



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Deputy Director General for the Food Chain

ARES (2016) 6999 09

## GRANT DECISION APPROVING NATIONAL PROGRAMMES AND ASSOCIATED FUNDING

Decision Number SANTE/2016/ES/SI2.725989

of 29/Jan/2016

**THE EUROPEAN COMMISSION** (hereinafter referred to as "the Commission") represented by Ladislav MIKO

Having regard to the Treaty on the Functioning of the European Union (hereinafter referred to as "the Union");

Having regard to the Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC<sup>1</sup>, and in particular Articles 9 to 11 and 36 thereof;

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>2</sup>, and in particular Articles 121 to 137 thereof,

Having regard to Commission Implementing Decision of 29 May 2015 on the adoption of the financing decision for the year 2016 and 2017 for the implementation of Union co-funded programmes for the eradication, control and surveillance of animal diseases and zoonoses<sup>3</sup>;

Whereas:

<sup>1</sup> OJ L 189, 27.6.2014, p.1.

<sup>2</sup> OJ L 298, 26.10.2012, p. 1.

<sup>3</sup> C(2015) 3609

- (1) Regulation (EU) No 652/2014 lays down the procedures governing the Union financial contribution for programmes for the eradication, control and monitoring of animal diseases and zoonoses.
- (2) Commission Decision 2008/341/EC of 25 April 2008 laying down Community criteria for national programmes for the eradication, control and monitoring of certain animal diseases and zoonoses<sup>4</sup> provides that, in order to be approved under the Union financial measures, programmes submitted by the Member States must meet at least the criteria set out in the Annex to that Decision.
- (3) Commission Implementing Decision 2014/288/EU of 12 May 2014<sup>5</sup> lays down the standard reporting requirements for national programmes for the eradication, control and monitoring of certain animal diseases and zoonoses co-financed by the Union.
- (4) On 30 April 2015, the Commission adopted a multiannual work programme for 2016-2017 for the implementation of veterinary programmes for animal diseases and zoonoses<sup>6</sup> and informed the Member States on the eligible costs per disease with their corresponding ceiling or unit cost.
- (5) By 31 May 2015, Spain submitted to the Commission the following programmes for which it wishes to receive a financial contribution from the Union:
  - an annual surveillance programme for avian influenza in poultry and wild birds;
  - an annual programme for the eradication and control of bluetongue;
  - a multiannual programme for the eradication of bovine brucellosis;
  - a multiannual programme for the eradication of sheep and goat brucellosis (*Brucella melitensis*);
  - a multiannual programme for the eradication of bovine tuberculosis;
  - a multiannual programme for the control of certain zoonotic *Salmonella* targeting five poultry populations, namely breeders of *Gallus gallus*, broilers of *Gallus gallus*, layers of *Gallus gallus*, breeding turkeys, and turkeys for slaughter;
  - a multiannual programme for the eradication and control of certain transmissible spongiform encephalopathies (TSEs);
- (6) The Commission has thoroughly assessed the national programmes submitted by Spain from both veterinary and financial perspective.. Those programmes comply with the relevant Union veterinary legislation and in particular with the criteria set out in Decision 2008/341/EC.

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<sup>4</sup> OJ L 115, 29.4.2008, p. 44.

<sup>5</sup> OJ L 147, 17.5.2014, p. 88.

<sup>6</sup> C(2015) 3024 final

## HAS DECIDED AS FOLLOWS:

### ARTICLE 1 – PURPOSE OF THE GRANT

1. A grant is awarded to Spain referred to as “the beneficiary” represented for the purposes of this Grant Decision by Valentin Almansa de Lara, for the annual programmes concerning, respectively, the surveillance for avian influenza in poultry and wild birds and the eradication and control of bluetongue; and for the multiannual programmes concerning, respectively, the eradication of bovine brucellosis, the eradication of sheep and goat brucellosis (*Brucella melitensis*), the eradication of bovine tuberculosis, the control of certain zoonotic *Salmonella*, and the eradication and control of certain TSEs; (hereinafter: “the programmes”), referred to in Annex III, under the terms and conditions set out in the present Grant Decision and its Annexes.
2. The beneficiary shall undertake everything in its power to carry out the annual and multiannual programmes as described in the grant applications submitted electronically via a dedicated link (Annex III), acting on its own responsibility.

