

December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- 14.8 In the event of failure to comply with Article 14.1 to 14.5, the Commission may declare the related costs ineligible for funding by the EU.

Article 15: Suspension

Suspension of payments and suspension of the time limit of a single payment request

- 15.1 The Commission may suspend payment, fully or partly, if:
- a) The Commission, on the basis of information it received, has serious concerns and needs to verify whether:
 - i) Substantial Errors, Irregularities, fraud or breach of obligations committed by the Organisation or the Sub-delegatees in the procedure of their selection, on their pillars assessment or in the implementation of the Action, including regarding the implementation of the Communication and Visibility plan, have occurred;
 - ii) there are significant deficiencies in the functioning of the Organisation or the Sub-delegatees' Internal Control system or systemic errors are detected which call into question the reliability of the Organisation or the Sub-delegatee's Internal Control system or the legality and regularity of the underlying transactions;
 - b) The suspension is necessary to prevent significant damage to the EU financial interests;
 - c) The Commission has evidence that the Organisation or Sub-delegatees have committed systemic or recurrent errors, Irregularities, fraud or breach of obligations under other agreements funded by EU funds provided that those errors, Irregularities, fraud or breach of obligations have a material impact on this Agreement;
- 15.2 In the situations listed in 15.1 the Commission shall immediately inform the Organisation about the suspension of payments and the reasons therefor. The Organisation shall provide its observations within 30 calendar days. The Commission shall, as soon as possible and at the latest within 30 calendar days from the receipt of the observations, notify its conclusions and without prejudice to the termination of the Agreement according to Article 16.2, resume payments or recover amounts unduly paid in line with Article 21 or, in duly justified circumstances, confirm the suspension for a maximum period of 30 additional calendar days.
- 15.3 In the situations listed in Article 16.1, the Commission may suspend payments as a precautionary measure informing the Organisation immediately in writing. The procedure described in Article 16.2 shall then apply.
- 15.4 The Commission may suspend the time limit of payment of a single payment request by notifying the Organisation that either:
- a) The amount is not due;
 - b) The appropriate supporting documents have not been provided;
 - c) The information that comes to the notice of the commission puts in doubt the eligibility of the expenditure included in a payment request.
- 15.5 In the situations listed in Article 15.4 the Commission shall notify to the Organisation as soon as possible the reasons for the suspension, specifying the additional information required. Suspension shall take effect on the date when the Commission sends the notification stating the reasons for the suspension. The remaining payment period shall start to run again from the date on which the Commission notifies that the requested information or revised documents are received or the necessary further checks are carried out.

Suspension of the Agreement by the Commission

- 15.6 The Commission may request in writing the Organisation to immediately suspend the implementation of this Agreement if circumstances so require, in particular:
- a) when a relevant EU Decision identifying a violation of human rights has been adopted⁶;

⁶ For instance, (i) a decision pursuant to Article 37 of Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing Instrument for Development Cooperation (OJ L 378, 27.12.2006, p. 41), Article 28 of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a

b) in cases such as crisis entailing a change of EU policy.

15.7 Following a written notification by the Commission, the Parties shall resume the implementation of the Agreement once the conditions allow. During the suspension period the Organisation shall be entitled to the reimbursement of the minimum costs necessary for a possible resumption of the Agreement. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions, including, if possible, the extension of the implementation period and the contracting deadline, or to the termination of the Agreement in accordance with Article 16.3.

Suspension of the Action by the Organisation, Force Majeure

15.8 The Organisation may decide or be invited to suspend the implementation of all or part of the Action if unforeseen circumstances beyond the control of the Parties so require, in particular in cases of Force Majeure. The Organisation shall inform the Commission immediately and provide all the necessary details, including the measures taken to minimise any possible damage, and the foreseeable effect and date of resumption.

15.9 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by Force Majeure, provided it takes any measure to minimise any possible damage.

15.10 The Parties shall minimise the duration of the suspension and the Organisation shall, resume implementation of the Agreement once the conditions allow, with the prior written approval of the Commission. The Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension. The contracting deadline is automatically extended by an amount of time equivalent to the duration of the suspension in case of suspension by Force Majeure.

15.11 The previous paragraph is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions or to the termination of the Agreement in accordance with Article 16.3.

