017, the milestones defined in the performance framework. The data transmitted shall relate to values for indicators for fully implemented operations and also, where possible, having regard to the stage of implementation, for selected operations. They shall also set out a synthesis of the findings of all evaluations of the programme that have become available during the previous financial year, any issues which affect the performance of the programme, and the measures taken.

Where appropriate, annual implementation reports shall also set out progress in preparation and implementation of major projects and joint action plans.

4. With regard to annual implementation reports submitted in 2017 and 2019, Article 14(4) of the ETC Regulation shall apply.
5. The annual and final implementation reports shall be drawn up in accordance with Article 8 and Annex X of Commission Implementing Regulation (EU) No 2015/207.



#### **Article 18 - Annual review meeting**

1. An annual review meeting shall be organised every year from 2016 until and including 2023 between the Commission, the Member State and the IPA II beneficiary to examine the performance of the Programme, taking account of the annual implementation report and the Commission's observations where applicable. The annual review meeting may cover more than one programme.
2. By way of derogation from paragraph 1, the Member State and the Commission may agree not to organise an annual review meeting for the Programme in years other than 2017 and 2019. In that case, the annual review may be carried out in writing.
3. The annual review meeting shall be chaired by the Commission or, if the Member State so requests, co-chaired by the Member State and the Commission.
4. The Member State and the IPA II beneficiary shall ensure that appropriate follow-up is given to comments of the Commission following the annual review meeting concerning issues which significantly affect the implementation of the Programme and, where appropriate, inform the Commission, within three months, of the measures taken.

#### **Article 19 - Transmission of data**

1. By 31 January, 31 July and 31 October of each year, the managing authority shall transmit electronically to the Commission for monitoring purposes, for the Programme and by priority axis:
  - (a) the total and public eligible cost of the operations and the number of operations selected for support;
  - (b) the total eligible expenditure declared by beneficiaries to the managing authority.
2. In addition, the transmission made by 31 January shall contain the above data broken down by category of intervention. That transmission shall be considered to fulfil the requirement for the submission of financial data referred to in Article 50(2) CPR.
3. A forecast of the amount for which the managing authority expects to submit payment applications for the current financial year and the subsequent financial year shall accompany the transmissions to be made by 31 January and 31 July.
4. The cut-off date for the data submitted under this paragraph shall be the end of the month preceding the month of submission.
5. Financial data shall be transmitted in accordance with Article 2 and Annex II of Commission Implementing Regulation (EU) No 1011/2014<sup>11</sup>.

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<sup>11</sup> Commission Implementing Regulation (EU) No 1011/2014 of 22 September 2014 laying down detailed rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for submission of certain information to the Commission and the detailed rules concerning the exchanges of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies, OJ L 286, 30.9.2014, p. 1



## **Article 20 - Information and communication**

1. The managing authority shall be responsible for the information and communication activities as set out in Articles 115, 116 and 117 CPR.
2. Articles 3 to 5 of Commission Implementing Regulation (EU) No 821/2014<sup>12</sup> concerning the technical characteristics of information and communication measures for operations and instructions for creating the Union emblem and a definition of the standard colours shall apply.

### **Sub-section 2: Evaluation**

## **Article 21 – Evaluation principles and specific evaluations**

1. Evaluations shall be carried out to improve the quality of the design and implementation of programmes, as well as to assess their effectiveness, efficiency and impact. The impact of programmes shall be evaluated, in the light of the mission of the ERDF, in relation to the targets under the Union strategy for smart, sustainable and inclusive growth and, having regard to the size of the programme, in relation to GDP and unemployment in the programme area concerned, where appropriate.
2. Participating countries shall provide the resources necessary for carrying out evaluations, and shall ensure that procedures are in place to produce and collect the data necessary for evaluations, including data related to common and where appropriate programme-specific indicators.
3. Evaluations shall be carried out by internal or external experts that are functionally independent of the authorities responsible for programme implementation. The Commission shall provide guidance on how to carry out evaluations, immediately following the entry into force of this Regulation.
4. All evaluations shall be made available to the public.
5. The participating countries shall jointly carry out an *ex ante* evaluation in accordance with Article 55 CPR.
6. Article 56 CPR concerning evaluation during the programming period shall apply.

In particular, the managing authority shall draw up an evaluation plan which shall be submitted to the MC no later than one year after the adoption of the Programme.

7. Article 57 CPR concerning evaluation *ex post* shall apply.

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<sup>12</sup> Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data, OJ L 223, 29.7.2014, p. 7.

**Sub-section 3: Technical assistance**

**Article 22 - Purpose**

At the initiative of a participating country, the ERDF assistance may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. The ERDF assistance may be used by the participating countries to support actions for the reduction of the administrative burden on beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use the ERDF assistance.

The ERDF assistance may also be used to support actions to reinforce the capacity of relevant partners (see Article 7 on partners and partnership) in line with point (e) of Article 5(3) CPR and to support exchange of good practices between such partners.

The actions referred to in this paragraph may concern previous and subsequent programming periods.

**Article 23 - Ceiling**

The amount of the ERDF assistance allocated to technical assistance shall be limited to 6 % of the total amount allocated to a cooperation programme. For programmes with a total allocation not exceeding EUR 50 000 000 the amount of the ERDF allocated to technical assistance shall be limited to 7 % of the total amount allocated, but shall not be less than EUR 1 500 000 and not higher than EUR 3 000 000.



## **Section IV - Eligibility of expenditure and durability of operations**

### **Article 24 – Eligibility principles**

1. In accordance with Article 18(2) of the ETC Regulation the hierarchy of eligibility rules for this Programme is established as follows:

Without prejudice to the eligibility rules laid down in this Section or in the delegated acts referred to in Articles 27 and 30, the participating countries in the MC shall establish additional rules on eligibility of expenditure for the Programme as a whole.

