

## 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 .....,

and

on the other part,

1. the Coordinator<sup>1</sup>,

**[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 terms set out in the Special Conditions shall take precedence over those set out in the Annexes.

The terms of the General Conditions shall take precedence over the other Annexes.

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<sup>1</sup> In accordance with the mandate conferred on the Coordinator (see Annex VI), the Coordinator signs this Contract also on behalf of the other beneficiaries, who, therefore, do not need to individually sign this Contract 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 ***[insert title of the action in bold]*** ("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 OF THE AGREEMENT AND DURATION

**I.2.1** The Agreement shall enter into force on the date on which the last party signs.

**I.2.2** The action shall run for **XX months** as of **XX/XX/XXXX** ("the starting date of the action") and shall end on **XX/XX/XXXX** ("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 - ADDITIONAL PROVISIONS ON REPORTING, PAYMENTS AND PAYMENT ARRANGEMENTS

#### I.4.1 Reporting periods, payments and additional supporting documents

In addition to the provisions set out in Articles II.23 and II.24 of the General Conditions, the following reporting and payment arrangements shall 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 balance shall be paid to the Coordinator subject to the receipt of :
  - Request for balance payment;
  - Final technical report (Annex IV);
  - 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 request for balance payment, accompanied by the final report covering the whole duration of the actions final and by the final financial statement must be submitted **no later than 60 calendar days after the end date** of the actions set out in Article I.2.

#### **I.4.2 Time limit for payment of the balance**

The time limit for Frontex to make the payment of the balance is 60 days as from the receipt of the request and necessary supporting documents.

#### **I.4.3 Language of requests for payments, technical reports and financial statements**

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

### **Article I.5 - 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.6 - DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES**

#### **I.6.1 Data controller**

The entity acting as a data controller according to Article II.6 of the General Conditions shall be 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](mailto: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](mailto:invoices@frontex.europa.eu) with CC to [grants.TRU@frontex.europa.eu](mailto: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.7 - 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 20,000.

#### SIGNATURES

For the Coordinator  
[function/forename/surname]

For Frontex  
[forename/surname]

[signature]  
Done at [place], [date]

[signature]  
Done at Warsaw, [date]

In duplicate in English

MODEL

## **ANNEX II GENERAL CONDITIONS**

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## PART A - LEGAL AND ADMINISTRATIVE PROVISIONS

### ARTICLE II.1 - GENERAL OBLIGATIONS AND ROLES OF THE BENEFICIARIES

#### II.1.1 General obligations and roles of the beneficiaries

The beneficiaries shall:

- (a) be 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) 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.1.2 General obligations and role of each beneficiary

Each beneficiary shall:

- (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) 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.1.3 General obligations and role of the Coordinator

The Coordinator shall:

- (a) 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) be the intermediary for all communications between the beneficiaries and Frontex, except if provided otherwise in the Agreement. In particular, the Coordinator shall:
  - (i) 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*.
  - (ii) be responsible for supplying Frontex with all documents and information required under the Agreement, in particular in relation to the reports and requests for payment. 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. Any information given, as well as any request made by the Coordinator to Frontex, shall be deemed to have been given in agreement with all the beneficiaries;
  - (iii) be responsible in the event of audits, checks, monitoring or evaluations, as described in Article II.27 for providing all the necessary documents, including the accounts of the beneficiaries, copies of the most relevant supporting documents and signed copies of any contract concluded according to Articles 9 and 10;
- (c) make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) 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.2 - COMMUNICATIONS BETWEEN THE PARTIES**

### **II.2.1 Form and means of communications**

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

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

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

### **II.2.2 Date of communications**

Any communication is deemed to have been made when it is received by the receiving party, unless the Agreement refers to the date when the communication was sent.

Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in Article I.6. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in Article I.6. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline.

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

Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

## **ARTICLE II.3 - LIABILITY FOR DAMAGES**

**II.3.1** Frontex shall not be held liable for any damage caused or sustained by the beneficiaries, including any damage caused to third parties as a consequence of or during the implementation of the action.

**II.3.2** Except in cases of force majeure, the beneficiaries shall compensate Frontex for any damage sustained by it as a result of the implementation of the action or because the action was not implemented or implemented poorly, partially or late.

## **ARTICLE II.4 - CONFLICT OF INTERESTS**

**II.4.1** The beneficiaries shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (“conflict of interests”).

**II.4.2** Any situation constituting or likely to lead to a conflict of interests during the implementation of the Agreement shall be notified to Frontex, in writing, without delay. The beneficiaries shall immediately take all the necessary steps to rectify this situation. Frontex reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

## **ARTICLE II.5 - CONFIDENTIALITY**

**II.5.1** Frontex and the beneficiaries shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential.

**II.5.2** The beneficiaries shall not use confidential information and documents for any reason other than fulfilling its obligations under the Agreement, unless otherwise agreed with Frontex in writing.

