

GRANT AGREEMENT NUMBER - [...]

This Agreement (hereinafter referred to as “the Agreement”) is concluded between the following parties:

on the one part,

The European Border and Coast Guard Agency, Plac Europejski 6, 00-844 Warsaw, Poland (hereinafter referred to as “Frontex”), represented for the purposes of signature of this Agreement by [function, forename and surname],

and

on the other part,

1. the Coordinator¹,

[full official name] [ACRONYM]

[official legal status or form]

[official registration No]

[official address in full]

[VAT number],

represented for the purposes of signature of this Agreement by [function, forename and surname]

and the other beneficiaries:

2. **[full official name, established in ...]**

3. **[full official name, established in ...]**

duly represented for the signature of this agreement by the Coordinator by virtue of the mandate(s) included in Annex VI.

Unless otherwise specified, references to “beneficiary/ies” include the Coordinator.

The parties referred to above

HAVE AGREED

to the Special Conditions (hereinafter referred to as “the Special Conditions”) and the following Annexes:

Annex I	Description of the action
Annex II	General Conditions (hereinafter referred to as “the General Conditions”)
Annex III	Estimated budget
Annex IV	Model final technical report
Annex V	Model financial statement
Annex VI	Mandate[s] provided to the Coordinator by the other beneficiary[ies]
Annex VII	Request for pre-financing template
Annex VIII	Request for final payment template

which form an integral part of this Agreement, “the Agreement”.

The provisions in the Special Conditions of the Agreement take precedence over its Annexes.

The provisions in Annex II ‘General Conditions’ take precedence over the other Annexes.

¹ In accordance with the mandate conferred on the Coordinator (see Annex VI), the Coordinator signs this Grant Agreement also on behalf of the other beneficiaries, who, therefore, do not need to individually sign this Grant Agreement to become parties to it.

SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT MATTER OF THE AGREEMENT

Frontex has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the other Annexes to the Agreement, for the action entitled **[title of the action]** ("the action") as described in Annex I.

With the signature of the Agreement, the beneficiaries accept the grant and agree to implement the action, acting on their own responsibility.

ARTICLE I.2 - ENTRY INTO FORCE AND IMPLEMENTATION PERIOD OF THE AGREEMENT

I.2.1 The Agreement enters into force on the date on which the last party signs it.

I.2.2 The action shall run from the entry into force of the Agreement ("the starting date of the action") and shall end on **30 September 2020** ("the end date"). The implementation of the action cannot start before the entry into force of the Agreement.

Article I.3 - MAXIMUM AMOUNT AND FORM OF THE GRANT

I.3.1 The total eligible cost of the action to be carried out is estimated at EUR, as shown in the estimated budget in Annex III, and it consists of:

- i. Eligible direct costs, which take the form of reimbursement of costs actually incurred;
- ii. Eligible indirect costs, which take the form of a flat-rate contribution of 7% of the eligible direct costs.

I.3.2 The grant shall be of a **maximum amount of EUR** (in words: and/100), equivalent to % of the estimated total eligible cost indicated in paragraph 1.

I.3.3 The final amount of Frontex's financing shall be determined as specified in the General Conditions, Part B - Financial provisions.

Article I.4 - REPORTING - REQUEST FOR PAYMENT AND SUPPORTING DOCUMENTS

I.4.1 Reporting periods, payments and additional supporting documents

The following reporting and payment arrangements apply:

- a) Upon entry into force of the Agreement, a pre-financing payment of 50% of the maximum amount specified in Article I.3.2 shall be paid to the Coordinator subject to the receipt of a request for pre-financing;
- b) The payment of the balance shall be paid to the Coordinator subject to the receipt of :
 - Request for balance payment;
 - A final report on implementation of the action ('final technical report'), drawn up in accordance with Annex IV;
 - A final financial statement (Annex V) with the following supporting documents proving the costs incurred (...to be filled in at the stage of grant agreement preparation);

The coordinator must submit a request for balance payment, accompanied by the final technical report covering the whole duration of the action and by the final financial statement within **30 calendar days following the end date** of the action set out in Article I.2.

The Coordinator must certify that the information provided in the request for payment of the balance is full, reliable and true.