For matters not covered by eligibility rules laid down in this Section or in the delegated acts referred to in Articles 27 and 30, or in rules established jointly by the participating countries in accordance with the second subparagraph, the national rules of the Member State or the IPA II beneficiary in which the expenditure is incurred shall apply.

2. An operation may receive support under this Programme and from other Union instruments, provided that the expenditure item included in a payment application for reimbursement by the ERDF assistance does not receive support from another Union instrument or support from ERDF assistance under another programme.
3. In accordance with Article 3(2) of Regulation (EU) No 1301/2013 the ERDF assistance may support the sharing of facilities and human resources and all types of infrastructure across borders under this Programme.
4. In addition to Articles 22 and 23, with the exception of Article 31, the provisions of this section shall also apply to Technical Assistance.

### **Article 25 - Eligibility in time**

1. Expenditure shall be eligible for a contribution from the ERDF assistance, both in the Member States and in the IPA II beneficiary if it has been incurred by a beneficiary and paid between 1 January 2014 and 31 December 2023.
2. In the case of costs reimbursed pursuant to points (b) and (c) of the first subparagraph of Article 26(2), the actions constituting the basis for reimbursement shall be carried out between 1 January 2014 and 31 December 2023.
3. Expenditure that becomes eligible as a result of an amendment to a programme shall only be eligible from the date of submission to the Commission of the request for amendment or, in the event of application of Article 10(6), from the date of entry into force of the decision amending the Programme.

### **Article 26 - Forms of support; forms of grants and repayable assistance**

1. The ERDF assistance shall be used to provide support in the form of grants, prizes and repayable assistance, or a combination thereof.

In the case of repayable assistance, the support repaid to the body that provided it, or to another competent authority of the Member State or the IPA II beneficiary, shall be kept in a separate account or separated with accounting codes and reused for the same purpose or in accordance with the objectives of the Programme. (Article 66 CPR)

2. Grants and repayable assistance may take any of the following forms:

- a) reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation;
- b) standard scales of unit costs;
- c) lump sums not exceeding EUR 100 000 of public contribution;
- d) flat-rate financing, determined by the application of a percentage to one or more defined categories of costs.

The options referred to in the first subparagraph may be combined only where each option covers different categories of costs or where they are used for different projects forming a part of an operation or for successive phases of an operation.

3. Where an operation or a project forming a part of an operation is implemented exclusively through the public procurement of works, goods or services, only point (a) of the first subparagraph of paragraph 2 shall apply. Where the public procurement within an operation or project forming part of an operation is limited to certain categories of costs, all the options referred to in the first subparagraph of paragraph 2 may be applied.
4. The amounts referred to in points (b), (c) and (d) of the first subparagraph of paragraph 2 shall be established in one of the following ways:
  - (a) a fair, equitable and verifiable calculation method based on:
    - i. statistical data or other objective information;
    - ii. the verified historical data of individual beneficiaries; or
    - iii. the application of the usual cost accounting practices of individual beneficiaries;
  - (b) in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary;
  - (c) in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
  - (d) rates established by this Regulation or the Fund-specific rules;
  - (e) specific methods for determining amounts established in accordance with the Fund-specific rules..
5. With regard to the eligibility of contributions in kind in the form of provision of works, goods, services, land and real estate Article 69(1) CPR shall apply.
6. Depreciation costs may be considered as eligible in accordance with Article 69(2) CPR.



### **Article 27 - Flat rates for indirect costs and staff costs**

1. Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:
  - a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State or the IPA II beneficiary for a similar type of operation and beneficiary;
  - b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State or the IPA II beneficiary to perform a calculation to determine the applicable rate;
  - c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.

Articles 20 and 21 of Commission Delegated Regulation (EU) No 480/2014<sup>13</sup> concerning the definition of the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph shall apply.

For the purposes of determining staff costs relating to the implementation of an operation, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours.

2. Staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation.

### **Article 28 - Ineligible expenditure**

1. The ERDF assistance shall not support:
  - a) the decommissioning or the construction of nuclear power stations;
  - b) investment to achieve the reduction of greenhouse gas emissions from activities listed in Annex I to Directive 2003/87/EC;
  - c) the manufacturing, processing and marketing of tobacco and tobacco products;
  - d) undertakings in difficulty, as defined under Union State aid rules;
  - e) investment in airport infrastructure unless related to environmental protection or accompanied by investment necessary to mitigate or reduce its negative environmental impact;
  - f) interest on debt;

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<sup>13</sup> As amended by Commission Delegated Regulation (EU) No 2015/616 of 13 February 2015 amending Delegated Regulation (EU) No 480/2014 as regards references therein to Regulation (EU) No 508/2014 of the European Parliament and of the Council, OJ L 102, 21.4.2015, p. 33.

- g) the purchase of land not built on and land built on in the amount up to 10 % of the total eligible expenditure for the operation concerned. For derelict sites and for those formerly in industrial use which comprise buildings, this limit shall be increased to 15 %. In exceptional and duly justified cases, this limit may be raised above the respective preceding percentages for operations concerning environmental conservation;
  - h) value added tax (VAT) except where it is non-recoverable under national VAT legislation.
2. Operations shall not be selected for ERDF assistance where they have been physically completed or fully implemented before the application for funding under the Programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.
  3. In accordance with point (l) of Article 4 of Commission Delegated Regulation (EU) No 481/2014, charges for financial transactions within a Member State or within an IPA II beneficiary are not eligible.