**II.5.3** Frontex and the beneficiaries shall be bound by the obligations referred to in Articles II.5.1 and II.5.2 during the implementation of the Agreement and for a period of five years starting from the payment of the balance, unless:

- (a) the concerned party agrees to release the other party from the confidentiality obligations earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

## **ARTICLE II.6 - PROCESSING OF PERSONAL DATA**

### **II.6.1 Processing of personal data by Frontex**

Any personal data included in the Agreement shall be processed by Frontex pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 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.

Such data shall be processed by the data controller identified in Article I.6.1 of the Special Conditions solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

The beneficiary shall have the right of access to personal data relating to it and the right to rectify any such data. Should the beneficiary have any queries concerning the processing of personal data relating to it, it shall address them to the data controller, identified in Article I.6.1 of the Special Conditions.

The beneficiary shall have the right of recourse at any time to the European Data Protection Supervisor.

### **II.6.2 Processing of personal data by the beneficiary**

Where the Agreement requires the processing of personal data by the beneficiary, the beneficiary may act only under the supervision of the data controller identified in Article I.6.1, in particular with regard to the purpose



of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his or her rights.

The access to data that the beneficiary grants to its personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Agreement.

The beneficiary undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - i. unauthorised reading, copying, alteration or removal of storage media;
  - ii. unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - iii. unauthorised persons from using data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by Frontex;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.7 - VISIBILITY OF FRONTEX FUNDING**

### **II.7.1 Information on Frontex funding and use of Frontex' emblem**

Unless Frontex requests or agrees otherwise, any communication or publication related to the action, made by the beneficiary, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall indicate that the action has received funding from Frontex and shall 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 beneficiary a right of exclusive use. The beneficiary shall 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 beneficiary is exempted from the obligation to obtain prior permission from Frontex to use Frontex' emblem.

### **II.7.2 Disclaimers excluding Frontex responsibility**

Any communication or publication related to the action, made by the beneficiaries jointly or individually in any form and using any means, shall 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.8 - PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **II.8.1 Ownership of the results by the beneficiary**

Unless stipulated otherwise in the Agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the beneficiary.

### **II.8.2 Pre-existing industrial and intellectual property rights**

Where industrial and intellectual property rights, including rights of third parties, exist prior to the conclusion of the Agreement, the beneficiary shall establish a list which shall specify all rights of ownership and use of the pre-existing industrial and intellectual property rights and disclose it to Frontex at the latest before the commencement of implementation.

The beneficiary shall ensure that it has all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Agreement.

### **II.8.3 Rights of use of the results and of pre-existing rights by Frontex**

Without prejudice to Articles II.1, II.3 and II.8.1, the beneficiary grants Frontex the right to use the results of the action for the following purposes:

- (a) use 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) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on the Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;
- (c) translation;
- (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (e) storage in paper, electronic or other format;
- (f) archiving in line with the document management rules applicable to Frontex;
- (g) rights to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

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

The beneficiary shall warrant that Frontex has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of the action. Unless specified otherwise in the Special Conditions, those pre-existing rights shall be used for the same purposes and under the same conditions applicable to the rights of use of the results of the action.

Information about the copyright owner shall be inserted when 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.9 - AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION**

**II.9.1** Where the implementation of the action requires the procurement of goods, works or services, the beneficiary shall award the contract 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.

A beneficiary acting in its capacity of a contracting authority within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts or a contracting entity within the meaning of Directive [2004/17/EC](#) of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall abide by the applicable national public procurement rules.

**II.9.2** The beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiary shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis Frontex under the Agreement.

**II.9.3** The beneficiary shall ensure that the conditions applicable to it under Articles II.3, II.4, II.5, II.6, II.7, II.8 and II.27 are also applicable to the contractor.

## **ARTICLE II.10 - SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION**

**II.10.1** A "subcontract" is a procurement contract within the meaning of Article II.9, which covers the implementation by a third party of tasks forming part of the action as described in Annex I.

**II.10.2** The beneficiary may subcontract tasks forming part of the action, provided that, in addition to the conditions specified in Article II.9 and the Special Conditions, the following conditions are complied with:

- (a) subcontracting only covers the implementation of a limited part of the action;
- (b) recourse to subcontracting is justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;
- (d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the beneficiary and approved by Frontex without prejudice to Article II.12.2.