Article 16: Termination and end date of the Agreement

16.1 Without prejudice to any other provision of these General Conditions, the Commission may terminate the Agreement if the Organisation or the Sub-delegatees:

- a) Fail to fulfil a substantial obligation incumbent on it under the terms of the Agreement;
- b) Undergo legal, financial, technical or organisational changes likely to substantially affect in a negative way the implementation and management of the Action or call into question the decision by which the EU contribution is awarded;
- c) Are guilty of misrepresentation or submit false or incomplete statements to obtain the EU contribution or provide reports that do not reflect reality to obtain or keep the EU contribution without cause;
- d) Are bankrupt or being wound up, or is subject to any other similar proceedings;
- e) Are guilty of grave professional misconduct proven by any justified means;
- f) Have intentionally or by negligence committed a substantial irregularity in performing the Agreement, or in the event of fraud, corruption or any other illegal activity by the Organisation or the Sub-delegatees to the detriment of the EU's financial interests;
- g) Fail to comply with the reporting obligations stated in Article 4.9;
- h) Have committed any of the failings described in Article 15.1.

16.2 In the circumstances mentioned in Article 16.1, the Commission shall enter into discussions with the Organisation. Failing agreement on a solution within 30 calendar days, the Commission may terminate the Agreement by serving 7 calendar days written notice and without paying compensation of any kind to the Organisation. In that event, the Commission may demand full or partial repayment of any amounts unduly paid, after allowing the Organisation to submit its observations.

- 16.3 If, at any time, either Party believes that the purposes of the Agreement can no longer be effectively or appropriately carried out due to the reasons described in 15.6.a, 15.6.b and 15.8, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by serving 60 calendar days written notice. In this case, the Organisation shall be entitled to (i) payment only for the part of the Action carried out, and (ii) reimbursement of legal commitments it entered into for implementing the Action before the written notice on termination was submitted to the other Party and which the Organisation cannot reasonably terminate on legal grounds. The Commission shall recover the remaining part in accordance with Articles 20 and 21.

End date

- 16.4 Unless the Agreement is terminated earlier pursuant to Article 16 of the General Conditions, it shall end by the “end date”, which is the moment of the payment of the balance by the Commission in accordance with Article 20 of the General Conditions or when the Organisation repays any amounts paid in excess of the final amount due pursuant to Article 21 of the General Conditions. In cases where there is no final payment by the Commission or final repayment by the Organisation, the “end date” shall occur 18 months after the end of the Implementation Period as defined in Article 2 of the Special Conditions. If any of the parties apply the dispute settlement procedure provided for in Article 17, the “end date” is postponed until the completion of such procedure.

Article 17: Applicable law and Settlement of Disputes

- 17.1 The Parties shall endeavour to amicably settle any dispute or complaint relating to the interpretation, application or fulfilment of the Agreement, including its existence, validity or termination.
- 17.2 When the Organisation is not an international organisation, this Agreement is governed by EU law, complemented if necessary by the relevant provisions of Belgian law. In default of amicable settlement, any Party may refer the matter to the General Court of the EU and, in the event of appeal, the Court of Justice of the EU.
- 17.3 When the Organisation is an international organisation:
- a) Nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents or international law.
 - b) In default of amicable settlement in accordance with paragraph 17.1 above, any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The Arbitrator’s decision shall be binding on all Parties and there shall be no appeal.

Article 18: Eligible costs

Conditions for the eligibility of implementation costs

- 18.1 Eligible costs incurred by the Organisation shall meet the following criteria:
- a) They are necessary for carrying out the Action. They are directly attributable to the Action and arise as a direct consequence of its implementation;
 - b) They are actual, i.e. they represent real costs definitely and genuinely borne by the Organisation.
 - c) They are reasonable, justified and comply with the principle of sound financial management, in particular regarding economy and efficiency;
 - d) They are incurred during the Implementation Period, whatever the time of disbursement:
 - i) Costs relating to grants, services and works shall relate to activities performed during the Implementation Period. Costs relating to supplies shall relate to their delivery and installation during the Implementation Period. Consequently, cash transfers from the Organisation to the Sub-Delegatee(s), payment of an advance (pre-financing) or entering into any commitment for future delivery of services, works or supplies (procurement) or for future execution of activities (grants), such as signing a contract or placing an order, are not incurred costs;



- ii) Except for multi-donor actions, pending payments corresponding to incurred costs shall either be paid before the submission of the Final Report or they shall be listed in the Final Report together with the estimated date of payment;
- iii) Costs relating to audit and evaluation may be incurred after the Implementation Period;
- e) They are identifiable, in particular being recorded in the accounting records of the Organisation and determined according to the Organization's accounting system. They are backed by effective supporting evidence (originals, as the case may be in electronic form) and are verifiable pursuant to Article 22;
- f) They are indicated in the estimated budget in Annex III distinguishing, to the extent possible, the costs of budget implementation tasks;
- g) They comply with the applicable tax and social legislation.

