

**GENERAL CONDITIONS APPLICABLE  
TO EUROPEAN UNION CONTRIBUTION AGREEMENTS  
WITH INTERNATIONAL ORGANISATIONS  
FOR HUMANITARIAN AID ACTIONS**

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## **I. GENERAL AND ADMINISTRATIVE PROVISIONS**

### **Article 1. General obligations**

#### **1.1. Implementation principles**

The Action shall be culturally appropriate, adequate for the needs of the affected persons and comply with applicable international law and national legislation of the country where the Action is implemented.

The Action shall be properly prepared, with a clear and verifiable objective, which shall be achieved within a given period; the results obtained should be assessed through specific, measurable, achievable, relevant and time bound indicators.

The International Organisation shall implement the Action with the requisite degree of care, efficiency, transparency and diligence, as required by best practice in the field, and in compliance with the Contribution Agreement.

The International Organisation shall make every effort to mobilise all the financial, human and material resources required for the full implementation of the Action, as specified in Annex I to the Contribution Agreement, endeavouring to use local human and material resources.

#### **1.2. Implementing partners and contractors**

The International Organisation may work alone or in association with other organisations, on a non-profit basis, identified in the Action proposal as implementing partners. The International Organisation may also contract out parts of the Action, in accordance with the procedure established in Article 13 herein.

The International Organisation shall, as appropriate, ensure that the obligations established under the Contribution Agreement and in particular in Articles 2, 3, 4, 5, 6, 7, 8, 13, 16, 18 and 23 herein are adequately reflected in its relations with implementing partners and contractors. To this effect, the International Organisation should include the necessary provisions in its agreements and contracts with implementing partners and contractors.

In any case, the International Organisation shall assure an effective supervision and control of the Action and is fully responsible for all activities implemented by its implementing partners and contractors in the framework of the Action.

The Commission recognises no contractual link between itself and the International Organisation's implementing partners and contractors. The Commission will not entertain any request for reimbursement or indemnity presented by the implementing partners and contractors of the International Organisation.

### 1.3. Implementation procedures

In any case, the International Organisation shall ensure:

- a) Transparent and non-discriminatory procurement procedures conform to internationally accepted standards, including the award of contract to the tender offering best value for money, in compliance with the principles of transparency and equal treatment of potential contractors, care being taken to avoid any conflict of interests. In case of Actions subject to the "A-control mechanism" as defined in Article 1.5, procurement procedures shall be compliant with the Rules and procedures applicable to property, supply, works and service contracts awarded within the framework of humanitarian actions financed by the European Union (herein referred to as "Procurement rules and procedures applicable to European Union-financed humanitarian actions");
- b) an effective and efficient internal control system for the management of Actions which includes the respect of ethical and humanitarian values, effective segregation of duties and appropriate risk management mechanisms identifying risks and appropriate risk responses;
- c) an accurate, complete and timely accounting system and an independent external audit;
- d) the availability of all relevant information to ensure timely management decisions as well as a sufficiently detailed audit trail.

### 1.4. Control mechanism for Actions implemented under joint management

Where the Action is implemented under joint management, the International Organisation shall ensure that, in its accounting, audit, internal control and procurement procedures, it applies standards which offer guarantees equivalent to internationally accepted standards. Suitable arrangements shall exist for the control and verification of the Action.

International Organisations covered by the Financial and Administrative Framework Agreement between the European Union and the United Nations (FAFA) and International Organisations which have signed a Framework Partnership Agreement with the European Union (FPA) shall be subject to the "P- control mechanism" ("P" standing for Prior assessment and own Procedures).

This control mechanism applied to the Actions of the International Organisation will determine the level of monitoring, controls related to the final report and to the compliance and the implementation of the Action with the International Organisation's rules and procedures.

Actions submitted to the P-control mechanism can be "multi-donor Actions", where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure. In case of multi-donor Actions, the maximum Commission contribution specified in Article 3 of the Special Conditions will be expressed as an amount and not as a percentage of estimated total eligible costs.