## **ARTICLE II.11 - FINANCIAL SUPPORT TO THIRD PARTIES**

**Not applicable.**

## **ARTICLE II.12 - AMENDMENTS TO THE AGREEMENT**

**II.12.1** Any amendment to the Agreement shall be made in writing.

**II.12.2** 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.12.3** Any request for amendment shall be duly justified and shall 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 period set out in Article I.2.2 of the Special Conditions, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.

**II.12.4** 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.12.5** Amendments shall enter into force on the date on which the last party signs.

#### **ARTICLE II.13 - ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES**

**II.13.1** Claims for payments of the beneficiary against Frontex may not be assigned to third parties, except in duly justified cases where the situation warrants it.

The assignment shall only be enforceable against Frontex if Frontex has accepted the assignment on the basis of a written and reasoned request to that effect made by the Coordinator on behalf of the beneficiaries. In the absence of such an acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on Frontex.

**II.13.2** In no circumstances shall such an assignment release the beneficiary from its obligations towards Frontex.

#### **ARTICLE II.14 - FORCE MAJEURE**

**II.14.1** "*Force majeure*" shall mean any unforeseeable exceptional situation or event beyond the parties' control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part or on the part of subcontractors or third parties involved in the implementation and which proves to be inevitable in spite of exercising all due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as *force majeure*.

**II.14.2** A party faced with *force majeure* shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

**II.14.3** The parties shall take the necessary measures to limit any damage due to *force majeure*. They shall do their best to resume the implementation of the action as soon as possible.

**II.14.4** The party faced with *force majeure* shall not be held to be in breach of its obligations under the Agreement if it has been prevented from fulfilling them by *force majeure*.

## ARTICLE II.15 - SUSPENSION OF THE IMPLEMENTATION OF THE ACTION

### II.15.1 Suspension of the implementation by the beneficiary

The Coordinator, on behalf of the beneficiaries, may suspend the implementation of the action or any part thereof if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*. The Coordinator shall inform Frontex without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

Unless the Agreement is terminated in accordance with Article II.16.1 or points (b) or (c) of Article II.16.2.1, the Coordinator shall, once the circumstances allow resuming the implementation of the action, inform Frontex immediately and present a request for amendment of the Agreement as provided for in Article II.15.3.

### II.15.2 Suspension of the implementation by Frontex

II.15.2.1 Frontex may suspend the implementation of the action or any part thereof:

- (a) if Frontex has evidence that the beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement or if the beneficiary fails to comply with its obligations under the Agreement;
- (b) if Frontex has evidence that the beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by Frontex or the Union which were awarded to the beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant; or
- (c) if Frontex suspects substantial errors, irregularities, fraud or breach of obligations committed by the beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred.

II.15.2.2 Before suspending the implementation Frontex shall formally notify the Coordinator of its intention to suspend, specifying the reasons thereof, and, in the cases referred to in points (a) and (b) of Article II.15.2.1, the necessary conditions for resuming the implementation. The Coordinator shall be invited to submit observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the Coordinator, Frontex decides to stop the suspension procedure, it shall formally notify the beneficiary thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, Frontex decides to pursue the suspension procedure, it may suspend the implementation by formally notifying the Coordinator thereof, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of Article II.15.2.1, the definitive conditions for resuming the implementation or, in the case referred to in point (c) of Article II.15.2.1, the indicative date of completion of the necessary verification.

The Coordinator must immediately inform the other beneficiaries of the suspension. The suspension shall take effect five calendar days after the receipt of the notification by the Coordinator or on a later date, where the notification so provides.

In order to resume the implementation, the Coordinator shall endeavour to meet the notified conditions as soon as possible and shall inform Frontex of any progress made in this respect.

Unless the Agreement is terminated in accordance with Article II.16.1 or points (b), (h) or (i) of Article II.16.2.1, Frontex shall, as soon as it considers that the conditions for resuming the implementation have been met or the

necessary verification, including on-the-spot checks, has been carried out, formally notify the Coordinator thereof and invite it to present a request for amendment of the Agreement as provided for in Article II.15.3.

### **II.15.3 Effects of the suspension**

If the implementation of the action can be resumed and the Agreement is not terminated, an amendment to the Agreement shall be made in accordance with Article II.12 in order to establish the date on which the action shall be resumed, to extend the duration of the action and to make any other modifications that may be necessary to adapt the action to the new implementing conditions.

The suspension is deemed lifted as from the date of resumption of the action agreed by the parties in accordance with the first subparagraph. Such a date may be before the date on which the amendment enters into force.

Any costs incurred by the beneficiary, during the period of suspension, for the implementation of the suspended action or the suspended part thereof, shall not be reimbursed or covered by the grant.