The Coordinator must also certify that the costs incurred can be considered eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27.

In addition, the Coordinator must certify that all the revenues generated by the action referred to in Article II.25.3 have been declared for each beneficiary.

I.4.2 Information on cumulative expenditure incurred

Not applicable.

I.4.3 Currency for requests for payment and financial statements and conversion into euro

Requests for payment and financial statements must be drafted in euros.

Where the beneficiary keeps its general accounts in a currency other than the euro, it shall convert costs incurred in another currency into euro at the monthly accounting rate established by the Commission and published on its website (http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm) applicable on the day when the cost was incurred².

I.4.4 Language of requests for payments, technical reports and financial statements

All requests for payments, technical reports and financial statements must be submitted in English.

ARTICLE I.5 - PAYMENTS AND PAYMENT ARRANGEMENTS

I.5.1 Payments to be made

Frontex must make the following payments to the coordinator:

- one pre-financing payment;
- one payment of the balance, on the basis of the request for payment of the balance referred to in Article I.4.1.

I.5.2 Pre-financing payment

The aim of the pre-financing is to provide the beneficiaries with a float. The pre-financing remains the property of the Union until it is cleared against interim payments or, if it is not cleared against interim payments, until the payment of the balance.

Frontex must make the pre-financing payment to the coordinator within 30 calendar days from the date of receiving the request for pre-financing.

I.5.3 Interim payment[s]

Not applicable

I.5.4 Payment of the balance

The payment of the balance reimburses or covers the remaining part of the eligible costs and contributions for the implementation of the *action*.

² In accordance with accrual accounting standards, the date when the cost was incurred means the date of issuance of the supporting document (invoice, bill, or other equivalent document).

If the total amount of earlier payments is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance takes the form of a recovery as provided for by Article II.26.

If the total amount of earlier payments is lower than the final amount of the grant determined in accordance with Article II.25, Frontex must pay the balance within 60 calendar days from when it receives the documents referred to in Article I.4.1, except if Article II.24.1 or II.24.2 apply.

Payment is subject to the approval of the request for payment of the balance and of the accompanying documents. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

Frontex determines the amount due as the balance by deducting the total amount of pre-financing payments already made from the final amount of the grant determined in accordance with Article II.25.

The amount to be paid may, however, be offset, without the beneficiary's consent, against any other amount owed by the beneficiary to Frontex, up to the maximum contribution indicated for that beneficiary, in the estimated budget in Annex III.

I.5.5 Notification of amounts due

Frontex must send a *formal notification* to the coordinator informing it of the amount due and specifying that the notification concerns the payment of the balance.

For the payment of the balance, the Frontex must also specify the final amount of the grant determined in accordance with Article II.25

I.5.6 Interest on late payment

If Frontex does not pay within the time limits for payment, the beneficiaries are entitled to late-payment interest at the rate applied by the European Central Bank for its main refinancing operations in euros ('the reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

Late-payment interest is not due if all beneficiaries are Member States of the Union (including regional and local government authorities and other public bodies acting in the name of and on behalf of the Member State for the purpose of the Agreement).

If Frontex suspends the time limit for payment as provided for in Article II.24.2 or if it suspends an actual payments as provided for in Article II.24.1, these actions may not be considered as cases of late payment.

Late-payment interest covers 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 I.5.8. Frontex does not consider payable interest when determining the final amount of grant within the meaning of Article II.25.

As an exception to the first subparagraph, if the calculated interest is lower than or equal to EUR 200, it must be paid to the coordinator only if the coordinator requests it within two months of receiving late payment.

I.5.7 Currency for payments

Frontex must make payments in euros.

I.5.8 Date of payment

Payments by Frontex are considered to have been carried out on the date when they are debited to its account.

I.5.9 Costs of payment transfers

Costs of the payment transfers are borne as follows:

- (a) Frontex bears the costs of transfer charged by its bank;
- (b) the beneficiary bears the costs of transfer charged by its bank;
- (c) the party causing a repetition of a transfer bears all costs of repeated transfers.

I.5.10 Payments to the coordinator

Frontex must make payments to the Coordinator.

Payments to the Coordinator discharge Frontex from its payment obligation.