### 1.5. Control mechanism for Actions not implemented under joint management

When the conditions set out in Article 1.4 herein for implementing an Action of an International Organisation under joint management cannot be met, the control mechanism to be applied will focus on the monitoring of the Action's implementation, more extensive controls related to the final report and ex post audits of the Actions and the compliance with the FPA conditions (herein referred to as "A-control mechanism", "A" standing for Action-related monitoring). Actions submitted to the A-control mechanism:

- a) shall have a maximum threshold per Action for European Union funding. This threshold may only be exceeded if additional controls are set up to ensure acceptable control and financial risk levels for the Action;
- b) shall be subject to specific procedures and thresholds in the area of procurement as defined in the Single Form (Annex I) and the "General Rules and Procurement Procedures" defined in the Procurement rules and procedures applicable to European Union-financed humanitarian actions.

### 1.6. Duty of information

The Parties shall inform each other immediately in writing of any circumstances likely to hamper or delay the implementation of the Action or the fulfilment of their contractual obligations.

The Organisation shall take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the Action. All cases of irregularity, fraud and corruption related to this Agreement as well as measures related thereto taken by the Organisation must be reported to the Commission without delay, in accordance with the international organisation's rules.

Where appropriate the Organisation shall terminate contracts with partners, contractors or agents involved in fraudulent behaviour or corrupt practices in connection with this or any other actions implemented by the Organisation and financed by the Commission, and take all reasonable measures to recover funds unduly paid.

The Parties shall take all reasonable measures to reduce to a minimum damages resulting from such circumstances, and notably in cases of *force majeure* and suspension of the implementation of the Action.

## **Article 2. Conflict of interests**

The International Organisation shall take all reasonable precautions to avoid any conflict of interests and shall inform the Commission without delay of any situation constituting or likely to entail a conflict of interests. Both parties will respect the principle of confidentiality.

There is a conflict of interests where the impartial and objective exercise of the functions, tasks and activities under the Contribution Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person or party.

### **Article 3. Liability**

#### **3.1. Liability of the Commission**

Under no circumstances nor for any reason whatsoever may the Commission be held liable for damages caused by implementing partners, contractors or property of the International Organisation as a result of the Action's implementation. Consequently, the Commission will not entertain any request for indemnity resulting from such a claim.

The International Organisation shall discharge the Commission of all liabilities associated with any claim or action brought as a result of a violation of rules or regulations or third party's rights by the International Organisation, its staff or individuals for whom the staff is responsible.

#### **3.2. Liability of the International Organisation**

The International Organisation shall have sole responsibility for complying with any legal obligations incumbent on it.

Subject to the International Organisation's privileges and immunities, the International Organisation shall assume sole liability towards third parties, including liabilities for damages or injuries of any kind suffered by them as a result of the Action's implementation.

### **Article 4. Communication, visibility and information**

#### **4.1. Communication activities during the implementation of the Action**

The International Organisation endeavours to undertake public communication activities highlighting its partnership with the European Union and to bring the support given by the European Union to the attention of the general public, the media or the beneficiaries of the Action.

For this purpose, the International Organisation shall identify, whenever possible, potential communication activities in the Action proposal.

These obligations are waived when both Parties agree that such activities may harm the mandate or the safety of the staff of the International Organisation or its implementing partners, or the safety of the local community.

The International Organisation shall provide evidence of implementation of activities referred to in this Article in the final narrative report.

#### **4.2. Visibility on durable equipment and major supplies and at project locations**

It is understood that the Organisation's equipment and vehicles may routinely carry its emblem and other indications of ownership prominently displayed. In cases where equipment or vehicles and major supplies have been purchased using funds provided by the European Union, the International Organisation agrees to include appropriate acknowledgement on such vehicles, equipment, signboards at project locations and major supplies, including display of the European logo (twelve yellow stars on a blue background).

This obligation is waived when both Parties agree that such visibility may harm the objective and results of the Action, the mandate or the safety of the staff of the International Organisation or its implementing partners, the safety of the local community or the International Organisation's privileges and immunities.

#### 4.3. Information and publications by the International Organisation

Information or publications by the International Organisation about the Action, including at conferences or seminars, shall indicate that the Action has received European Union funding and display the European Union logo in an appropriate way.

Such information and publications, in any form and medium, including the Internet, shall include the following text or a similar disclaimer: *"This document has been produced with the financial assistance of the European Union. The views expressed herein should not be taken, in any way, to reflect the official opinion of the European Union"*

Where the International Organisation has a website where the activities supported by the European Union are described, a reference must be made on this site to the International Organisation's partnership with the European Union.