The right of Frontex to suspend the implementation is without prejudice to its right to terminate the Agreement or to terminate the participation of a beneficiary in accordance with Article II.16.2 and its right to reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party shall be entitled to claim compensation on account of a suspension by the other party.

## **ARTICLE II.16 - TERMINATION OF THE AGREEMENT**

### **II.16.1 Termination of the Agreement by the Coordinator**

In duly justified cases the Coordinator may terminate the Agreement by formally notifying Frontex thereof, stating clearly the reasons and specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect.

If no reasons are given or if Frontex considers that the reasons exposed cannot justify the termination, it shall formally notify the beneficiary, specifying the grounds thereof, and the Agreement shall be deemed to have been terminated improperly, with the consequences set out in the third subparagraph of Article II.16.3.

### **II.16.2 Termination of the participation of one or more beneficiaries**

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.16.4.2.

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.16.3 Termination of the Agreement or the participation of one or more beneficiaries by Frontex**

**II.16.3.1** Frontex may decide to terminate the Agreement or the participation of any one or several beneficiaries in the following circumstances:

- (a) if 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;
- (b) if the beneficiary does not implement the action as specified in Annex I or fails to comply with another substantial obligation incumbent on it under the terms of the Agreement;
- (c) in the event of *force majeure*, notified in accordance with Article II.14, or in the event of suspension by the beneficiary as a result of exceptional circumstances, notified in accordance with Article II.15, where resuming the implementation is impossible or where the necessary modifications to the Agreement would call into question the decision awarding the grant or would result in unequal treatment of applicants;
- (d) if the beneficiary is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) if the beneficiary or any related person, as defined in the second subparagraph, have been found guilty of professional misconduct proven by any means;
- (f) if the beneficiary is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or in which the action is implemented;
- (g) if Frontex has evidence that the beneficiary or any related person, as defined in the second subparagraph, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the European Union's financial interests;
- (h) if Frontex has evidence that the beneficiary or any related person, as defined in the second subparagraph, have committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement, including in the event of submission of false information or failure to submit required information in order to obtain the grant provided for in the Agreement; or
- (i) if Frontex has evidence that the beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to the beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant.

For the purposes of points (e), (g) and (h) "any related person" shall mean any natural person who has the power to represent the beneficiary or to take decisions on its behalf.

#### **II.16.3.2 Procedure for termination**

Before terminating the Agreement or the participation of one or more beneficiaries, Frontex shall formally notify the Coordinator of its intention to terminate, specifying the reasons thereof and inviting the Coordinator, within 45 calendar days from receipt of the notification, to submit observations on behalf of all beneficiaries and, in

the case of point (b) of Article II.16.2.1, to inform Frontex about the measures taken to ensure that it continues to fulfil its obligations under the Agreement.

If, after examination of the observations submitted by the Coordinator, Frontex decides to stop the termination procedure, it shall formally notify the Coordinator thereof.

If no observations have been submitted or if, despite the observations submitted by the Coordinator, Frontex decides to pursue the termination procedure, it may terminate the Agreement by formally notifying the Coordinator thereof, specifying the reasons for the termination. The Coordinator must immediately inform the other beneficiaries of the termination.

In the cases referred to in points (a), (b), (d) and (f) of Article II.16.2.1, the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (c), (e), (g), (h) and (i) of Article II.16.2.1, the termination shall take effect on the day following the date on which the formal notification was received by the beneficiary.

## **II.16.4 Effects of termination**

### **II.16.4.1 Effect of terminating the Agreement**

Where the Agreement is terminated, payments by Frontex shall be limited to the amount determined in accordance with Article II.25 on the basis of the eligible costs incurred by the beneficiaries and the actual level of implementation of the action on the date when the termination takes effect. Costs relating to current commitments, which are not due for execution until after the termination, shall not be taken into account. The Coordinator shall have 60 days from the date when the termination of the Agreement takes effect, as provided for in Articles II.16.1 and II.16.2.2, to produce a request for payment of the balance in accordance with Article II.23.2. If no request for payment of the balance is received within this time limit, Frontex shall not reimburse or cover any costs which are not included in a financial statement approved by it or which are not justified in a technical report approved by it. In accordance with Article II.26, Frontex shall recover any amount already paid, if its use is not substantiated by the technical reports and, where applicable, by the financial statements approved by Frontex.

Where Frontex, in accordance with point (b) of Article II.16.2.1, is terminating the Agreement on the grounds that the beneficiary has failed to produce the request for payment and, after a reminder, has still not complied with this obligation within the deadline set out in Article II.23.3, the first subparagraph shall apply, subject to the following:

- (a) there shall be no additional time period from the date when the termination of the Agreement takes effect for the beneficiary to produce a request for payment of the balance in accordance with Article II.23.2; and
- (b) Frontex shall not reimburse or cover any costs incurred by the beneficiary up to the date of termination or up to the end of the period set out in Article I.2.2 of the Special Conditions, whichever is the earlier, which are not included in a financial statement approved by it or which are not justified in a technical report approved by it.