Article I.6 - BANK ACCOUNT FOR PAYMENTS

All payments shall be made to the Coordinator's bank account as indicated below:

Name of bank: [...]

Address of branch: [...]

Precise denomination of the account holder: [...]

Full account number (including bank codes): [...]

[IBAN code: [...]]

ARTICLE I.7 - DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES

I.6.1 Data controller

The entity acting as a data controller according to Article II.7 of the General Conditions is the Head of Training Unit, Capacity Building Division, Frontex.

I.6.2 Communication details of Frontex

Any communication addressed to Frontex shall have the reference number of this Agreement and be sent to the following address:

Frontex
Training Unit
Forename / Surname
Plac Europejski 6
00-844 Warsaw, Poland
E-mail address: grants.TRU@frontex.europa.eu and

Requests for payment and the documents accompanying them are to be scanned and sent in pdf format (attached to an email) and addressed to: invoices@frontex.europa.eu with CC to grants.TRU@frontex.europa.eu

I.6.3 Communication details of the beneficiary

Any communication from Frontex to the beneficiary shall be sent to the address of the Coordinator:

[Full name]
[Function]
[Name of the entity]

[Full official address]

E-mail address: [complete]

ARTICLE I.8 - SPECIAL PROVISIONS ON ELIGIBILITY OF COSTS

In addition to the provisions of Article II.19 of the General Conditions, the costs of the equipment needed for the implementation of the project shall be eligible up to 25% of eligible direct costs and shall not exceed EUR 15,000.

ARTICLE I.9 - SPECIAL PROVISIONS ON BUDGET TRANSFERS

As an exception to the first subparagraph of Article II.22, budget transfers between budget categories are limited to 10% of the total eligible direct costs of the action without prior request for approval. Any budget transfer requires justification to be presented in the final report.

SIGNATURES

For the Coordinator
[forename/surname]
Function:

For Frontex
[forename/surname]
Head of Unit

[signature]
Done at
Date:

[signature]
Done at Warsaw
Date:

In duplicate in English

**ANNEX II
GENERAL CONDITIONS**

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PART A - LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 - DEFINITIONS

The following definitions apply for the purpose of the Agreement:

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

'Breach of obligations': failure by a beneficiary to fulfil one or more of its contractual obligations. **'Confidential information or document'**: any information or document (in any format) received by either party from the other or accessed by either party in the context of the implementation of the Agreement that any of the parties has identified in writing as confidential. It does not include information that is publicly available.

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

'Direct costs': those specific costs which are directly linked to the implementation of the action and can therefore be attributed directly to it. They may not include any indirect costs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.2.1 General obligations and roles of the beneficiaries

The beneficiaries:

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

II.2.2 General obligations and role of each beneficiary

Each beneficiary must:

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

II.2.3 General obligations and role of the Coordinator

The Coordinator:

- (a) must monitor the implementation of the action in order to make sure that the action is implemented in accordance with the terms of the Agreement;
- (b) is the intermediary for all communications between the beneficiaries and Frontex, except if provided otherwise in the Agreement. In particular, the Coordinator::

- (i) must immediately inform Frontex:
 - of any change in the name, address, legal representative of any of the beneficiaries;
 - of any change in the legal, financial, technical, organisational or ownership situation of any of the beneficiaries;
 - of any events or circumstances of which the Coordinator is aware, that are likely to affect or delay the implementation of the *action*.
 - of any change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046, for any of the beneficiaries.
- (ii) is responsible for supplying Frontex with all documents and information required under the Agreement, except if provided otherwise in the Agreement itself. If information is required from the other beneficiaries, the Coordinator is responsible for obtaining, verifying and consolidating this information before passing it on to Frontex.
- (iii)
- (c) must make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) must draw up the requests for payment and reports in accordance with the Agreement;
- (e) if it is designated as the sole recipient of payments on behalf of all of the beneficiaries, ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;
- (f) is responsible for providing all the necessary documents required for checks and audits initiated before the payment of the balance or documents required for evaluation as provided for in Article II.27.

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

ARTICLE II.3 - COMMUNICATIONS BETWEEN THE PARTIES

II.3.1 Form and means of communications

Any communication relating to the Agreement or to its implementation must be made in writing (in paper or electronic form), bear the number of the Agreement and be made using the communication details identified in Article I.6 of the Special Conditions.