### ARTICLE 2 - DURATION

1. The annual programmes shall run from 1 January 2016 to 31 December 2016.  
The multiannual programmes for the eradication of bovine brucellosis, of bovine tuberculosis, of sheep and goat brucellosis (*Brucella melitensis*) which started on 1 January 2015 shall run to 31 December 2016.  
The multiannual programmes for the control of certain zoonotic *Salmonella* which started on 1 January 2014 shall run to 31 December 2016.  
The multiannual programme for the eradication and control of certain TSEs shall run from 1 January 2016 to 31 December 2017.
2. The programmes are approved for the duration referred to in Article 2(1).  
The funding associated to the programmes is approved for the period from 1 January 2016 to 31 December 2016.

### ARTICLE 3 - FINANCING THE PROGRAMMES

1. The grant shall be of a maximum amount of EUR 30 734 000.
2. The grant shall take the form of reimbursement of 50% of the eligible costs for the implementation of:
  - a) the annual surveillance programme for avian influenza in poultry and wild birds; EU co-financing shall not exceed EUR 43 000;

- b) the annual programme for the eradication and control of bluetongue; EU co-financing shall not exceed EUR 2 654 000;
- c) the multiannual programme for the eradication of bovine brucellosis; EU co-financing shall not exceed EUR 4 997 000;
- d) the multiannual programme for the eradication of bovine tuberculosis; EU co-financing shall not exceed EUR 14 393 000;
- e) the multiannual programme for the eradication of sheep and goat brucellosis (*Brucella melitensis*); EU co-financing shall not exceed EUR 6 922 000;
- f) the multiannual programme for the control of certain zoonotic *Salmonella*; EU co-financing shall not exceed EUR 817 000.

3. The grant shall take the form of reimbursement of 50% or 75 % of the eligible costs in accordance with the co-financing rate set within the corresponding estimated budget attached as Annex II for the implementation of the multiannual programme for the eradication and control of certain TSEs; EU co-financing shall not exceed EUR 908 000.

4. The eligible costs for the programmes referred to in points (a) to (f) of Article 3(2) and in Article 3(3) are:

- a) direct costs incurred by the beneficiary for the categories of costs listed in Annex IV and paid before the submission of the payment request to the Commission;
- b) indirect costs declared on the basis of a flat-rate of 7% on the total amount of the eligible direct costs reimbursed on the basis of real costs subject to a ceiling (the amount of eligible direct costs reimbursed on the basis of unit costs excluded) for the beneficiary and the affiliated entities indicated in Article 7 for the categories of direct costs listed in Annex IV, with the categories of costs of compensation to owners for the value of their animals slaughtered or culled and for the value of their destroyed products of animal origin excluded.

5. By way of derogation from the individual maximum amounts referred to in points (a) to (f) of Article 3(2) and in Article 3(2), without prejudice to Article 16 of Annex I and provided that the programmes are implemented in accordance with the specifications set in the online submissions referred to in Annex III, the beneficiary is allowed to adjust the estimated budgets set out in Annex II by transfers between the different programmes, without this adjustment being considered as an amendment of the Grant Decision within the meaning of Article 16; given that these budget transfers are limited to 20% of the total maximum amount indicated in Article 3(1).

#### **ARTICLE 4 -PAYMENT ARRANGEMENTS AND SUBMISSION OF REPORTS**

The beneficiary shall submit to the Commission for each programme approved an intermediate financial report, an annual technical and financial report and a payment request in accordance with Article 14 and Article 15 of Regulation (EU) No 652/2014.

These reports shall comply with the standard reporting requirements laid down in Commission Implementing Decision 2014/288/EU of 12 May 2014.

competence has been conferred. A competent authority can also be one at regional level, depending on the governance structure of the Member State.

- b) public entities other than a competent authority which have a link with the beneficiary/Member State, in particular a legal or capital link, which is neither limited to the programmes nor established for the sole purpose of their implementation.

#### **ARTICLE 8 - ORDER OF PRECEDENCE AND ANNEXES**

The General Conditions and the other annexes to the present Decision constitute an integral part of the present Decision. The terms set out in this Decision shall take precedence over those in the General Conditions. The terms set out in the General Conditions shall take precedence over those in the other annexes.

For the Commission



Ladislav MIKO

Done in Brussels

**29 JAN. 2016**

- Annexes:**
- I) General conditions for the funding of national programmes**
  - II) Estimated budget of the national programmes**
  - III) Approved national programmes**
  - IV) Eligible costs and funding rates**

The Commission may suspend the time limit for payment and suspend or reduce the payments in accordance with the procedures laid down in Working Document SANCO/12785/2012 Rev2<sup>7</sup>.