#### **Article 29 - Eligibility depending on location**

1. Operations, subject to the derogations referred to in paragraphs 2 and 3, shall be located in the programme area comprising the part of the territory of the participating countries as defined in the Programme (the 'programme area').
2. The managing authority may accept that all or part of an operation is implemented outside the programme area, provided that all the following conditions are satisfied:
  - (a) the operation is for the benefit of the programme area;
  - (b) the total amount allocated under the Programme to operations located outside the programme area does not exceed 20 % of the ERDF assistance at programme level;
  - (c) the obligations of the managing and audit authorities in relation to management, control and audit concerning the operation are fulfilled by the Programme authorities or they enter into agreements with authorities in the Member State or the IPA II beneficiary in which the operation is implemented.
3. For operations concerning technical assistance, promotional activities and capacity-building, expenditure may be incurred outside the programme area provided that the conditions in points (a) and (c) of paragraph 2 are fulfilled.
4. In view of the specific objectives of IPA II set out in Article 3(1) and (2), the ERDF contribution from budget Heading 4 (IPA II) shall not be spent in the part of the programme area comprising Union territory.



### **Article 30 - Specific rules on eligibility for certain expenditure categories**

1. Commission Delegated Regulation (EU) No 481/2014<sup>14</sup> shall apply.
2. However, by derogation to Article 5(5) to (8) of that Regulation, the following shall apply:
  - a) For operations concerning technical assistance or promotional activities and capacity-building, expenditure incurred outside the programme area shall be eligible, if incurred in accordance with the conditions in points a) and c) of Article 29(2).
  - b) With regard to other persons than those covered by points d) and e), the managing authority may accept the costs of accommodation and meals taken in establishments located outside the programme area but in an IPA II beneficiary as eligible for the ERDF contribution from budget Heading 4 (IPA II), if incurred in accordance with Article 29(2). This shall also apply to local travel costs at the location of an event or an action outside the programme area but within the Union.
  - c) With regard to other persons than those covered by points d) and e), the managing authority may accept the costs of accommodation and meals taken in establishments located outside the programme area but in an IPA II as eligible for the ERDF contribution from budget Heading 4, if incurred in accordance with Article 29(2) and (4). This shall also apply to local travel costs at the location of an event or an action outside the programme area but in an IPA II beneficiary.
  - d) For the staff of beneficiaries located outside the programme area but within the Union, the managing authority may accept costs referred to in paragraph 1, including costs of travel to and from the location of an event or an action inside or outside the programme area, as eligible for the ERDF contribution from budget Heading 4 (IPA II), if incurred in accordance with Article 29(2).
  - e) For the staff of beneficiaries located outside the programme area but in an IPA II beneficiary, the managing authority may accept costs referred to in paragraph 1, including costs of travel to and from the location of an event or an action inside or outside the programme area, as eligible for the ERDF contribution from budget Heading 4 (IPA II), if incurred in accordance with Article 29(2) and (4).
  - f) For the staff of beneficiaries located inside the programme area the costs referred to in paragraph 1 of Article 5 of Commission Delegated Regulation (EU) No 481/2014, including costs of travel to and from location of an event or an action inside or outside the programme area, shall be considered eligible for the respective ERDF assistance in accordance with Article 29(1).

### **Article 31 - Operations generating net revenue**

1. With regard to operations which generate net revenue during their implementation, Article 65(8) CPR shall apply.

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<sup>14</sup> Commission Delegated Regulation (EU) No 481/2014 of 4 March 2014 supplementing Regulation (EU) No 1299/2013 of the European Parliament and of the Council with regard to specific rules on eligibility of expenditure for cooperation programmes, OJ L 138, 13.5.2014, p. 45.



2. With regard to operations which generate net revenue after their completion, Article 61 CPR and the fourth subparagraph of Article 65(8) CPR shall apply.

In accordance with Articles 1 and 2 of Commission Delegated Regulation (EU) No 2015/1516<sup>15</sup> a flat rate of 20 % is established for operations in the sector of research, development and innovation as referred to in point (a) of the first subparagraph.

Articles 15 to 19 of Commission Delegated Regulation (EU) No 480/2014<sup>16</sup> concerning the method for calculating the discounted net revenue of operations generating net revenue shall apply.

### **Article 32 - Durability of operations**

With regard to the durability of operations Article 71 CPR shall apply.

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<sup>15</sup> Commission Delegated Regulation (EU) 2015/1516 of 10 June 2015 establishing, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, a flat rate for operations funded by the European Structural and Investment Funds in the Research, Development and Innovation sector, OJ L 239, 15.9.2015, p. 65.

<sup>16</sup> Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, OJ L 138, 13.5.2014, p. 5.



## **Section V – Procurement by beneficiaries from the IPA II beneficiary**

### **Article 33 – Applicable procurement rules**

1. For the award of service, supply and work contracts, by beneficiaries from the IPA II beneficiary the procurement procedures shall follow:
  - a) the provisions in Articles 190 and 191 of Chapter 3 of Title IV of Part Two of the Financial Regulation;
  - b) the provisions of Articles 260 to 276 of Chapter 3 of Title II of Part Two of Delegated Regulation (EU) No 1268/2012<sup>17</sup>.

In addition the IPA II beneficiary may opt to make use of the Practical Guide to Contract Procedures for EU External Actions (PRAG) supplementing the provisions under points a) and b) of the first subparagraph. The version of PRAG to be used shall be the one in force at the time of the initiation of the relevant procurement procedure.

In accordance with Article 18(5) of the Framework Agreement, the national law of the IPA II beneficiary transposing Directive 2014/24/EU shall be considered equivalent to the rules applied by the Commission in accordance with the Financial Regulation. The Commission shall inform the IPA II beneficiary and the managing authority about its assessment of such national law and fix a date from which such national law can be applied for the implementation of operations under the Programme.