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

II.3.2 Date of communications

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

Email is considered to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email addressees listed in Article I.6. The sending party must be able to prove the date of dispatch. If the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to Frontex using the postal or courier services is considered to have been received by Frontex on the date on which it is registered by Frontex.

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

ARTICLE II.4 - LIABILITY FOR DAMAGES

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

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

ARTICLE II.5 - CONFLICT OF INTERESTS

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

II.5.2 The beneficiaries must inform Frontex without delay of any situation constituting or likely to lead to a conflict of interests. They must take immediately all the necessary steps to rectify this situation. Frontex may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

ARTICLE II.6 - CONFIDENTIALITY

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

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

II.6.3 The confidentiality obligations do not apply if:

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

ARTICLE II.7 - PROCESSING OF PERSONAL DATA

II.7.1 Processing of personal data by Frontex

Any personal data included in the Agreement must be processed by Frontex in accordance with Regulation (EU) No 2018/1725.³

Such data must be processed by the data controller identified in Article I.6.1 solely for implementing, managing and monitoring the Agreement or to protect the financial interests of the EU, including checks, audits and investigations in accordance with Article II.27.

The beneficiaries have the right to access, rectify or erase their own personal data and the right to restrict or, where applicable, the right to data portability or the right to object to data processing in accordance with

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Regulation (EU) No 2018/1725. For this purpose, they must send any queries about the processing of their personal data to the data controller identified in Article I.6.1.

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

II.7.2 Processing of personal data by the beneficiary

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

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

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

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

ARTICLE II.8 - VISIBILITY OF FRONTEX FUNDING

II.8.1 Information on Frontex funding and use of Frontex' emblem

Unless Frontex requests or agrees otherwise, any communication or publication made by the beneficiaries jointly or individually that relates to the action, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), must indicate that the action has received funding from Frontex and display Frontex' emblem.

When displayed in association with another logo, Frontex' emblem must have appropriate prominence.

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

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

II.8.2 Disclaimers excluding Frontex responsibility

Any communication or publication that relates to the action, made by the beneficiaries jointly or individually in any form and using any means, must indicate that it reflects only the author's view and that Frontex is not responsible for any use that may be made of the information it contains.

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

II.9.1 Ownership of the results by the beneficiary

The beneficiaries retain ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, unless stipulated otherwise in the Agreement.

II.9.2 Pre-existing rights

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

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

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

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

The beneficiaries grant Frontex the right to use the results of the action::

- (a) for its own purposes, and in particular, making available to persons working for Frontex, other Union institutions, agencies and bodies and to Member States' institutions, as well as, copying and reproducing in whole or in part and in unlimited number of copies;
- (b) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;
- (d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;
- (e) adaptation: the right to modify the results;
- (f) translation;
- (g) the right to store and archive the results in line with the document management rules applicable to Frontex, including digitisation or converting the format for preservation or new use purposes.

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

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

The beneficiaries must ensure that Frontex has the right to use any pre-existing rights, included in the results of the action. Unless specified otherwise in the Special Conditions, the pre-existing rights must be used for the same purposes and under the same conditions as applicable to the rights of use of the results of the action.

Information about the copyright owner shall be inserted in cases where the result is divulged by Frontex. The copyright information shall read: "© - year - name of the copyright owner. All rights reserved. Licenced to the Frontex under conditions."

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

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

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

II.10.2 Beneficiaries that are 'contracting authority' within the meaning of Directive 2014/24/EU⁴ or 'contracting entities' within the meaning of Directive 2014/25/EU⁵ must comply with the applicable national public procurement rules.

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

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

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

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

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

II.11.1 Beneficiaries may subcontract tasks forming part of the action. If they do so, they must ensure that, in addition to the conditions specified in Article II.9 , the following conditions are also complied with:

- (a) subcontracting does not cover core tasks of the action;
- (b) recourse to subcontracting is justified because of the nature of the action and what is necessary for its implementation;
- (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;

⁴ 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

⁵ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

- (d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the coordinator and approved by Frontex. Frontex may grant approval:
- (i) before any recourse to subcontracting, if the beneficiaries request an amendment as provided for in Article II.13; or
 - (ii) after recourse to subcontracting if the subcontracting:
 - is specifically justified in the interim or final technical report referred to in Articles I.4.3 and I.4.4; and
 - does not entail changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;

(e) the beneficiaries ensure that the conditions applicable to them under Article II.8 are also applicable to the subcontractors.