#### ARTICLE 5 - BANK ACCOUNT

Payments shall be made to the beneficiary's bank account denominated in euro, as indicated below:

Name of the bank: \_\_\_\_\_

Precise denomination of the account holder \_\_\_\_\_

Full account number (including bank codes): \_\_\_\_\_

Any change of bank account or sub-account shall be communicated in writing to the Commission.

#### ARTICLE 6 – GENERAL ADMINISTRATIVE PROVISIONS

1. Any communication addressed to the Commission in connection with the present Decision shall be sent to the following address, indicating the number of the Decision:

**European Commission**

Directorate-General for Health and Food Safety

Directorate for Food Chain: Stakeholders and international relations

Unit for Food safety programme, emergency funding

1049 Brussels

Belgium

E-mail address: \_\_\_\_\_

2. Any communication from the Commission to the beneficiary for the purposes of this Decision shall be sent to the following address:

**Ministerio de Agricultura, Alimentación y Medio Ambiente**

Dirección General de Sanidad de la Producción Agraria

represented by \_\_\_\_\_

General Director

Calle Almagron<sup>o</sup>33 3<sup>a</sup> planta

ES – 28010 Madrid

E-mail address: \_\_\_\_\_

Any change of address by the beneficiary shall be communicated in writing to the Commission.

#### ARTICLE 7 – ENTITIES AFFILIATED TO THE BENEFICIARY

The following entities are considered as affiliated entities to the beneficiary:

- a) entities which are part of the Member States' competent authorities, but form separate legal entities. '*Competent authority*' means the central authority of a Member State competent for animal health and veterinary issues or any other authority to which that

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<sup>7</sup> Working Document on principles and criteria on which is based the reaction of the Commission in cases of unsatisfactory implementation of programmes co-financed under Article 27 of Council Decision 2009/470/EC

**ANNEX I**

**GENERAL CONDITIONS  
FOR THE FUNDING OF NATIONAL PROGRAMMES**

## **FINANCIAL PROVISIONS**

### **ARTICLE 1 – ELIGIBLE COSTS**

#### **1.1. Conditions for the eligibility of direct costs**

Eligible direct costs are costs actually incurred by the beneficiary which meet the following criteria:

- (a) they are incurred in the period set out in Article 2 of the Grant Decision and paid before the submission of the final report by the Member State;
- (b) they are indicated in the estimated budget provided in Annex II of the Grant Decision;
- (c) they are incurred in relation to the actions as described in the submitted and approved programmes listed in Annex III and are necessary for their 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 (i.e. for implementation contracts and compensation to owners, prices are proportionate to the market value), justified, and compliant with the principle of sound financial management, in particular regarding economy and efficiency.

#### **1.2. Eligible direct costs**

Direct costs are those specific costs borne by the beneficiary which are directly linked to the implementation of the programmes and can therefore be directly attributed to the various eligible measures.

To be eligible, direct costs should comply with the conditions for eligibility set out in Article 1.1.

#### **1.3. Eligible indirect costs**

Indirect costs are costs borne by the beneficiary that cannot be clearly traced to individual measures. They should be declared on the basis of a flat-rate of 7% on the total amount of the eligible direct costs reimbursed on the basis of real costs subject to a ceiling (the amount of eligible direct costs reimbursed on the basis of unit costs excluded) for the beneficiary and the affiliated entities indicated in Article 7 for the categories of eligible direct costs listed in Annex IV, with the categories of costs of compensation to owners for the value of their animals slaughtered or culled and for the value of their destroyed products of animal origin excluded

#### **1.4. Ineligible costs**

In addition to any other costs which do not fulfill the conditions set out in Article 1.1, in particular, the following costs shall not be considered eligible:



- (a) value added tax;
- (b) exchange losses;
- (c) costs of transfers from the Commission charged by the bank of a beneficiary;
- (d) costs declared by the beneficiary in the framework of another programme 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 the Commission for the purpose of implementing the Union budget); indirect costs shall not be eligible under a grant for a programme awarded to the beneficiary when it already receives an operating grant financed from the Union budget during the period in question;
- (e) excessive or reckless expenditure.