#### 4.4. Publication by the Commission

The International Organisation authorises the Commission to publish the following information in any form and medium, including the Internet:

- the International Organisation's name and address;
- the purpose of the Contribution Agreement;
- the amount of the European Union contribution and the percentage of funding of the Action.

Following a justified request by the International Organisation, the Commission may forgo such publication if it may threaten the International Organisation's safety or harm its interests.

### **Article 5. Evaluation of the Action**

#### 5.1. Evaluation by the International Organisation

Representatives of the European Commission shall be invited to participate in the main monitoring and in the evaluation missions relating to the performance of the Action undertaken by the International Organisation. The results of such missions shall be reported to the European Commission.

#### 5.2. Evaluation by the Commission

This is without prejudice to any evaluation mission that the European Commission as a donor may wish to perform. In order to facilitate the coordination between the International Organisation and the European Commission evaluation, submission of Action proposals will outline the envisaged evaluation plan of the relevant Action.

Evaluation missions by representatives of the European Commission are to be planned and completed in a collaborative manner between the Organisation's staff and the European Commission's representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of the contribution agreement. These missions are to be planned ahead and procedural matters are to be agreed upon by the Parties in advance.

The European Commission will make a draft of its report available to the International Organisation for comments before final issuance. .

#### **Article 6. Access to agreement related documents by third parties**

Without prejudice to Article 23 herein, the Parties commit to grant third parties access to any document, information or other material directly related to the Contribution Agreement only after having received the written authorisation of the other Party. This obligation remains valid for a period of five years following the payment of the balance, or for three years following the payment of the balance in the case that the maximum value of the European Union's contribution is not more than EUR 60.000.

#### **Article 7. Intellectual property rights**

Industrial and intellectual property rights on the outputs of the Action, the reports referred to in Article 10 herein and other documents relating to the Action shall be vested in the International Organisation and, as the case may be, in third parties.

Without prejudice to Article 6, the Commission has the right to use freely and as it sees fit all documents produced as an activity of the Action, whatever their form or medium, provided that such use does not violate the existing industrial and intellectual property rights of third parties.

#### **Article 8. Data protection**

Any personal data contained in the Contribution Agreement shall be processed in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movements of such data, taking the International Organisation's privileges and immunities into account.

Such data shall be processed solely for the purposes of the performance, management and follow-up of the Contribution Agreement by the Commission's Directorate General for Humanitarian Aid without prejudice to a possible transmission to the competent European Union bodies, including the European Court of Auditors, for the purposes of safeguarding the financial interests of the Union.

The data subject may, upon written request, gain access to his/her personal data and rectify any inaccurate or incomplete personal data. Should the data subject have any queries concerning the processing of his/her data, he/she shall address them to the Commission's Directorate General for Humanitarian Aid. In any case and as regards the processing of personal data, the data subject has a right of recourse at any time to the European Data Protection Supervisor.

## II MANAGEMENT OF THE CONTRIBUTION AGREEMENT

### **Article 9. Establishment and entry into force of the Contribution Agreement**

#### 9.1. Establishment of the Contribution Agreement

The International Organisation shall present the Action proposal on the standard Single Form.

The Commission shall draft the Contribution Agreement according to the agreed standard format and in conformity with the Action proposal agreed by the Parties.

The Commission shall sign the Contribution Agreement and send two originals for signature to the International Organisation by registered letter with advice of delivery or equivalent. Under no circumstances whatsoever may the International Organisation make changes to the Contribution Agreement sent for signature. In the case of a material error in the text sent for signature, the Parties shall inform each other as soon as the error is identified. The correction of the material error is without prejudice to the entering into force of the Contribution Agreement.

#### 9.2. Entry into force of the Contribution Agreement

An authorised representative of the International Organisation shall sign and return one original of the Contribution Agreement to the Commission by registered letter with advice of delivery or equivalent procedure within 15 calendar days following its receipt.

Subject to the requirements established in this Article, Contribution Agreements shall be considered to be concluded and will enter into force on the date of receipt by the Commission of the original Contribution Agreement signed by the International Organisation, independently of the start date of the Action as laid down in Article 2 of the Special Conditions.

In case of non-compliance with the present Article, the Commission reserves its right to declare the Contribution Agreement null and void.

### **Article 10. Reporting**

#### 10.1. Purpose

The International Organisation shall give the Commission full information on the implementation of the Action. To this end, the International Organisation shall submit narrative and financial reports pertaining to the whole Action, regardless of the European Union contribution.