Implementation costs

18.2 The following categories of costs are eligible provided that they satisfy the conditions of eligibility set out in Article 18.1:

- a) The costs of the Organisation's staff directly assigned to the implementation of the Action corresponding to salaries plus social security charges and other statutory costs included in the remuneration of the staff and provided in accordance with the Organisation's policy. The Organization shall retain evidence regarding the time worked by the staff be that through a time-recording system, a reliable method of apportionment or through an employment contract stipulating the precise assignment to the Action;
- b) The costs of travel by the staff directly assigned to the implementation of the Action and related subsistence allowances, provided in line with the usual practices of the Organisation;
- c) The costs of funding by the Organisation to Contractors and Grant Beneficiaries for implementation of the Action described in Annex I, such as:
 - i) Costs for equipment (new or used) which are directly attributable to the Action;
 - ii) Costs for goods and services (transport, storage and distributing, rent of equipment, etc.) which are directly attributable to the Action;
 - iii) Costs of consumables and supplies directly attributable to the Action;
- d) Taxes, duties and charges, including VAT, paid by the Organisation in relation to the costs referred to in point (a), (b) or (c), provided the Organisation cannot recover them.

18.3 The costs referred to in 18.2.a, 18.2.b and 18.2.c, attributable to the functioning of the field offices necessary to implement the Action, are eligible in proportion to the amount of activity directly attributable to the Action.

Remuneration

18.4 A fixed percentage of the eligible implementation costs, as stated in Article 3.2 of the Special Conditions and not exceeding 7%, may be claimed by the Organisation, or the sub-delegatees, as remuneration.

18.5 Subject to the above, for comparable Actions and Actions where there is more than one donor the amount claimed as remuneration shall not, in percentage terms, be higher than for other comparable contributions.

18.6 The remuneration does not need to be supported by accounting documents.

Ineligible costs

18.7 The following costs are ineligible in addition to any other costs not fulfilling the conditions set out in Article 18.1:

- a) Debt and debt service charges;
- b) Provisions for losses or debt;
- d) Expenditure financed by other sources;
- e) Purchases of land or buildings;
- f) Exchange losses;
- g) Contributions in kind. The cost of staff assigned to the Action is not a contribution in kind and may be considered as co-financing in the Budget when paid for by the Organisation or the Sub-delegatees.

Sub-delegation

- 18.8 The costs incurred by the Sub-delegatees are eligible under the same conditions than those of the Organisation.

Article 19: Payments

- 19.1 Payment procedures as set forth in Article 4 of the Special Conditions shall be:
- a) The Commission shall provide pre-financing as set out in Article 4.2 of the Special Conditions within 30 calendar days of receiving this Agreement signed by both Parties.
 - b) When the Implementation Period exceeds 12 months, each further instalment shall be provided as per the amount set out in the Article 4.2 of the Special Conditions provided that at least 70% of the immediately preceding instalment (and 100% of previous instalments if any) has been subject to a legal commitment between the Organisation or the Sub-delegatees and a third party as proven by the relevant report;
 - c) The Commission shall pay the instalments and final payment within 90 calendar days of receiving a payment request accompanied by a progress or final report.
- 19.2 Reports shall be presented in accordance with Article 4. The payment shall be made upon approval of the reports. The final amount shall be established in line with Article 20. Approval of the requests for payment and of the accompanying reports shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information contained therein.
- 19.3 The Commission shall make payments in Euro into the bank account referred to in the financial identification form in Annex IV.

Late payment interest

- 19.4 In case of late payment of the amounts stated in Article 4 of the Special Conditions the following conditions apply:
- a) If the Organisation is not a Member State of the EU, on expiry of the time limits for payments specified in Article 19.1, the Organisation shall receive interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros. The reference rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the EU, increased by three and a half percentage points;
 - b) The suspension of payments by the Commission in accordance with Article 15 shall not be considered as late payment;
 - c) Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article 19.1. Any partial payment shall first cover the interest;
 - d) By way of exception to Article 19.4.c, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, the Commission shall pay such interest to the Organisation only upon request from the Organisation submitted within two months of it receiving late payment;
 - e) The interest shall not be treated as an income for the purposes of determining the final amount of the EU contribution within the meaning of Article 20.

Article 20: Final Amount

- 20.1 The Commission shall determine the final amount of the EU contribution when approving the Organisation's final report. Without prejudice to Article 22, the Commission shall then determine the balance still due to the Organisation or the amount to be recovered.
- 20.2 Without prejudice to Article 20.5 the final amount shall be the lower of the following two amounts:
- a) The sum of the eligible implementation costs approved by the Commission and the related remuneration;
 - b) The maximum EU contribution referred to in Article 3.1 of the Special Conditions.
- 20.3 The Organisation accepts that the contribution under this Agreement shall be limited to the amount required to balance income generated by the Action, donor contributions and eligible costs.