In addition to the first and second subparagraphs, where the Agreement is terminated improperly by the beneficiary within the meaning of Article II.16.1, or where the Agreement is terminated by Frontex on the grounds set out in points (b), (e), (g), (h) and (i) of Article II.16.2.1, Frontex may also reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit its observations.

Neither party shall be entitled to claim compensation on account of a termination by the other party.



## **II.16.4.2 Effects of terminating the participation of one or more beneficiaries**

II.16.4.2.1 The Coordinator must submit a request for amendment including:

- (a) a proposal to reallocate the tasks of the beneficiary or beneficiaries concerned by the termination; and,
- (b) 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.16.2.

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.16.3.1 (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.

II.16.4.2.2 The beneficiary concerned by termination must submit to the Coordinator:

- (a) a technical report; and
- (b) 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 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.16.2 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.16.2.1.

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

## **ARTICLE II.17 - ADMINISTRATIVE AND FINANCIAL PENALTIES**

**II.17.1** By virtue of Articles 109 and 131(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and with due regard to the principle of proportionality, if the beneficiary has committed substantial errors, irregularities or fraud, has made false declarations in supplying required information or has failed to supply such information at the moment of the submission of the application or during the implementation of the grant, or has been found in serious breach of its obligations under the Agreement, it shall be liable to:

- (a) administrative penalties consisting of exclusion from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established and confirmed following a contradictory procedure with the beneficiary; and/or
- (b) financial penalties of 2% to 10% of the maximum amount of the grant set out in Article I.3.

In the event of another infringement within five years following the establishment of the first infringement, the period of exclusion under point (a) may be extended to 10 years and the range of the rate referred to in point (b) may be increased to 4% to 20%.

**II.17.2** Frontex shall formally notify the beneficiary of any decision to apply such penalties.

Frontex is entitled to publish such decision under the conditions and within the limits specified in Article 109(3) of Regulation (EU, Euratom) No 966/2012.

An action may be brought against such decision before the General Court of the European Union, pursuant to Article 263 of the Treaty on the Functioning of the European Union ("TFEU").

#### **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.

## **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 II.23.2;
- (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**

"Direct costs" of the action are 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.

To be eligible, direct costs shall comply with the conditions of eligibility 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, comprising actual salaries plus social security contributions and other statutory costs included in the remuneration, provided that these costs are in line with the beneficiary's usual policy on remuneration; those costs may also include additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used;

The costs of natural persons working under a contract with the beneficiary other than an employment contract may be assimilated to such costs of personnel, provided that the following conditions are fulfilled:

- (i) the natural person works under the instructions of the beneficiary and, unless otherwise agreed with the beneficiary, in the premises of the beneficiary;
- (ii) the result of the work belongs to the beneficiary; and
- (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary;

- (b) costs of travel, 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.9 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.9;
- (e) costs entailed by subcontracts within the meaning of Article II.10, provided that the conditions laid down in that Article 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**

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

To be eligible, indirect costs shall represent a fair apportionment of the overall overheads of the beneficiary and shall 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 shall 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 shall not be considered eligible:

- (a) return on capital;
- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) exchange losses;
- (f) costs of transfers from Frontex charged by the bank of the beneficiary;
- (g) costs declared by the beneficiary in the framework of another action receiving a grant financed from the Union budget (including grants awarded by a Member State and financed from the Union budget and grants awarded by other bodies than Frontex for the purpose of implementing the Union budget); in particular, indirect costs shall not be eligible under a grant for an action awarded to the beneficiary when it already receives an operating grant financed from the Union budget during the period in question;
- (h) contributions in kind;
- (i) depreciation costs;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.

**ARTICLE II.20 - IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED****II.20.1 Reimbursement of actual costs**

Where, in accordance with Article I.3.1(i) of the Special Conditions, the grant takes the form of the reimbursement of actual costs, the beneficiary must declare as eligible costs the costs it actually incurred for the action.

If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records. The invoices shall be issued within the period set out in Article I.2 of the Special Conditions. 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 as well as with the amounts indicated in the supporting documents.

**II.20.2 Reimbursement of pre-determined unit costs or pre-determined unit contribution**

Not applicable.

**II.20.3 Reimbursement of pre-determined lump sum costs or pre-determined lump sum contribution**

Not applicable.