## **ARTICLE 2 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

### **2.1. Reimbursement of actual costs**

Where the grant takes the form of reimbursement of actual costs, the beneficiary must declare the costs it actually incurred for the programmes.

If requested to do so in the context of the checks or audits described in Article 8, the beneficiary must be able to provide adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records, in particular the documents listed below. 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.

### **2.2. Reimbursement of pre-determined flat-rate costs**

Where the grant takes the form of reimbursement of flat-rate costs, the beneficiary must declare as eligible costs the amount obtained by applying the flat rate of 7% on the total amount of the eligible direct costs reimbursed on the basis of real costs subject to a ceiling (the amount of eligible direct costs reimbursed on the basis of unit costs excluded) for the beneficiary and the affiliated entities indicated in Article 7 for the categories of eligible direct costs listed in Annex IV, with the categories of costs of compensation to owners for the value of their animals slaughtered or culled and for the value of their destroyed products of animal origin excluded.

## **ARTICLE 3 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARY**

Costs incurred by affiliated entities are eligible, provided that they satisfy the same conditions under Articles 1 and 2 applicable to the beneficiary, and that the beneficiary ensures that the conditions applicable to it under Articles 8, 11, 13 and 14 are also applicable to the entities.

## **ARTICLE 4 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS**

### **4.1. Requests for payment and supporting documents**

The beneficiary shall submit a request for payment for each programme specified in Article 1(1) of the Grant Decision by 30 April 2017.

The request shall be accompanied by:

- (a) a technical report, which must contain the information needed to justify the eligible costs declared; the report shall include the results achieved, measured on the basis of indicators referred to in Article 12.2 (g) of the Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014.
- (b) a financial report, which should include a breakdown of the amounts claimed by the beneficiary and should be drawn up in accordance with the structure of the estimated budget set out in Annex II of the Grant Decision.

The request for payment shall provide all the relevant information in accordance with Article 4 of Commission Implementing Decision 2014/288/EU<sup>8</sup>.

### **4.2. Non-submission of documents**

Where the beneficiary has failed to submit a request for payment accompanied by the documents referred to above by 30 April 2017, and where the beneficiary still fails to submit such a request within 60 days following a written reminder sent by the Commission, the Commission reserves the right to terminate the grant in accordance with Article 19.2 (a), with the effects described in the second and the third subparagraphs of Article 19.4.

### **4.3. Currency for requests for payment and financial reports and conversion into euro**

Requests for payment and financial reports shall be submitted in euro.

Where the cost incurred by the Member State is in a currency other than the euro, the Member State concerned shall convert the costs into euro by applying the most recent exchange rate set by the European Central Bank prior to the first day of the month in which the payment requests are submitted by the Member State.

### **4.4. Language of requests for payments, technical and financial reports**

Requests for payments, technical and financial reports shall be submitted in English.

## **ARTICLE 5 - PAYMENTS AND PAYMENT ARRANGEMENTS**

### **5.1. Pre-financing**

***NOT APPLICABLE***

### **5.2. Payment**

The payment, which may not be repeated, is intended to reimburse or cover after the end of the period set out in Article 2 of the Grant Decision the remaining part of the eligible costs incurred by the beneficiary for its implementation. Where the total amount of earlier

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<sup>8</sup> OJ L 147, 17.5.2014, p. 88.

payments is greater than the final amount of the grant determined in accordance with Article 6, the payment may take the form of a recovery as provided for by Article 7.

Without prejudice to Articles 6.3 and 6.4, on receipt of the documents referred to in Article 4.1, the Commission shall pay the amount due within 90 days.

This amount shall be determined following review and approval of the requests for payment and of the supporting documents. Approval of the requests for payment and of the supporting documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

### **5.3. Suspension of the time limit for payment**

The Commission may suspend the time limit for payment at any time by informing the beneficiary in writing that its requests for payment cannot be met, either because the request does not comply with the provisions of the Grant Decision, 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 reports.

The beneficiary 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 the Commission. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received by the Commission or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension exceeds two months, the beneficiary may request a decision by the Commission on whether the suspension is to be continued.

Where the time limit for payment has been suspended following the rejection of the technical or financial reports described in Article 4, and the beneficiary submits revised technical or financial reports that are also rejected by the Commission following their review, the Commission reserves the right to terminate the grant in accordance with Article 19.2 with the effects described in Article 19.4.