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

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

ARTICLE II.12 - FINANCIAL SUPPORT TO THIRD PARTIES

Not applicable.

ARTICLE II.13 - AMENDMENTS TO THE AGREEMENT

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

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

II.13.3 Any request for amendment must:

- (a) be duly justified;
- (b) be accompanied by appropriate supporting documents; and
- (c) be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the *implementation period*.

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

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

II.13.5 Amendments shall enter into force on the date on which the last party signs.

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

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

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

II.14.2 In no circumstances may an assignment release the beneficiary from its obligations towards Frontex.

ARTICLE II.15 - FORCE MAJEURE

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

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

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

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

II.16.1 Suspension of the implementation by the beneficiary

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

The Coordinator must immediately inform Frontex, stating:

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

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

II.16.2 Suspension of the implementation by Frontex

II.16.2.1 Grounds for suspension:

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

II.16.2.2 Procedure for suspension

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

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

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

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

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

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

II.16.2.3 Resuming implementation

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

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

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

II.16.3 Effects of the suspension

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

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

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

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

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

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

ARTICLE II.17 - TERMINATION OF THE AGREEMENT

II.17.1 Termination of the Agreement by the Coordinator

The beneficiaries may terminate the Agreement.

The Coordinator must send a *formal notification* of termination to Frontex, stating:

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

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

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

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

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

The Coordinator must send a formal notification of termination to Frontex and inform the beneficiary concerned by termination.

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

The formal notification must include:

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

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

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

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

II.17.3.1 Grounds for termination

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

- (a) a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Agreement substantially or calls into question the decision to award the grant, or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046, that calls into question the decision to award the grant;

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

II.17.3.2 Procedure for termination

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

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

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

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

The termination takes effect:

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

II.17.4 Effects of termination

II.17.4.1 Effect of terminating the Agreement

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

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

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

Frontex calculates the final grant amount as referred to in Article II.25 and the balance as referred to in Article I.4 on the basis of the reports submitted. Only activities undertaken before the date when the termination takes effect or the end date of the *implementation period* as specified in Article I.2.2, whichever is the earliest, must be taken into account. Where the grant takes the form of reimbursement of costs actually incurred as provided for in Article I.3, only costs incurred before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not taken into account and are not reimbursed or covered by the grant.

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

- (a) improper termination of the Agreement by the coordinator within the meaning of Article II.17.1; or

- (b) termination of the Agreement by Frontex on any of the grounds set out in points (c), (f) and points (g) to (j) of Article II.17.3.1.

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

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

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

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

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

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

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

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

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

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

- (i) a technical report; and
- (ii) a financial statement covering the period from the end of the last reporting period to the date when termination takes effect.

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

Only activities undertaken before the date when the termination takes effect must be taken into account. Where the grant takes the form of reimbursement of costs actually incurred as provided for in Article I.3, only costs incurred by the beneficiary concerned before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not reimbursed or covered by the grant.

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

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

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

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

ARTICLE II.18 - APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISION

II.18.1 The Agreement is governed by the applicable Union law.

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

II.18.3 Not applicable.

MODEL

PART B - FINANCIAL PROVISIONS

ARTICLE II.19 - ELIGIBLE COSTS

II.19.1 Conditions for the eligibility of costs

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

- (a) they are incurred in the period set out in Article I.2 of the Special Conditions, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article I.4;
- (b) they are indicated in the estimated budget set out in Annex III;
- (c) they are incurred in connection with the action as described in Annex I and are necessary for its implementation;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

II.19.2 Eligible direct costs

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

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

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

Those costs include actual salaries plus social security contributions and other statutory costs included in the remuneration. They may also comprise additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used;

- (b) costs of travel, accommodation and related subsistence allowances, provided that these costs are in line with the beneficiary's usual practices on travel and they do not exceed the maximum rates established by the European Commission;
- (c) costs of consumables and supplies, provided that they are purchased in accordance with Article II.10.1 and are directly assigned to the action;
- (d) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction), provided that the corresponding services are purchased in accordance with Article II.10.1;

- (e) costs entailed by subcontracts within the meaning of Article II.11, provided that the conditions laid down in Article II.11.1 (a), (b), (c) and (d) are met;
- (f) duties, taxes and charges paid by the beneficiary, notably value added tax (VAT), provided that they are included in eligible direct costs, and unless specified otherwise in the Agreement.