**II.20.4 Reimbursement of pre-determined flat-rate costs or pre-determined flat-rate contribution**

Where, in accordance with Article I.3.1(ii) of the Special Conditions, the grant takes the form of the reimbursement of flat-rate costs or of a flat-rate contribution, the beneficiary must declare as eligible costs or as requested contribution the amount obtained by applying the flat rate specified in Article I.3.1(ii) of the Special Conditions.

If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies. However, the beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, for the flat rate applied.

**II.20.5 Reimbursement of costs declared on the basis of the beneficiary's usual cost accounting practices**

Not applicable.

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

Not applicable.

**ARTICLE II.22 - BUDGET TRANSFERS**

Without prejudice to Article II.10 and provided that the action is implemented as described in Annex I, the beneficiaries are allowed to adjust the estimated budget set out in Annex III, by transfers between themselves and between the different budget categories, without this adjustment being considered as an amendment of the Agreement within the meaning of Article II.12.

The first subparagraph does not apply to amounts which, in accordance with Article I.3 of the Special Conditions, take the form of lump sums.

## ARTICLE II.23 - TECHNICAL AND FINANCIAL REPORTING - REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS

### II.23.1 Requests for further pre-financing payments and supporting documents

Not applicable.

### II.23.2 Requests for payment of the balance and supporting documents

The Coordinator shall submit a request for payment of the balance within 60 days following the end date of the action as specified in Article I.2.2 of the Special Conditions, in accordance with Article I.4.1 of the Special Conditions.

This request shall be accompanied by the following documents:

- (a) a final report on implementation of the action (“final technical report”), drawn up in accordance with Annex IV; the final technical report must contain the information needed to justify the eligible costs declared;
- (b) a final financial statement (“final financial statement”); the final financial statements must include a consolidated statement and a breakdown of the amounts claimed by each beneficiary; it must be drawn up in accordance with the structure of the estimated budget set out in Annex III and with Annex V;
- (c) any other document indicated in Article I.4.1.

The Coordinator shall certify that the information provided in the request for payment of the balance is full, reliable and true. It shall 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, for the payment of the balance, the Coordinator shall certify that all the receipts referred to in Article II.25.3.2 have been declared.

### II.23.3 Non-submission of documents

Where the Coordinator has failed to submit a request for payment of the balance accompanied by the documents referred to above within 60 days following the end date of the action as specified in Article I.2.2 of the Special Conditions and where the beneficiary still fails to submit such a request within 30 days following a written reminder sent by Frontex, Frontex reserves the right to terminate the Agreement as provided for in Article 16.3.19(b) and reduce or refuse the payment of the grant.

### II.23.4 Currency for requests for payment and financial statements and conversion into euro

Requests for payment and financial statements shall be drafted in euro.

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](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)) applicable on the day when the cost was incurred<sup>2</sup>.

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<sup>2</sup> 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).

## **ARTICLE II.24 - PAYMENTS AND PAYMENT ARRANGEMENTS**

### **II.24.1 Pre-financing**

The pre-financing is intended to provide the beneficiary with a float.

Without prejudice to Article II.24.6, where Article I.4.1 of the Special Conditions provides for a pre-financing payment, Frontex shall pay to the Coordinator within 30 days following the receipt of a request for pre-financing.

### **II.24.2 Further pre-financing payments**

Not applicable.

### **II.24.3 Interim payments**

Not applicable.

### **II.24.4 Payment of the balance**

The payment of the balance, which may not be repeated, is intended to reimburse or cover after the end of the period set out in Article I.2.2 of the Special Conditions the remaining part of the eligible costs incurred by the beneficiary. Where the pre-financing is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance may take the form of a recovery as provided for by Article II.26.

Without prejudice to Articles II.24.5 and II.24.6, on receipt of the documents referred to in Article II.23.2, Frontex shall pay the amount due as the balance within the time limit specified in Article I.4.2 of the Special Conditions.

This amount shall be determined following approval of the request for payment of the balance and of the accompanying documents and in accordance with the fourth subparagraph. Approval of the request for payment of the balance and of the accompanying documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

The amount due as the balance shall be determined by deducting, from the final amount of the grant determined in accordance with Article II.25, the total amount of pre-financing already made.

### **II.24.5 Suspension of the time limit for payment**

Frontex may suspend the time limit for payment specified in Article I.4.2 of the Special Conditions at any time by formally notifying the Coordinator that its request for payment cannot be met, either because it does not comply with the provisions of the Agreement, or because the appropriate supporting documents have not been produced, or because there is doubt about the eligibility of the costs declared in the financial statement.

The Coordinator shall be notified as soon as possible of any such suspension, together with the reasons thereof.

Suspension shall take effect on the date when notification is sent by Frontex. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out.