- 20.4 The Commission shall recover pursuant to Article 21 any amount paid in excess.
- 20.5 Where the Action is not implemented, is not implemented in line with the Agreement, is implemented partially or late, or if the Organisation has substantially breached a contractual obligation under the Agreement, for example on Communication and Visibility, the Commission may, after allowing the Organisation to submit its observations, reduce the EU contribution accordingly.

Article 21: Recovery

- 21.1 Where an amount is to be recovered under the terms of the Agreement, the Organisation shall repay in Euro to the Commission the amount due.
- 21.2 Before recovery, the Commission shall formally notify the Organisation of its intention to recover any undue amount, specifying the amount and the reasons for recovery and inviting the Organisation to make any observations within 30 calendar days from the date of receipt of the notification. If the Organisation does not submit any observations or if, despite the observations submitted by the Organisation, the Commission decides to pursue the recovery procedure, the Commission may confirm recovery by formally notifying to the Organisation a debit note ("debit note"), specifying the terms and the date for payment.
- 21.3 If the Organisation does not make the payment by the date specified in the debit note, the Commission shall recover the amount due:
- a) By offsetting it against any amounts owed to the Organisation by the EU;
 - b) By taking legal action in accordance with Article 17, or, where applicable, by adopting an enforceable decision in accordance with Article 299 of the Treaty on the Functioning of the EU;
 - c) In exceptional circumstances, justified by the necessity to safeguard the financial interests of the EU, the Commission may recover by offsetting before the deadline specified in the debit note without the Organisation's prior consent.
- 21.4 If the Organisation fails to repay by the due date, the amount due shall be increased by late payment interest calculated at the rate indicated in Article 19.4.a. The interest shall be payable for the period elapsing from the day after the expiration of the time limit for payment up to and including the date when the Commission actually receives payment in full of the outstanding amount. Any partial payment shall first cover the interest.
- 21.5 Bank charges incurred from the repayment of amounts due to the Commission shall be borne entirely by the Organisation.

Article 22: Accounts, technical and financial checks.

Accounting

- 22.1 The Organisation shall keep accurate and regular records and accounts of the implementation of the Action.
- 22.2 Where feasible, the Organisation shall maintain the EU contribution in Euro denominated bank accounts. The Organisation may pool the EU contribution together with contributions from other donors. They may be exchanged for other currencies in order to facilitate their disbursement. If interest in pre-financing is due the accounting methods of the Organisation shall make possible to identify the payments by the Commission and the interest or other benefits yielded by those funds.

Archiving

- 22.3 For a period of five years from the End Date defined in Article 16.4 or up to the date of the limitation period of any claim pursuant to the applicable law governing the Agreement and any contracts or grants concluded under the Agreement if the latter last longer, the Organisation shall keep and make available according to Article 22.4 all relevant financial information in its original form (electronic as the case may be) or, in exceptional and duly justified cases, certified copies of original documents related to the Agreement and on any procurement contracts or grant agreements concluded under this Agreement.

Access

- 22.4 The Organisation shall allow the Commission and the European Court of Auditors, or any other representative authorised by the Commission to conduct desk reviews, and on-the-spot checks on the use made of the EU contribution (including procedures for the award of procurement contracts and

- grants) on the basis of supporting accounting documents and any other documents related to the financing of the Action.
- 22.5 The Organisation agrees that OLAF may carry out on-the-spot checks, investigations and verifications in accordance with the procedures laid down by EU law for the protection of the financial interests of the EU against fraud and other Irregularities.
- 22.6 To that end, the Organisation undertakes to grant officials of the Commission, OLAF and the European Court of Auditors and their authorised agents access to sites and premises at which operations financed under the Agreement are carried out, and to any documents and computerised data concerning the technical and financial management of those operations. The Organisation shall take all necessary measures to facilitate these checks. The Organisation shall grant access by authorised agents of the Commission, OLAF and the European Court of Auditors on conditions of confidentiality, without prejudice to public law obligations to which it is subject. Documents must be accessible and filed in a manner permitting inspection, the Organisation being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.
- 22.7 The Commission shall inform the Organisation of the planned on-the-spot missions by agents appointed by the Commission or the Court of Auditors in due time in order to ensure adequate procedural matters are agreed upon in advance.
- 22.8 If the Organisation is an international organisation the desk reviews, investigations and on-the-spot checks referred to in Article 22 shall refer to a verification which shall be performed in accordance with the verification clauses agreed with the Commission. If the Organisation is not an international organisation an investigation or audit shall be performed. This is without prejudice to any cooperation agreement between OLAF and the Organisation's anti-fraud bodies.