Narrative reports shall allow comparison between the objective and results envisaged and those actually achieved and between the activities envisaged and those implemented.

Financial reports shall provide a clear identification of all expenses actually incurred and related information on the eligible costs as well as of the contributions and revenue of the Action.

## 10.2. Intermediate report and Final reports

Unless otherwise specified in Article 4 of the Special Conditions, the International Organisation shall submit an Intermediate narrative report, a Final narrative report and a Final financial report.

The Intermediate narrative report shall be made on the standard Single Form and focus on the state of implementation of the Action, providing a complete account of the implementation of the Action for the period covered. Failure to submit an Intermediate report within the agreed deadlines and without any valid justification may be considered sufficient grounds to terminate the Contribution Agreement on the basis of Article 16.2.b) herein.

The Final narrative report shall also be made on the standard Single Form and shall provide an overview of the implementation of the Action. The International Organisation shall assess the level of achievement of the objective and results envisaged in the proposal.

The Final financial report shall focus on financial information related to the Action. Financial reports shall be derived from the financial and accounting system of the International Organisation and, as the case may be, its implementing partners.

## 10.3. Additional information

The Commission may request specific information related to the implementation of the Action at any time. The International Organisation shall submit the reasonably available information within 30 calendar days following the request.

The International Organisation shall also send to the Commission any relevant reports, publications, press releases and updates, relating to the Action.

## 10.4. Formal requirements

Narrative reports shall be drafted using the standard Single Form.

Reports and any additional information required by the Commission shall be submitted in the language of the Contribution Agreement.

Reports shall be submitted in euro. They may be drawn from financial statements denominated in other currencies as per the International Organisation's legislative requirements. Actual expenditure will be converted into euro using the rate of exchange at which the European Union's contribution was recorded in the International Organisation's accounts, unless otherwise specified in the Special Conditions.

## **Article 11. Amendment of the Contribution Agreement**

### 11.1. Scope and form of the Amendments

Parties may agree to amend the Contribution Agreement when the implementation of the Action, the achievement of its objective and results or the compliance with the principle of sound financial management so require it. Amendments shall not have the purpose or effect of making such changes to the Contribution Agreement as would call into question the award of the contribution.

Any amendment of the Contribution Agreement, including its Annexes, shall be done in writing.

#### 11.2. Unilateral modification

When the amendment does not affect a basic element of the Action nor Articles 2, 3, 4, 5 or 8 of the Special Conditions, the International Organisation may apply the amendment unilaterally and shall inform the Commission in writing. The basic elements of the Action include the Action's objective and the related indicators, results, beneficiaries, area of implementation and, when relevant, sustainability. In case of multi-donor Actions, the estimation of the total eligible costs of the Action referred to in Article 3.1 of the Special Conditions is not considered as a basic element and can consequently be changed unilaterally.

Changes of address or bank accounts as identified in Articles 6 and 7 of the Special Conditions shall be notified to the other Party.

#### 11.3. Amendment request

When the amendment is expected to affect a basic element of the Action or, without prejudice to Article 11.2 in case of multi-donor Actions, Articles 2, 3, 4, 5 and 8 of the Special Conditions, the requesting Party shall send to the other Party a duly justified amendment proposition explaining the object of the amendment. The proposition shall be made in due time, i.e. before the amendment takes effect and in any case one month before the end of the implementation of the Action. Parties may agree to shorten this delay by mutual consent.

The Requested Party commits to inform the Requesting Party within the shortest delays of its acceptance or rejection of the proposed amendment. The Requesting Party shall abstain from implementing any changes before having received the express agreement of the Requested Party, except in cases of *force majeure*, suspension of the implementation of the Action or equivalent circumstances which require the immediate adoption of precautionary measures.

#### 11.4. Exchange of letters

When the amendment request affects the contents of Articles 4 or 5 of the Special Conditions or a basic element of the Action, the Requested Party shall send a written reply, accepting or rejecting the amendment request, to the Requesting Party. If accepted, the amendment shall enter into force the day following the day of receipt of the written reply by the Requesting Party.

#### 11.5. Supplementary Agreement

When the amendment affects the contents of Articles 2, 3 and 8 of the Special Conditions, in case of acceptance of the proposed amendment by the Requested Party, the Commission shall send to the International Organisation a Supplementary Agreement reflecting the amendment. The procedures of Article 9 herein shall apply *mutatis mutandis*.