2. Public procurement procedures with regard to the expenditure linked to the preparatory stage of an operation and launched by beneficiaries before the grant document referred to in Article 14(7) had been provided to the beneficiary shall also follow the provisions referred to in paragraph 1.
3. Public procurement procedures with regard to technical assistance financed from both the contribution from budget Heading 1b and from budget Heading 4 (IPA II) and implemented by the programme authorities located in the Member State shall follow the national public procurement procedures transposing EU Directives.

### **Article 34 - Rules on nationality and origin**

1. Participation in the award of procurement contracts, grants and other award procedures for actions financed under the Programme shall be open to all natural persons who are nationals of, and legal persons which are effectively established in the participating countries, other Member States, other IPA II beneficiaries, contracting parties to the Agreement on the European Economic Area and partner countries covered by the European Neighbourhood Instrument (hereafter referred to as 'eligible countries'), and to International Organisations<sup>18</sup>.

Legal persons may include civil society organisations, such as non-governmental non-profit organisations and independent political foundations, community based organisations and private

<sup>17</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ L 362, 31.12.2012, p. 1.

<sup>18</sup> International Organisations are international public-sector organisations set up by intergovernmental agreements, specialised agencies set up by such organisations and other non-profit organisations assimilated to international organisations by a Commission decision.

sector non-profit agencies, institutions and organisations and networks thereof at local, national, regional and international level as long as they are capable of having legal rights and duties in accordance with the respective national laws.

The managing authority may allow the participation in call for proposals of entities without legal personality.

2. All supplies purchased under a procurement contract, or in accordance with a grant agreement, financed under IPA II shall originate from an eligible country.

However, they may originate from any country when the amount of the supplies to be purchased is below the threshold for the use of the competitive negotiated procedure<sup>19</sup>. For the purposes of this Article, the term "origin" is defined in Article 23 and 24 of the Council Regulation (EEC) No°2913/92<sup>20</sup>.

3. The rules under this Article do not apply to, and do not create nationality restrictions for natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.
4. In order to promote local capacities, markets and purchases, priority shall be given to local and regional contractors when the Financial Regulation provides for award on the basis of a single tender. In all other cases, participation of local and regional contractors shall be promoted in accordance with the relevant provisions of the Financial Regulation.
5. Eligibility as defined in this Article may be further restricted in the Special Conditions of this Financing Agreement with regard to the nationality, geographical location or nature of applicants, where such restrictions are required by the specific nature and the objectives of the action and where they are necessary for its effective implementation, in particular to participation in award procedures in case of cooperation actions.
6. Tenderers, applicants and candidates from non-eligible countries or, without prejudice to the second subparagraph of paragraph 2, goods from non-eligible origin may be accepted as eligible by the managing authority in case of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where application of the eligibility rules would make the realisation of a project, programme or action impossible or exceedingly difficult.
7. Natural and legal persons who have been awarded contracts shall comply with applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards<sup>21</sup>.

#### **Article 35 - Intellectual property rights**

1. Contracts concluded by beneficiaries located in the IPA II beneficiary financed under this Financing Agreement shall ensure that the IPA II beneficiary acquire all necessary intellectual property rights

<sup>19</sup> See point (b)(ii) of Article 267(1) of Commission Implementing Regulation (EU, Euratom) No 1268/2012: contracts with a value of less than EUR 100 000.

<sup>20</sup> Council Regulation (EEC) N°2913/92 of 12 October 1992 establishing the Community Customs Code and other Community legislation governing non-preferential origin, OJ L 302, 19 October 1992, p. 1.

<sup>21</sup> The ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation and the abolition of child labour.

with regard to information technology, studies, drawings, plans, publicity and any other material made for planning, implementation, monitoring and evaluation purposes.

2. The IPA II beneficiary shall guarantee that the managing authority, the Commission, or anybody or person authorised by the Commission, shall have access and the right to use such a material. The Commission will only use such material for its own purposes.



## **Section VI – Management, control and designation**

### **Sub-section 1: Designation and functions of the programme authorities**

#### **Article 36 - Designation of authorities**

1. The participating countries in the Programme have designated, for the purposes of Article 123(1) CPR, a single managing authority; for the purpose of Article 123(2) CPR, a single certifying authority, and for the purpose of Article 123(4) CPR, a single audit authority, as set out in table 21 of section 5.1 of the Programme.
2. The managing authority is not responsible for carrying out the functions of the certifying authority. The certifying authority shall receive the payments made by the Commission and shall, as a general rule, make payments to the lead beneficiary in accordance with Article 132 CPR.
3. The procedure for the designation of the managing authority and, where appropriate, of the certifying authority, set out in Article 124 CPR, shall be carried out by the Member State in which the authority is located.

#### **Article 37 - Functions of the managing authority**

1. Without prejudice to paragraph 2 of this Article, the managing authority of the Programme shall carry out the functions laid down in Article 125 CPR and Article 23.
2. As the managing authority does not carry out verifications under point (a) of Article 125(4) CPR throughout the whole programme area, each Member State or each IPA II beneficiary shall designate the body or person responsible for carrying out such verifications in relation to beneficiaries on its territory (the 'controller(s)'), as set out in table 22 of section 5.1 of the Programme.
3. The managing authority shall satisfy itself that the expenditure of each beneficiary participating in an operation has been verified by a designated controller.
4. Each participating country shall ensure that the expenditure of a beneficiary can be verified within a period of three months of the submission of the documents by the beneficiary concerned.
5. Each participating country shall be responsible for verifications carried out on its territory.
6. Where the delivery of co-financed products or services can be verified only in respect of an entire operation, the verification shall be performed by the managing authority or by the controller of the Member State where the lead beneficiary is located.

#### **Article 38 - Joint Secretariat**

The managing authority, after consultation with the Member States and any IPA II beneficiary participating in a cooperation programme, shall set up a joint secretariat, as set up in section 5.2 of the Programme.