### **5.4. Suspension of payments**

The Commission may, at any time during the implementation of the Grant Decision, suspend the payment:

- (a) if the Commission 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 Grant Decision;
- (b) if the Commission 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 the Commission suspects substantial errors, irregularities, fraud or breach of obligations committed by the beneficiary in the award procedure or in the implementation of the Grant Decision and needs to verify whether they have actually occurred.

Before suspending payments, the Commission shall inform the beneficiary in writing 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 beneficiary 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 beneficiary, the Commission decides to stop the procedure of payment suspension, the Commission shall inform the beneficiary in writing thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Commission decides to pursue the procedure of payment suspension, it may suspend payments by informing the beneficiary in writing, 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 suspension of payments shall take effect on the date when the notification is sent by the Commission.

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

The Commission 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, inform in writing the beneficiary thereof.

During the period of suspension of payments, the beneficiary is not entitled to submit any requests for payments and supporting documents referred to in Article 4.

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

#### **5.5. Notification of amounts due**

The Commission shall inform the beneficiary in writing of the final amount determined in accordance with Article 6.

#### **5.6. Currency for payments**

Payments by the Commission shall be made in euro.

#### **5.7. 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 the Commission shall be borne by the Commission;
- (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 6 – DETERMINING THE FINAL AMOUNT OF THE GRANT**

### **6.1. Calculation of the final amount**

Without prejudice to Articles 6.2, 6.3 and 6.4, the final amount of the grant shall be determined by application of the co-financing rate specified in Article 3 of the Grant Decision to the eligible costs incurred by the beneficiary in the implementation of the programmes. The final amount of the grant is determined after review and control of the request for payment and the supporting documents submitted by the beneficiary.

### **6.2. Maximum amount**

The total amount paid to the beneficiary by the Commission may in no circumstances exceed the maximum amount specified in Article 3(1) of the Grant Decision.

Where the final amount determined in accordance with Article 6.1 exceeds this maximum amount, the final amount of the grant shall be limited to the maximum amount specified in Article 3(1) of the Grant Decision.

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

**6.3.1.** The grant may not produce a profit for the beneficiary. "Profit" shall mean a surplus of the receipts over the eligible costs of the programmes.

**6.3.2.** The receipts to be taken into account are the receipts established, generated or confirmed on the date on which the requests for payment are drawn up by the beneficiary.

**6.3.3.** The eligible costs to be taken into account are the costs approved by the Commission in accordance with Article 3 of the Grant Decision.

**6.3.4.** Where the final amount of the grant determined in accordance with Articles 6.1 and 6.2 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 programmes approved by the Commission for the costs referred to in Article 3 of the Grant Decision. This final rate shall be calculated on the basis of the final amount of the grant in the form of the reimbursement of actual costs, as determined in accordance with Articles 6.1 and 6.2.

### **6.4. Reduction for poor, partial or late implementation**

If the programmes are not implemented or are implemented poorly, partially or late, the Commission may reduce the grant initially provided for, in line with the actual implementation of the programmes according to the terms laid down in the Grant Decision.

## **ARTICLE 7 – RECOVERY**

### **7.1. Financial responsibility**

Where an amount is to be recovered under the terms of the Grant Decision, the beneficiary shall repay the Commission the amount in question.

## **7.2. Recovery procedure**

Before recovery, the Commission shall inform in writing the beneficiary 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, the Commission decides to pursue the recovery procedure, the Commission may confirm recovery by informing the beneficiary in writing of 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, the Commission shall recover the amount due:

- (a) by offsetting it against any amounts owed to the beneficiary by the Union or the European Atomic Energy Community (Euratom) ("offsetting"); in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Commission may recover by offsetting before the due date; the beneficiary's prior consent shall not be required; a programme 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 20.2.

## **7.3. Bank charges**

Bank charges incurred in connection with the recovery of the sums owed to the Commission 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<sup>9</sup> applies.

# **ARTICLE 8 – CHECKS, AUDITS AND EVALUATION**

## **8.1. Technical and financial checks or audits**

The Commission 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, the Commission may carry out interim or final evaluation of the impact of the programmes measured against the objective of the Union programme concerned.

Checks or audits made by the Commission 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 Grant Decision and for a period of five years starting from the date of payment. This period shall be limited to three years if the maximum amount specified in the Grant Decision is not more than EUR 60 000.

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

## **8.2. 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

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<sup>9</sup> OJ L 319, 5.12.2007, p.1.

its national law and under the conditions laid down therein, for a period of five years starting from the date of payment.