Where the time limit for payment has been suspended following the rejection of one of the technical reports or financial statements provided for by Article II.23 and the new report or statement submitted is also rejected, Frontex reserves the right to terminate the Agreement in accordance with Article II.16.2.1(b), with the effects described in Article II.16.3.

## II.24.6 Suspension of payments

Frontex may, at any time during the implementation of the Agreement, suspend the payments:

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

Before suspending payments, Frontex shall formally notify the Coordinator of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a) and (b) of the first subparagraph, the necessary conditions for resuming payments. The Coordinator shall be invited to make any observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the Coordinator, Frontex decides to stop the procedure of payment suspension, Frontex shall formally notify the Coordinator thereof.

If no observations have been submitted or if, despite the observations submitted by the Coordinator, Frontex decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the Coordinator, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of the first subparagraph, the definitive conditions for resuming payments or, in the case referred to in point (c) of the first subparagraph, the indicative date of completion of the necessary verification.

The Coordinator must immediately inform the other beneficiaries of the suspension. The suspension of payments shall take effect on the date when the notification is sent by Frontex.

In order to resume payments, the Coordinator shall endeavour to meet the notified conditions as soon as possible and shall inform Frontex of any progress made in this respect.

Frontex shall, as soon as it considers that the conditions for resuming payments have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify the Coordinator thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation in accordance with Article II.15.1 or to terminate the Agreement in accordance with Article II.16.1, the Coordinator is not entitled to submit any requests for payments and supporting documents referred to in Article II.23.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments.

## II.24.7 Notification of amounts due

Not applicable.



#### **II.24.8 Interest on late payment**

On expiry of the time limits for payment specified in Articles I.4.2 of the Special Conditions and II.24.1, and without prejudice to Articles II.24.5 and II.24.6, the beneficiary is entitled to interest on late payment 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 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 European Union*.

The first subparagraph shall not apply where the beneficiary is a Member State of the Union, including regional and local government authorities and other public bodies acting in the name and on behalf of the Member State for the purpose of this Agreement.

The suspension of the time limit for payment in accordance with Article II.24.5 or of payment by Frontex in accordance with Article II.24.6 may not be considered as late payment.

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 II.24.10. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of Article II.25.3.

By way of derogation from the first subparagraph, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Coordinator only upon request submitted by the Coordinator within two months of receiving late payment.

#### **II.24.9 Currency for payments**

Payments by Frontex shall be made in euro.

#### **II.24.10 Date of payment**

Payments by Frontex shall be deemed to be effected on the date when they are debited to Frontex' account.

#### **II.24.11 Costs of payment transfers**

Costs of the payment transfers shall be borne in the following way:

- (a) costs of transfer charged by the bank of Frontex shall be borne by Frontex;
- (b) costs of transfer charged by the bank of the beneficiary shall be borne by the beneficiary;
- (c) all costs of repeated transfers caused by one of the parties shall be borne by the party which caused the repetition of the transfer.

### **ARTICLE II.25 - DETERMINING THE FINAL AMOUNT OF THE GRANT**

#### **II.25.1 Calculation of the final amount**

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.

Without prejudice to Articles II.25.2, II.25.3 and II.25.4, the final amount of the grant shall be determined by applying the rate (%) specified in Article I.3.2 of the Special Conditions to the total eligible cost of the action approved by Frontex.

#### **II.25.2 Maximum amount**

The total amount paid to the beneficiary by Frontex may in no circumstances exceed the maximum amount specified in Article I.3.2 of the Special Conditions.

Where the amount determined in accordance with Article II.25.1 exceeds this maximum amount, the final amount of the grant shall be limited to the maximum amount specified in Article I.3.2 of the Special Conditions.

#### **II.25.3 No-profit rule and taking into account of receipts**

**II.25.3.1** The grant may not produce a profit for the beneficiaries, unless specified otherwise in the Special Conditions. "Profit" shall mean a surplus of the receipts over the eligible costs of the action.

**II.25.3.2** The receipts to be taken into account are the receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the Coordinator, which fall within one of the following two categories:

- (a) income generated by the action; or
- (b) financial contributions specifically assigned by the donors to the financing of the eligible costs of the action.

**II.25.3.3** The following shall not be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the beneficiary:

- (a) financial contributions referred to in point (b) of Article II.25.3.2, which may be used by the beneficiary to cover costs other than the eligible costs under the Agreement;
- (b) financial contributions referred to in point (b) of Article II.25.3.2, the unused part of which is not due to the donor at the end of the period set out in Article I.2.2 of the Special Conditions;

**II.25.3.4** The eligible costs to be taken into account are the eligible costs approved by Frontex.

**II.25.3.5** Where the final amount of the grant determined in accordance with Articles II.25.1 and II.25.2 would result in a profit for the beneficiary, the profit shall be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the action approved by Frontex. This final rate shall be calculated on the basis of the final amount of the grant, as determined in accordance with Articles II.25.1 and II.25.2.