#### **Article 39 - Functions of the certifying authority**

The certifying authority of the Programme shall carry out the functions laid down in Article 126 CPR.



**Article 40- Functions of the audit authority**

1. The participating Member States and the IPA II beneficiary may authorise the audit authority to carry out directly the functions provided for in Article 127 CPR in the whole of the territory covered by the Programme. They shall specify when the audit authority is to be accompanied by an auditor of a Member State or the IPA II beneficiary.
2. Where the audit authority does not have the authorisation referred to in paragraph 1, it shall be assisted by a group of auditors composed of a representative from each participating Member State or from the IPA II beneficiary and carrying out the functions provided for in Article 127 CPR, as listed in table 22 of section 5.1 of the Programme. Each Member State or the IPA II beneficiary shall be responsible for audits carried out on its territory.
3. Each representative from a Member State or from the IPA II beneficiary shall be responsible for providing the factual elements relating to expenditure on its territory that are required by the audit authority in order to perform its assessment.
4. The group of auditors shall be set up within three months of the decision approving the cooperation programme. It shall draw up its own rules of procedure and be chaired by the audit authority for the cooperation programme.
5. The auditors shall be functionally independent of controllers who carry out verifications under Article 37.

**Article 41 - Functions of the authorities of the IPA II beneficiary**

1. The authorities and bodies of the IPA II beneficiary shall support the Member State in its responsibilities and cooperate loyally with the single programme authorities.
2. In accordance with its national law, the IPA II beneficiary may authorise the audit authority to carry out directly the functions provided for in Article 127 CPR in the whole of the territory covered by a cooperation programme. That authorization shall specify when the audit authority is to be accompanied by an auditor of the IPA II beneficiary.

Where the audit authority does not have the authorisation referred to in the first subparagraph, it shall be assisted by a representative from the IPA II beneficiary in carrying out the functions provided for in Article 127CPR.

In case described in second subparagraph, the IPA II beneficiary shall be responsible for audits carried out on its territory.

The representative from the IPA II beneficiary shall ensure that audit work takes account of internationally accepted audit standards.

The representative from the IPA II beneficiary shall be responsible for providing the factual elements relating to expenditure on its territory that are required by the audit authority in order to perform its assessment.

The representative from the IPA II beneficiary shall be functionally independent of the controller/s who carry out verifications under Article 37.

**Sub-section 2: Management and control**

**Article 42 - General principles of management and control systems**

1. In accordance with Article 122(1) CPR, the Member State shall ensure that the management and control systems for the Programme are set up in accordance with Articles 72, 73 and 74 CPR.
2. The Member State shall in particular ensure that no later than 31 December 2015 all exchanges of information between beneficiaries and a managing authority, a certifying authority, an audit authority and intermediate bodies can be carried out by means of electronic data exchange systems.

The systems referred to in the first subparagraph shall facilitate interoperability with national and Union frameworks and allow for the beneficiaries to submit all information referred to in the first subparagraph only once.

Articles 8 to 10 of Commission Implementing Regulation (EU) No 1011/2014 concerning the electronic exchange of information shall apply.

**Article 43 - Shared management and responsibilities**

In accordance with the principle of shared management, the Member State, the IPA II beneficiary and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities laid down in Regulation (EU) No 1303/2013, the Financial Regulation and the ETC Regulation.

**Article 44 - Responsibilities of the IPA II beneficiary**

The NIPAC as designated in accordance with the Framework Agreement shall be responsible for coordinating the IPA II beneficiary's participation in the relevant INTERREG programmes. The NIPAC may delegate this coordination task to a territorial cooperation coordinator or operating structure as appropriate.

**Article 45 - Commission powers and responsibilities**

Article 75 CPR shall apply.

**Article 46 - Cooperation between the Commission and the audit authority**

Article 128 CPR shall apply.

**Article 47- Proportional control of cooperation programmes**

Article 148 CPR shall apply.

**Section VII – Calculating basis and aid intensity**

**Article 48 - Basis for calculating the ERDF assistance**

The Commission decision approving the Programme (see Annexes I, II and III) shall set out whether the co-financing rate for each priority axis and for the contribution from budget Heading 1b and the contribution from budget Heading 4 (IPA II) is to be applied to:

- (a) total eligible expenditure, including public and private expenditure; or
- (b) eligible public expenditure.



**Article 49 - Aid intensity**

The Union co-financing rate at the level of each priority axis of the Programme shall not be less than 20% and no higher than 85% of the eligible expenditure.

The IPA II beneficiary shall respect the minimum rate of its contribution specified in Annexes I and III. In case of contributions from both the IPA II beneficiary and the Union, the IPA II beneficiary contribution shall be made available at the same time as the corresponding contribution from the Union.



**Section VIII - Financial management, decommitment, examination and acceptance of accounts, closure and financial corrections**

**Sub-section 1: Commitments and payments**

**Article 50 - Budget commitments**

With regard to budget commitments Article 76 CPR shall apply.

In particular the decision of the Commission adopting the Programme shall constitute a financing decision within the meaning of Article 84 of the Financial Regulation and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

**Article 51 - Common rules for payments**

With regard to common rules for payments Article 77 CPR shall apply.

In accordance with Article 27(1) of the ETC Regulation, the ERDF assistance to the Programme shall be paid into a single account with no national subaccounts.

In accordance with Article 21(2) of the ETC Regulation the certifying authority shall receive the payments made by the Commission.

In accordance with Article 129 CPR the Member State shall ensure that by the closure of the Programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the ERDF assistance paid by the Commission to the Member State and to the IPA II beneficiary.

**Article 52 - Common rules for calculating interim payments and payment of the final balance**

With regard to calculating interim payments and payment of the final balance Articles 78 and 130 CPR shall apply.