This period shall be limited to three years if the maximum amount specified in the Article 3 of the Grant Decision 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 8.6. In such cases, the beneficiary shall keep the documents until such audits, appeals, litigation or pursuits of claims are closed.

### **8.3. Obligation to provide information and on-the-spot visits**

The beneficiary shall provide any information, including information in electronic format, requested by the Commission, or by any other outside body authorised by it, in the context of checks, audits and evaluations as referred to in Article 8.1.

During an on-the-spot visit, the beneficiary shall allow Commission staff and outside personnel authorised by the Commission to have access to the sites and premises where the programmes are or were 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 does not comply with the obligation set out in the first subparagraph or refuses to provide access to the sites, premises and information in accordance with the second and third subparagraphs, the Commission may consider:

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

### **8.4. 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 the Commission or its authorised representative to the beneficiary, 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.

### **8.5. Effects of audit findings**

On the basis of the final audit findings, the Commission may take the measures which it considers necessary, including recovery of all or part of the payments made by it, in accordance with Article 7.

In the case of final audit findings made after the payment, the amount to be recovered shall correspond to the difference between the revised final amount of the grant, determined in accordance with Article 6, and the total amount paid to the beneficiary according to the Grant Decision for the implementation of the programmes.

## **8.6. Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations**

**8.6.1.** The Commission may take all measures which it considers necessary, including recovery of all or part of the payments made by it according to the Grant Decision, in accordance with Article 7, where the following conditions are fulfilled:

- (a) the beneficiary 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 8.1.

**8.6.2.** The Commission shall determine the amount to be corrected under the Grant Decision:

- (a) wherever possible and practicable, on the basis of costs unduly declared as eligible in implementation of the Grant Decision.
- (b) where it is not possible or practicable to quantify precisely the amount of ineligible costs under the Grant Decision, 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.
- (c) where ineligible costs cannot serve as a basis for determining the amount to be corrected, by applying a flat rate correction to the maximum amount of the grant specified in Article 3 of the Grant Decision or part thereof, having regard to the principle of proportionality.

For the purpose of (a), the beneficiary shall revise the financial report submitted in implementation of the Grant Decision taking account of the findings and resubmit it to the Commission 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.

For the purpose of (b) and (c) the Commission shall inform in writing the extrapolation method or flat rate to be applied to the beneficiary, which shall have 60 days from the date of receipt of the notification to submit observations and to propose a duly substantiated alternative method or flat rate.

If the Commission accepts the alternative method or flat rate proposed by the beneficiary, it shall inform in writing the beneficiary thereof and determine the revised eligible costs by applying the accepted alternative method or correct the grant amount by applying the accepted alternative flat rate.

If no observations have been submitted or if the Commission does not accept the observations or the alternative method or flat rate proposed by the beneficiary, the Commission shall inform in writing the beneficiary thereof and determine the revised eligible costs by applying the extrapolation method initially notified to the beneficiary or 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, the amount to be recovered shall correspond to the difference between the total amount paid to the beneficiary under the Grant Decision for the implementation of the programmes and



For the purpose of (a) the revised final amount of the grant, determined in accordance with Article 6 on the basis of the revised eligible costs declared by the beneficiary and approved by the Commission,

For the purpose of (b) the revised final amount of the grant, determined in accordance with Article 6 on the basis of the revised eligible costs after extrapolation,

For the purpose of (c) the revised final amount of the grant after flat-rate correction.

#### **8.7. Checks and inspections by OLAF**

The European Anti-Fraud Office (OLAF) shall have the same rights as the Commission, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996<sup>10</sup> 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 and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>11</sup>, OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities.

Where appropriate, OLAF findings may lead to recovery by the Commission.

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

The European Court of Auditors shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits.

### **LEGAL AND ADMINISTRATIVE PROVISIONS**

#### **ARTICLE 9 – GENERAL OBLIGATIONS OF THE BENEFICIARY**

The beneficiary shall:

- (a) be responsible for implementing the programmes in accordance with the terms and conditions of the Grant Decision;
- (b) be responsible for complying with any legal obligations incumbent on it;
- (c) inform the Commission immediately of any change likely to affect or delay the implementation of the programmes of which the beneficiary is aware

#### **ARTICLE 10 – COMMUNICATIONS BETWEEN THE COMMISSION AND THE BENEFICIARY**

##### **10.1. Form and means of communications**

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

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by the Commission or the beneficiary provided that this request

<sup>10</sup> OJ L 292, 15.11.1996, p. 2.