**Article 12. Transmission of documents****12.1. Means of transmission**

The International Organisation shall always send the final version of the Action proposal and the signed original of the Contribution Agreement or Supplementary Agreements in paper copy, even if these documents were first sent by electronic means as advance copy.

The International Organisation may submit unilateral modifications and amendment requests to the Commission by electronic means only.

Unless otherwise specified in the Special Conditions, the International Organisation shall submit reports in one paper copy and by electronic means.

The Commission shall always send the Contribution Agreement and Supplementary Agreements in paper copy to the International Organisation, even if these documents were first sent by electronic means. Confirmation replies addressing questions on the interpretation of the rules defined herein or related issues, and the replies to amendment requests by exchange of letters will only be sent by electronic means.

As date of official receipt of documents, both Parties agree to accept the first date of receipt, be it on paper or by electronic means, whichever happens to be first.

**12.2. Contractual addresses and addressees**

Communications concerning the Contribution Agreement shall be sent for the attention of the persons and to the addresses, including electronic addresses, identified in Article 7 of the Special Conditions. This is without prejudice to any other practical arrangement established by the Parties for the transmission of the information to other competent persons in their organisations. Regardless of the transmission procedure followed, the person responsible for the transmission has to be clearly identified.

Article 7 of the Special Conditions shall identify the official electronic mailboxes of the Parties which have to be used for all contractual communications by electronic means.

Communications not respecting this obligation shall be considered null and void.

**12.3. Language**

Any exchange of documents between the Parties relating to the Contribution Agreement shall be drafted in the language in which the Contribution Agreement was established.

**Article 13. Award of contracts****13.1. Contracting arrangements**

In case of Actions subject to the "A-control mechanism" the implementation of which requires the award of procurement contracts by the International Organisation, the Action proposal shall mention the envisaged activities and related procurement procedures.

The International Organisation will report on the implementation of these contracting arrangements in accordance with Article 10 herein. Subsequent modifications of this information will be processed, if appropriate, in accordance with the relevant procedures laid down in Article 11 herein.

### 13.2. Applicable procurement rules

In case of Actions subject to the "A-control mechanism", the International Organisation shall procure supplies, works, services or property in the context of the Action in accordance with the provisions on procurement established in the Procurement rules and procedures applicable to European Union-financed humanitarian actions. These provisions are an integral part of the Contribution Agreement. In case of non-compliance, the related costs may not be eligible for European Union funding. This is without prejudice to the Commission's right to impose administrative and financial penalties in accordance with the Financial Regulation and its Rules of Application taking the International Organisation's privileges and immunities into account.

In case of Actions subject to the "P-control mechanism", the procurement of any goods, works or services by the International Organisation in the context of the Action shall be carried out in accordance with the applicable rules and procedures adopted by the Organisation, unless otherwise agreed by the Parties in the Special Conditions. This is based on the understanding that the Organisation's rules and procedures conform to internationally accepted standards, including the award of contract to the tender offering best value for money, in compliance with the principles of transparency and equal treatment of potential contractors, care being taken to avoid any conflict of interests.

In any case, the Organisation shall adopt reasonable measures to ensure that potential tenderers shall be excluded from the participation in a procurement procedure financed with the Union's contribution, if:

- they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- they are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or fail to supply this information;
- are subject to a conflict of interest.

### **Article 14. *Force majeure***

Neither of the Parties shall be held liable for breach of its obligations under the Contribution Agreement if it has been prevented from performing them by *force majeure*.

*Force majeure* shall mean any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their contractual obligations, which is not attributable to error or negligence on their part (or the part of their implementing partners, contractors or employees), and which proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available or financial difficulties cannot be invoked as *force majeure*.

## **Article 15. Suspension of the implementation of the Action**

### **15.1. Suspension of the implementation of the Action by the International Organisation**

The International Organisation may suspend the implementation of the Action if changes in circumstances in the field are likely to make it impossible or excessively difficult to continue the implementation of the Action, notably in the event of *force majeure*, serious threat to the safety of humanitarian workers, and in cases of incompatibility between the further implementation of the Action and compliance with humanitarian principles.

The International Organisation shall inform the Commission immediately justifying the suspension, the measures adopted and the expected date of resumption. The International Organisation shall also inform the Commission of the details of the expenses expected to be incurred during the suspension period.