**Article 53 - Payment applications**

1. With regard to payment applications Articles 79(2) and 131 CPR shall apply.
2. Payment applications shall be submitted in accordance with the model set out in Article 6 and Annex VI of Commission implementing Regulation (EU) No 1011/2014.

**Article 54 - Deadlines for presentation of interim payment applications and for their payment**

Article 135 CPR shall apply.

**Article 55 - Payment to beneficiaries**

1. In accordance with Article 21(2) of the ETC Regulation the certifying authority shall, as a general rule, make payments to the lead beneficiary in accordance with paragraphs 2 and 3.
2. Subject to the availability of funding from initial and annual pre-financing and interim payments, the managing authority shall ensure that a beneficiary receives the total amount of eligible public expenditure due in full and no later than 90 days from the date of submission of the payment claim by the beneficiary.



No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries.

3. In accordance with Article 132(2) CPR the payment deadline referred to in paragraph 2 may be interrupted by the managing authority in either of the following duly justified cases:
  - a) the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of the first subparagraph of Article 125(4) CPR, have not been provided;
  - b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.

The beneficiary concerned shall be informed in writing of the interruption and the reasons for it.

#### **Article 56 - Use of the euro**

1. Amounts set out in programmes submitted by Member States, forecasts of expenditure, statements of expenditure, payment applications, accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.
2. Member States which have not adopted the euro as their currency on the date of an application for payment shall convert the amounts of expenditure incurred in national currency into euro.

When the euro becomes the currency of a Member State, the conversion procedure set out in the first subparagraph shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

3. Expenditure incurred in a currency other than the euro shall be converted into euro by the beneficiaries using the monthly accounting exchange rate of the Commission in the month during which that expenditure was either:
  - a) incurred;
  - b) submitted for verification to the managing authority or the controller in accordance with Article 42(3); or
  - c) reported to the lead beneficiary.

The method chosen for this Programme shall be set out in the Programme and shall be applicable to all beneficiaries.

The conversion shall be verified by the managing authority or by the controller in the Member State or in the IPA II beneficiary in which the beneficiary is located.

#### **Article 57 - Pre-financing**

Articles 81, 82 and 134 CPR shall apply.

### **Article 58 - Interruption of the payment deadline and suspension of payments**

1. Concerning the interruption of payments by the Commission Article 83 CPR shall apply.
2. Concerning the suspension of payments by the Commission Article 142 CPR shall apply.

### **Sub-section 2: Decommitment**

#### **Article 59 - Principles**

1. The Programme shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by pre-financing or by a payment application within a defined period, including any payment application for which all or part is subject to an interruption of the payment deadline or a suspension of payments, shall be decommitted.
2. The commitment related to the last year of the period shall be decommitted in accordance with the rules to be followed for the closure of the Programme.
3. The part of commitments still open shall be decommitted if any of the documents required for the closure have not been submitted to the Commission by the deadlines established in Article 60.

#### **Article 60 - Deadline for decommitment**

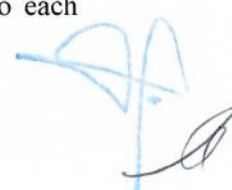
1. The Commission shall decommit any part of the amount in the Programme
  - (a) that has not been used for payment of the initial and annual pre-financing and interim payments by 31 December of the third financial year following the year of budget commitment under the operational programme; or
  - (b) for which a payment application drawn up in accordance with Article 53 has not been submitted in accordance with Article 54.
2. That part of commitments still open on 31 December 2023 shall be decommitted if any of the documents required under Article 68 has not been submitted to the Commission by 15 February 2025.

#### **Article 61 - Exceptions to decommitment**

Article 87 CPR shall apply.

#### **Article 62 - Procedure**

1. The Commission shall inform the Member State, the IPA II beneficiary and the managing authority in good time whenever there is a risk of application of the decommitment rule under Article 59.
2. On the basis of the information it has received as of 31 January, the Commission shall inform the Member State, the IPA II beneficiary and the managing authority of the amount of the decommitment resulting from that information.
3. The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.
4. By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting, for the financial year concerned, the reduced amount of support over one or more priorities of the Programme. Failing such submission, the Commission shall revise the financing plan by reducing the ERDF assistance for the financial year concerned. That reduction shall be allocated to each priority proportionately.



5. The Commission shall amend the decision adopting the Programme, by means of implementing acts, not later than 30 September.

### **Sub-section 3: Accounts**

#### **Article 63 – Preparation, submission, examination and acceptance of the accounts**

1. With regard to the preparation, examination and acceptance of accounts Articles 84, 137 to 139 and 141(2) CPR shall apply.
2. The accounts shall be drafted in accordance with Article 7 and Annex VII of Commission Implementing Regulation (EU) No 1011/2014.
3. In accordance with Article 139(10) CPR the Member State or the IPA II beneficiary may replace irregular amounts which are detected after the submission of the accounts by making the corresponding adjustments in the accounts for the accounting year in which the irregularity is detected, without prejudice to Articles 73 and 74 CPR.
4. In accordance with Article 141(1) CPR, in addition to the documents referred to in Article 138 CPR, for the final accounting year from 1 July 2023 to 30 June 2024, the managing authority shall submit a final implementation report for the Programme.

#### **Article 64 - Availability of documents**

Concerning the obligations of the managing authority to make documents available, the provisions of Article 140 CPR shall apply.