II.19.3 Eligible indirect costs

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

Unless otherwise specified in Article I.3 of the Special Conditions, eligible indirect costs must be declared on the basis of a flat rate of 7% of the total eligible direct costs.

II.19.4 Ineligible costs

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

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

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

II.20.1 Declaring costs and contributions

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

- (a) for actual costs: the costs it actually incurred for the *action*;
- (b) for financing not linked to costs: the global amount specified in Article I.3, if the corresponding results or conditions as described in Annex I have been properly achieved or fulfilled;

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

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

- (a) for actual costs: adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records.

In addition, the beneficiary's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements and with the amounts indicated in the supporting documents;

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

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

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

Not applicable.

ARTICLE II.21 - ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARY

Not applicable.

ARTICLE II.22 - BUDGET TRANSFERS

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

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

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

ARTICLE II.23 - NON-COMPLIANCE WITH REPORTING OBLIGATIONS

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

- (a) did not submit a request for payment of the balance accompanied by the documents referred to in Articles I.4.1 within 30 calendar days following the end of the corresponding reporting period; and
- (b) still fails to submit such a request within further 30 calendar days following a written reminder sent by Frontex.

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

II.24.1 Suspension of payment

II.24.1.1 Grounds for suspension

Frontex may at any moment suspend, in whole or in part, the pre-financing payment or the payment of the balance for all beneficiaries:

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

II.24.1.2 Procedure for suspension

Step 1 – Before suspending payments, Frontex must send a *formal notification* to the Coordinator:

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

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

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

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

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

II.24.1.3 Effects of suspension

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

- (a) any requests for payments and supporting documents referred to in Articles I.4.1; or
- (b) where the suspension concerns the pre-financing payments, any requests for payments and supporting documents relating to the participation of the concerned beneficiary or beneficiaries in the *action*.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article I.4.1.

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

II.24.1.4 Resuming payments

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

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

II.24.2 Suspension of the time limit for payment

II.24.2.1 Frontex may at any moment suspend the time limit for payment specified in Articles I.4.2 if a request for payment cannot be approved because:

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

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

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

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

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

If the suspension exceeds two months, the Coordinator may request Frontex if the suspension will continue.

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

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

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

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

- Step 1 – Application of the reimbursement rate to the eligible costs and addition of the financing not linked to costs, unit, flat-rate and lump sum contributions
- Step 2 – Limit to the *maximum amount of the grant*
- Step 3 – Reduction due to the no-profit rule
- Step 4 – Reduction due to improper implementation or breach of other obligations.

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

This step is applied as follows:

- (a) If, as provided for in Article I.3.2, the grant takes the form of the reimbursement of eligible costs actually incurred, the reimbursement rate specified in that Article is applied to those eligible costs as approved by Frontex for the corresponding categories of costs, beneficiaries;
- (b) If, as provided for in Article I.3.2(d), the grant takes the form of a flat-rate contribution, the flat rate referred to in that Article is applied to the eligible costs or to the contribution approved by Frontex for the corresponding beneficiaries and affiliated entities;

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

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

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

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

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

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

The profit must be calculated as follows:

- (a) calculate the surplus of the total receipts of the action, over the total eligible costs of the action, as follows:
- { receipts of the action
 - minus
 - consolidated total eligible costs and contributions approved by Frontex corresponding to the amounts determined in accordance with Article II.25.1 }

The receipts of the action are calculated as follows:

- { the revenue generated by the *action* for beneficiaries and affiliated entities other than non-profit organisations
 - plus
 - the amount obtained following Steps 1 and 2 }
- where the revenue generated by the *action* is the consolidated revenue established, generated or confirmed for beneficiaries and affiliated entities other than non-profit organisations on the date on which the request for payment of the balance is drawn up by the Coordinator.