#### **II.25.4 Reduction for poor, partial or late implementation**

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.

## **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, II.27.8 and II.27.9, the beneficiary concerned 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 shall formally notify the beneficiary concerned of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and 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 formally notifying to the beneficiary a debit note ("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 shall 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 set out in the debit note, the amount due shall bear interest at the rate established in Article II.24.8. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when Frontex actually receives payment in full of the outstanding amount.

Any partial payment shall first be appropriated against charges and interest on late payment and then against the principal.

### **II.26.5 Bank charges**

Bank charges incurred in connection with the recovery of the sums owed to Frontex shall be borne by the beneficiary except where Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC applies.

## **ARTICLE II.27 - CHECKS, AUDITS AND EVALUATION**

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

Frontex may carry out technical and financial checks and audits in relation to the use of the grant.

Information and documents provided in the framework of checks or audits shall 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 shall be limited to three years if the maximum amount specified in Article I.3 of the Special Conditions 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 shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance.

This period shall be limited to three years if the maximum amount specified in Article I.3 of the Special Conditions is not more than EUR 60 000.

The periods set out in the first and second subparagraphs shall be 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 shall keep the documents until such audits, appeals, litigation or pursuit of claims are 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.

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 beneficiary shall 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.

It shall 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”) shall be drawn up. It shall 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”) shall 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 shall 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 take all measures which it considers necessary, including recovery of all or part of the payments made by it under the Agreement, in accordance with Article II.26, where the following conditions are fulfilled:

- (a) the beneficiary concerned is found, on the basis of an audit of other grants awarded to it under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant; and
- (b) the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations is received by the beneficiary within the period referred to in Article II.27.1.

**II.27.7.2** Frontex shall determine the amount to be corrected under the Agreement:

- (a) wherever possible and practicable, on the basis of costs unduly declared as eligible under the Agreement.

For that purpose, the beneficiary concerned shall revise the financial statements submitted under the Agreement taking account of the findings and resubmit them to Frontex within 60 days from the date of receipt of the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between 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 concerned and approved by Frontex, and the total amount paid to the beneficiary under the Agreement for the implementation of the action;

- (b) where it is not possible or practicable to quantify precisely the amount of ineligible costs under the Agreement, by extrapolating the correction rate applied to the eligible costs for the grants for which the systemic or recurrent errors or irregularities have been found.

Frontex shall formally notify the extrapolation method to be applied to the beneficiary concerned, which shall have 60 days from the date of receipt of the notification to submit observations and to propose a duly substantiated alternative method.

If Frontex accepts the alternative method proposed by the beneficiary concerned, it shall formally notify the beneficiary thereof and determine the revised eligible costs by applying the accepted alternative method.

If no observations have been submitted or if Frontex does not accept the observations or the alternative method proposed by the beneficiary, Frontex shall formally notify the beneficiary thereof and determine the revised eligible costs by applying the extrapolation method initially notified to the beneficiary.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs after extrapolation, and the total amount paid to the beneficiary under the Agreement for the implementation of the action; or

- (c) where ineligible costs cannot serve as a basis for determining the amount to be corrected, by applying a flat rate correction to maximum amount of the grant specified in Article I.3 of the Special Conditions or part thereof, having regard to the principle of proportionality.

Frontex shall formally notify the flat rate to be applied to the beneficiary concerned, which shall have 60 days from the date of receipt of the notification to submit observations and to propose a duly substantiated alternative flat rate.

If Frontex accepts the alternative flat rate proposed by the beneficiary concerned, it shall formally notify the beneficiary thereof and correct the grant amount by applying the accepted alternative flat rate.

If no observations have been submitted or if Frontex does not accept the observations or the alternative flat rate proposed by the beneficiary, Frontex shall formally notify the beneficiary thereof and correct the grant amount by applying the flat rate initially notified to the beneficiary.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the grant after flat-rate correction and the total amount paid to the beneficiary under the Agreement for the implementation of the action.

#### **II.27.8 Checks and inspections by European Anti-Fraud Office (OLAF)**

The OLAF shall have the same rights as Frontex, notably right of access, for the purpose of checks and investigations.

In line with Article 31 of the Frontex Regulation, 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 recovery by Frontex.

#### **II.27.9 Checks and audits by the European Court of Auditors**

In line with Article 31 of the Frontex Regulation, the European Court of Auditors shall have the same rights as Frontex, notably right of access, for the purpose of checks and audits.