### **Sub-section 4: Financial corrections and recoveries by the participating countries**

#### **Article 65 - Responsibilities of the participating countries**

1. The participating countries shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments.
2. The participating countries shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the participating country shall extend its investigation to cover all operations potentially affected.
3. The participating countries shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or in the Programme. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or in the Programme. The participating countries shall take into account the nature and gravity of the irregularities and the financial loss to the ERDF assistance and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts for the accounting year in which the cancellation is decided.
4. The contribution from the ERDF assistance cancelled in accordance with paragraph 3 may be reused by the participating countries within the Programme concerned, subject to paragraph 5.
5. The contribution cancelled in accordance with paragraph 3 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

#### **Article 66 - Notification of irregularities**

1. Irregularities shall be notified to the Commission in accordance with the first, second and third subparagraph of Article 122(2) CPR.

2. Commission Delegated Regulation (EU) No 2015/1970<sup>22</sup> laying down additional detailed rules on the criteria for determining the cases of irregularity to be reported and the data to be provided shall apply.

In accordance with Article 3(4) of Delegated Regulation (EU) No 2015/1970 irregularities shall be reported by the Member State or the IPA II beneficiary in which the expenditure is paid out by the beneficiary in implementing the operation. The Member State or the IPA II beneficiary shall inform the managing authority, the certifying authority for the programme, the audit authority as well as the national controller as referred to in Article 37(2) and its representative in the group of auditors as referred to in the second subparagraph of Article 40(1).

3. Commission implementing Regulation (EU) No 2015/1974<sup>23</sup> setting out the frequency and the format of the reporting of irregularities shall apply.

#### **Article 67 - Recoveries**

1. In accordance with Article 27(2) of the ETC Regulation the managing authority shall ensure that any amount paid as a result of an irregularity is recovered from the lead or sole beneficiary. Beneficiaries shall repay to the lead beneficiary any amounts unduly paid.
2. In accordance with Article 27(3) of the ETC Regulation, if the lead beneficiary does not succeed in securing repayment from other beneficiaries or if the managing authority does not succeed in securing repayment from the lead or sole beneficiary, the participating country on whose territory the beneficiary concerned is located or, in the case of an EGTC, is registered shall reimburse the managing authority any amounts unduly paid to that beneficiary. The managing authority shall be responsible for reimbursing the amounts concerned to the general budget of the Union, in accordance with the apportionment of liabilities among the participating countries as laid down in the Programme.
3. In accordance with the second sentence of the fourth subparagraph of Article 122(2) CPR the participating countries may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the ERDF assistance.
4. Commission Delegated Regulation (EU) No 2016/568<sup>24</sup> laying down additional detailed rules on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed shall apply.

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<sup>22</sup> Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund, OJ L 293, 10.11.2015, p. 1.

<sup>23</sup> Commission Implementing Regulation (EU) 2015/1974 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, under Regulation (EU) No 1303/2013 of the European Parliament and of the Council, OJ L 293, 10.11.2015, p. 20.

<sup>24</sup> Commission Delegated Regulation (EU) No 2016/568 29 January 2016 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund, OJ L 97, 13 April 2016, p. 1.

**Sub-section 5: Financial corrections by the Commission**

**Article 68 – Scope, criteria and procedure**

1. In accordance with Article 85(1), (2) and (3) CPR the Commission shall make financial corrections by cancelling all or part of the ERDF assistance to the Programme and effecting recovery from the Member State and the IPA II beneficiary in order to exclude from Union financing expenditure which is in breach of applicable law.
2. In accordance with Article 85(4) CPR with regard to the criteria for financial corrections the provisions of Article 144(1) to (5) CPR shall apply.
3. Articles 30 and 31 of Commission Delegated Regulation (EU) No 480/2014 concerning financial corrections by the Commission in relation to systems deficiencies shall apply.
4. With regard to the procedure the provisions of Article 145(1) to (7) CPR shall apply.
5. With regard to repayments the provisions of Article 147 CPR shall apply

**Article 69 - Obligations of the participating countries**

In accordance with Article 146 CPR a financial correction by the Commission shall not prejudice the participating countries' obligation to pursue recoveries under Article 67(2) and Member States to recover State aid within the meaning of Article 107(1) TFEU and under Article 14 of Council Regulation (EC) No 659/1999<sup>25</sup>.

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<sup>25</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p. 1.

## **Section IX – Discontinuation and implementing problems**

### **Article 70 - Failure to sign this Financing agreement**

Where the IPA II beneficiary has not concluded this Financing Agreement by the end of the year following the year of the adoption of the Programme or the amendment of the Programme in order to also cover the ERDF assistance in its favour, the Commission may propose to the MC an amendment of the Programme with a view to discontinue the participation of the IPA II beneficiary in the Programme in accordance with the procedure set out in Article 10(4).

Article 71(2) to (4) shall apply *mutatis mutandis*.

### **Article 71 - Implementation problems**

1. Where that part of ERDF assistance of the Programme with regard to a beneficiary in the IPA II beneficiary cannot be implemented owing to problems arising in relations between participating countries and in other duly justified cases, the Commission may propose to the MC an amendment of the Programme with a view to discontinue the participation of the IPA II beneficiary in the Programme before the expiry date of the period of execution in accordance with the procedure set out in Article 10(4).
2. Where the participation of the IPA II beneficiary in the Programme is discontinued, the managing authority shall transmit the final report within six months following the Commission's decision. After clearing the previous pre-financing payments, the Commission shall pay the final balance or, where appropriate, issue the recovery order. The Commission shall also decommit the balance of commitments.
3. That part of ERDF assistance with regard to a beneficiary in the IPA II beneficiary already subject to a grant document without any condition pursuant to the second subparagraph of Article 12(7) shall be repaid to the managing authority unless it has been paid out in respect of contractual obligations of the beneficiary contracted before the Commission discontinuation decision.
4. That part of ERDF assistance with regard to a beneficiary in a Member State already subject to a grant document shall remain available for its normal lifetime but may be used only for activities which take place exclusively in the Member State concerned and contracted before the Commission discontinuation decision.
5. As an alternative, it may be decided to reduce the Programme's allocation with regard to the participation of the IPA II beneficiary to the programme scope in accordance with the procedure set out in Article 10(4).