### **15.2. Suspension of the implementation of the Action at the request of the Commission**

The Commission may request the International Organisation to suspend the implementation of the Action in the event of serious threat to the safety of humanitarian workers on the site, incompatibility between the further implementation of the Action and compliance with humanitarian principles.

The International Organisation has 15 calendar days after receipt of the suspension request to reply to the Commission and present its observations. If the International Organisation fails to do so or if the Commission reasonably rejects the observations, the suspension of activities shall be applied.

The Commission reserves its right to terminate the Contribution Agreement, in accordance with the procedure established in Article 16.2 (b) herein, in case of failure to comply with the suspension request.

### **15.3. Duration of the suspension**

If the suspension lasts longer than a third of the implementation period of the Action established in Article 2.2 of the Special Conditions, the Commission may terminate the Contribution Agreement in accordance with the procedure established in Article 16.3 (a) herein.

Parties shall agree the resumption of the implementation of the Action once the grounds for the suspension cease to exist. The duration of the suspension will be added to the implementation period of the Action. To this end, the procedure established in Article 11.5 herein shall apply.

## **Article 16. Termination of the Contribution Agreement**

### **16.1. Termination with advance notice by the International Organisation**

The International Organisation may terminate the Contribution Agreement at any time by serving 45 calendar days' written notice stating the grounds for termination. If no motives are given or if the European Commission reasonably rejects the justifications invoked by the International Organisation, the termination shall be deemed wrongful.

### **16.2. Termination with advance notice by the Commission**

The Commission may terminate the Contribution Agreement without any indemnity at any time by serving 45 calendar days' written notice when:

- a) a legal, financial, technical or organisational change in the International Organisation's situation affects the Contribution Agreement substantially or calls the award decision into question; or
- b) the International Organisation has failed to comply with its obligations under the Contribution Agreement, including its Annexes and these General Conditions.

After receipt of the notice letter the International Organisation has 15 calendar days to present its observations. If the International Organisation fails to do so or if the Commission reasonably rejects the observations, the notice shall continue to run.

Notice in the sense of this Article is given by registered letter with advice of delivery or equivalent procedure. The notice period starts to run on the day when the notice letter is received. The termination date is the day when the notice period expires.

### **16.3. Termination by the European Commission with immediate effect**

By way of exception, the Commission may terminate the Contribution Agreement with immediate effect without any notice, nor indemnity, in any of the following circumstances:

- a) if the suspension lasts longer than one third of the implementation period of the Action;
- b) if the International Organisation fails to present the due Final reports within six months of the end of the implementing period of the Action without justified reasons or if the Commission twice explicitly rejected the Final reports in their entirety presented by the International Organisation;
- c) if the International Organisation is bankrupt or being wound up, has its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- d) if the International Organisation has been convicted of an offence concerning its professional conduct by a judgment which has the force of res judicata, or if it is guilty of grave professional misconduct proven by any justified means;
- e) if the International Organisation intentionally makes false declarations, is guilty of misrepresentation or submits reports inconsistent with the reality;

- f) if the International Organisation has, intentionally or by negligence, committed a substantial irregularity in the performance of the Contribution Agreement. 'Irregularity' shall mean any infringement of the obligations under the Contribution Agreement resulting from an act or omission by the International Organisation, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it;
- g) if the International Organisation has been the subject of a judgment or administrative decision which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- h) if the International Organisation fails to report and take measures to address the situations defined in Article 1.6 paragraphs 2 and 3 and in Article 2.

The grounds for termination by the Commission with immediate effect referred to in Article 16.3 (f) and (g) also apply, *mutatis mutandis*, to any known actions committed by the implementing partners, contractors or staff of the International Organisation to the extent that they are related to the implementation of the Action and have not been the subject of any appropriate remedial action by the International Organisation in accordance with the provisions of Article 1.6.

The Commission shall inform the International Organisation of the termination and of the grounds of termination by registered letter with advice of delivery or equivalent. The termination takes effect on the day following the date of receipt of the letter.

The International Organisation shall have 15 calendar days following receipt of the termination letter to request the Commission to review its decision, submitting any supporting evidence it considers adequate. If the International Organisation does not react within this deadline, it is deemed as having accepted the termination.

The Commission shall react within 15 calendar days following receipt of the International Organisation's observations. In the absence of a reply by the Commission, the observations of the International Organisation are deemed to be accepted and the termination procedure shall be cancelled.