<sup>11</sup> OJ L 248, 18.9.2013, p. 1.

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.

#### **10.2. Date of communications**

Any communication is deemed to have been made when it is received by the addressee, unless the Grant Decision refers to the date when the communication was sent.

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

Mail sent to the Commission using the postal services is considered to have been received by the Commission on the date on which it is registered by the department identified in Article 6.2 of the Grant Decision.

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 addressee on the date of receipt indicated on the return receipt or equivalent.

### **ARTICLE 11 – LIABILITY FOR DAMAGES**

The Commission shall not be held liable for any damage caused or sustained by the beneficiary, including any damage caused to third parties as a consequence of or during the implementation of the programmes.

### **ARTICLE 12 – PROCESSING OF PERSONAL DATA BY THE COMMISSION**

Any personal data related to the implementation of this Grant Decision shall be processed by the Commission 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, Director of General Affairs, from the DG in charge of the implementation of Regulation (EU) No 652/2014, solely for the purposes of the implementation, management and monitoring of the implementation of the Grant Decision, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

### **ARTICLE 13 – VISIBILITY OF UNION FUNDING**

Unless the Commission requests or agrees otherwise, any communication or publication related to the programmes, 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 programmes have received funding from the Union.

## **ARTICLE 14 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE PROGRAMMES**

- 14.1.** Where the implementation of the programmes 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.
- 14.2.** 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.
- 14.3.** The beneficiary shall retain sole responsibility for carrying out the programmes and for compliance with the provisions of the Grant Decision.
- 14.4.** The beneficiary shall ensure that the conditions applicable to it under Articles 8 and 11 are also applicable to the contractor.

## **ARTICLE 14.a – SUBCONTRACTING OF TASKS FORMING PART OF THE PROGRAMME**

- 14.a.1** A "subcontract" is a procurement contract within the meaning of Article 14, which covers the implementation by a third party of tasks forming part of the programmes as referred to in Annex III.
- 14.a.2** The beneficiary may subcontract tasks forming part of the programmes, provided that, in addition to the conditions specified in Article 14 and in the Grant Decision, the following conditions are complied with:
- (a) subcontracting only covers the implementation of limited parts of the programmes;
  - (b) recourse to subcontracting is justified having regard to the nature of the programmes and what is necessary for its implementation.

## **ARTICLE 15 – COMPENSATION TO OWNERS**

- 15.1** Where the implementation of the programme requires compensating owners, the beneficiary shall give such compensation in accordance with the conditions specified in the submitted programmes referred to in Annex III, which shall at least contain the rules for determining the exact amount of the individual compensation.
- 15.2** The beneficiary shall ensure that the conditions applicable to it under Articles 8 and 11 are also applicable to owners receiving compensation.

## ARTICLE 16 – AMENDMENTS TO THE GRANT DECISION

- 16.1. Any amendment to the Grant Decision shall be made by means of a modifying Decision.
- 16.2. An amendment may not have the purpose or the effect of making changes to the Grant Decision which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.
- 16.3. Any request for amendment shall be duly justified and shall be sent to the Commission 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 2 of the Grant Decision, except in cases duly substantiated by the and accepted by the Commission .
- 16.4. Amendments shall enter into force on the date of notification of the modifying Decision.

Amendments shall take effect on the date indicated in the modifying Decision or, in the absence of such a date, on the date of the notification of the said modifying Decision.

## ARTICLE 17 – FORCE MAJEURE

- 17.1. "*Force majeure*" shall mean any unforeseeable exceptional situation or event beyond the Commission's and/or the beneficiary's control, which prevents either of them from fulfilling any of their obligations under the Grant Decision, 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*.
- 17.2. The beneficiary faced with *force majeure* shall inform the Commission in writing without delay, stating the nature, likely duration and foreseeable effects.
- 17.3. The beneficiary shall take the necessary measures to limit any damage due to *force majeure*. The beneficiary shall do its best to resume the implementation of the programmes as soon as possible.
- 17.4. The beneficiary faced with *force majeure* shall not be held to be in breach of its obligations under the Grant Decision if it has been prevented from fulfilling them by *force majeure*.

## ARTICLE 18 – SUSPENSION OF THE IMPLEMENTATION OF THE PROGRAMMES

### 18.1. Suspension of the implementation by the beneficiary

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