## **Section X – Final Provisions**

### **Article 72 - Consultation between the participating countries and the Commission**

- (1) The IPA II beneficiary and the Commission shall consult each other before entering into any dispute relating to the implementation of this Financing Agreement further pursuant to Article 76 of these General Conditions or any dispute relating to the interpretation of this Financing Agreement which cannot be solved in accordance with Article 3 of the Special Conditions.
- (2) Where the Commission becomes aware of problems in carrying out procedures relating to the implementation of this Financing Agreement with regard to the IPA II beneficiary, it shall establish all necessary contacts with the IPA II beneficiary to remedy the situation and take any steps that are necessary.
- (3) The consultation may lead to an amendment, suspension or termination of this Financing Agreement.
- (4) The Commission and the IPA II beneficiary shall keep the Member State informed about any consultations or contacts under paragraphs 1 and 2.
- (5) The Commission shall consult the Member State before a measure listed in paragraph 3 is taken.

### **Article 73 - Amendment of this Financing Agreement**

- (1) Without prejudice of paragraph 6, this Financing Agreement is amended as set out in paragraphs 2 to 5.
- (2) Any amendment of this Financing Agreement shall be made in writing.
- (3) If one of the participating countries requests an amendment, the request shall be submitted to the Commission at least six months before the amendment is intended to enter into force.
- (4) In case the Commission becomes aware of a conflict between, on the one hand, the provisions of this Financing Agreement and, on the other hand, the basic acts listed in Article 1 of the Special Conditions, the Commission shall propose the necessary alignment of this Financing Agreement with the provisions of the basic acts.

In case of an amendment to a basic act, the Commission shall propose the necessary alignment of this Financing Agreement with the amended provisions of the basic acts within two months of the entry into force thereof.

- (5) Amendments to Implementing Regulation (EU) No 2015/207 as regards different models do not require amendments to this Financing Agreement. The IPA II beneficiary shall be informed in writing about any such amendment and its entry into force.
- (6) The managing authority shall notify the Commission in writing any decision amending [Annex [V]] [the specific document referred to in Article 10 of the Special Conditions] within one month of the date of that amending decision. The amending decision shall specify the date of its entry into force. The Commission will acknowledge receipt of that notification in writing.

At the occasion of an amendment of this Financing Agreement in accordance with paragraphs 2 to 5, [Annex [V]] [the reference to the specific document referred to in Article 10 of the Special Conditions] shall be replaced by the most recent version notified to the Commission.

### **Article 74 - Suspension of this Financing Agreement**

- (1) This Financing Agreement may be suspended in the following cases:
  - (a) if the IPA II beneficiary breaches an obligation under this Financing Agreement;
  - (b) if the IPA II beneficiary breaches any obligation set under the procedures and standard documents referred to in Article 18(2) of the Framework Agreement;



- (c) if the IPA II beneficiary does not meet requirements for entrusting budget implementation tasks;
  - (d) if the IPA II beneficiary decides to suspend or cease the EU Membership accession process;
  - (e) if the IPA II beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.
- (2) This Financing Agreement may be suspended in cases of *force majeure*, as defined below.

"*Force majeure*" shall mean any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as *force majeure*. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by a case of *force majeure* of which the other party is duly informed. A party faced with *force majeure* shall inform the other party/parties without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage. If *force majeure* impacts only part of the Programme, the suspension of this Financing Agreement can be partial.

Neither of the Parties shall be held liable for breach of its obligations under this Financing Agreement if it is prevented from fulfilling them by *force majeure*, provided it takes measures to minimise any possible damage.

- (3) The Commission may suspend this Financing Agreement without prior notice.
- (4) The Commission may take any appropriate precautionary measure before suspension takes place.
- (5) When the suspension is notified, the consequences for the on-going or to be signed procurement and grant contracts, and delegation agreements shall be indicated.
- (6) A suspension of this Financing Agreement is without prejudice to the interruption of payments in accordance with Article 58 and to the termination of this Financing Agreement by the Commission in accordance with Article 75.
- (7) The Parties shall resume the implementation of this Financing Agreement once the conditions allow with the prior written approval of the Commission. This is without prejudice to any amendments of this Financing Agreement which may be necessary to adapt the Programme to the new implementing conditions, including, if possible, the extension of the eligibility period, or the termination of this Financing Agreement in accordance with Article 75.

#### **Article 75 - Termination of this Financing Agreement**

- (1) If the issues which led to the suspension of this Financing Agreement have not been resolved within a maximum period of 180 days, either party may terminate this Financing Agreement at 30 days' notice.
- (2) This Financing Agreement shall be automatically terminated, if within the period of two years of its signature:
  - (a) it has not given rise to any payment;
  - (b) no implementing contract or delegation agreement has been signed.
- (3) When the termination is notified, the consequences for the on-going procurement and grant contracts, delegation agreements and such contracts or grants, and delegation agreements to be signed shall be indicated.
- (4) The termination of this Financing Agreement shall not preclude the possibility of the Commission to make financial corrections in accordance with Article 68.

**Article 76 - Dispute settlement arrangements**

- (1) Any dispute concerning this Financing Agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 72 should be submitted to the jurisdiction of the European Court of Justice. If an IPA II beneficiary country does not accept such a jurisdiction, and only in this case, the dispute shall be submitted to an arbitration procedure.
- (2) In case of arbitration, the parties shall designate a common arbitrator within 30 days of the request for arbitration. Failing that, each party shall designate its own arbitrator: Then, the two arbitrators shall in their turn designate a third arbitrator within 30 days. Unless the arbitrators decide otherwise, the procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.
- (3) Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.