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

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

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

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

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

Before Frontex reduces the grant, it must send a *formal notification* to the Coordinator:

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

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

If the grant is reduced, Frontex must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the *action* or to the seriousness of the *breach of obligations*) from the *maximum amount of the grant*.

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

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

ARTICLE II.26 - RECOVERY

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

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

II.26.2 Recovery after payment of the balance

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

II.26.3 Recovery procedure

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

- (a) informing it of its intention to recover the amount unduly paid;
- (b) specifying the amount due and the reasons for recovery; and
- (c) inviting the beneficiary to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, Frontex decides to pursue the recovery procedure, Frontex may confirm recovery by sending a formal notification to the beneficiary consisting of a debit note, specifying the terms and the date for payment.

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

- (a) by offsetting it against any amounts owed to the beneficiary by Frontex; in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, Frontex may recover by offsetting before the due date; the beneficiary's prior consent shall not be required; an action may be brought against such offsetting before the General Court of the European Union pursuant to Article 263 TFEU;
- (b) by taking legal action in accordance with Article II.18.2 or with the Special Conditions.

II.26.4 Interest on late payment

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

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

II.26.5 Bank charges

Bank charges incurred in the recovery process must be borne by the beneficiary concerned, unless Directive 2007/64/EC⁶ applies.

ARTICLE II.27 - CHECKS, AUDITS AND EVALUATION

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

Frontex may, during the implementation of the *action* or afterwards, carry out technical and financial checks and audits to determine that the beneficiaries are implementing the *action* properly and are complying with the obligations under the Agreement.

Information and documents provided in the framework of checks or audits must be treated on a confidential basis.

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

Checks, audits or evaluations made by Frontex may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

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

The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of Frontex announcing it.

II.27.2 Duty to keep documents

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

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

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

II.27.3 Obligation to provide information

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

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

⁶ Directive 2007/64/EC⁶ of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

In case the beneficiary does not comply with the obligation set out in the first and second subparagraphs, Frontex may consider any cost insufficiently substantiated by information provided by the beneficiary as ineligible.

II.27.4 On-the-spot visits

During an on-the-spot visit, the beneficiaries must allow Frontex staff and outside personnel authorised by Frontex to have access to the sites and premises where the action is or was carried out, and to all the necessary information, including information in electronic format.

They must ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form.

In case the beneficiary refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, Frontex may consider any cost insufficiently substantiated by information provided by the beneficiary as ineligible.

II.27.5 Contradictory audit procedure

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

II.27.6 Effects of audit findings

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

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

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

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

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

The extension of findings may lead to:

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

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

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

Step 1 – The *formal notification* must include:

- (i) an invitation to submit observations on the list of grants affected by the findings;
- (ii) a request to submit revised financial statements for all grants affected;
- (iii) where possible, the correction rate for extrapolation established by Frontex to calculate the amounts to be rejected on the basis of the systemic or recurrent *irregularities, fraud or breach of obligations*, if the beneficiary concerned:

- considers that the submission of revised financial statements is not possible or practicable; or
- will not submit revised financial statements.

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

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

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

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

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

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

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

- (i) the revised final amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by Frontex or on the basis of the revised eligible costs after extrapolation; and
 - (ii) the total amount paid to the beneficiaries under the Agreement for the implementation of the *action*;
- (b) If the findings concern improper implementation or a breach of another obligation the procedure is as follows:

Step 1 – The *formal notification* must include:

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

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

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

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

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

- (i) that it does not accept the observations or the alternative flat rate proposed;

- (ii) of the corrected grant amount by applying the flat rate initially notified to the beneficiary.

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

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

II.27.8 Right of OLAF

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

Under Council Regulation (Euratom, EC) No 2185/96⁷ and Regulation (EU, Euratom) No 883/2013⁸ OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against *fraud* and other *irregularities*.

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

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

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

The European Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939⁹ ('the EPPO') have the same rights as Frontex, particularly the right of access, for the purpose of checks, audits and investigations.

⁷ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

⁸ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office