#### 16.4. Rules applicable in case of termination

- i) The Special Conditions and these General Conditions will continue to apply after termination, to the extent necessary to allow an orderly liquidation of the Contribution Agreement.
- j) When the termination is based on the motives mentioned in Article 16.3.(b) herein, the Commission shall proceed to the recovery of any amounts already paid to the International Organisation and not justified by the documentation previously submitted by the International Organisation.
- k) When the termination is based on other grounds, by derogation to Article 4 of the Special Conditions, the International Organisation shall submit the final narrative and financial reports with a request for payment within 60 calendar days from the termination date. If no request is made within this time limit the Commission shall recover any amounts not justified by the documentation

previously submitted by the International Organisation.

- l) Without prejudice to the procedures established in Articles 21 and 22.6 herein, the International Organisation shall be entitled to payment only for the part of the Action carried out.
- m) The Commission may reimburse penalties paid by the International Organisation in case of cancellation of orders and commitments entered into by the International Organisation for the implementation of the Action and which it cannot reasonably terminate on legal grounds. When the Contribution Agreement is wrongfully terminated within the sense of Article 16.1 herein, or if it is terminated on the grounds set out in Article 16.2 b) or the termination is based on the grounds referred to in Article 16.3, paragraphs d), e) , f), g) or h), the previous paragraph shall not apply.

#### 16.5. Automatic termination of Contribution Agreements

The Contribution Agreement shall be considered terminated by tacit mutual consent if it has not given rise to any payment by the Commission within the duration of the financing decision to which it relates.

### III. FINANCIAL PROVISIONS

#### Article 17. Assignment

The Contribution Agreement and the payments attached to it may not be assigned to a third party, in any manner whatsoever, without the prior written consent of the Commission. In no circumstances shall such assignment release the International Organisation from its obligations to the Commission under the Contribution Agreement, including its Annexes and these General Conditions.

#### Article 18. Eligible Costs

##### 18.2. General principles

To be considered eligible as direct costs of the Action, costs must satisfy the following general criteria:

- a) They must derive directly from the Contribution Agreement or be necessary and reasonable for the implementation of the Action;
- b) They must be actual costs and comply with the principles of sound financial management, in particular regarding economy and efficiency;
- c) They must be committed during the eligibility period of the Action as laid down in Article 2 of the Special Conditions, with the exception of:
  - costs relating to the winding-up of the Action, and
  - expenditure committed before the date of submission of the Action proposal related to the constitution of stocks by the International Organisation for use in connection with the Action.

All commitments will ultimately have to be paid in full.

- d) They must be identifiable, in particular being recorded in the accounting

records of the International Organisation or its implementing partners, determined according to the usual cost-accounting practices of the International Organisation;

- e) They must be backed by original supporting evidence (as the case may be in electronic form) and verifiable, pursuant to the provisions of Article 21 herein, to be consistent with the principles of transparency and equal treatment;
- f) They must comply with the applicable requirements of tax and social legislation.

## 18.2. Eligible costs

Subject to the above and without prejudice to Articles 13.2 and 19.3 herein, the following direct costs may, notably, be considered as eligible:

- a) Purchase costs for supplies and services delivered to the beneficiaries of the Action, including transport, monitoring, storage and distribution costs;
- b) Expenditure incurred by the International Organisation related to the award of contracts required for the implementation of the Action;
- c) Without prejudice to paragraph 3 of this Article, purchase or depreciation costs for new or used durable equipment which is used for the Action;
- d) Costs of staff assigned to the Action, including actual salaries, social security contributions and other remuneration related costs such as withholding taxes, even if the related employment contracts were concluded before the eligibility period. Identifiable staff costs at headquarters level directly related to the Action may be included. Salaries and costs may not exceed those normally borne by the International Organisation. Travel and subsistence costs for staff taking part in the Action may also be eligible, provided they do not exceed those normally borne by the International Organisation;
- e) Actual costs incurred by the International Organisation's implementing partners directly attributable to the implementation of the Action;
- f) Without prejudice to Article 18.5 herein, a contribution to the country office costs of the International Organisation or its implementing partner established on the basis of an equitable cost allocation system applied to all of the Actions supported by the country office in question;
- g) the financial support to beneficiaries, including distribution of small amounts of cash, subject to the conditions established in Article 137 of the Financial Regulation and to the Article 210 of the Rules of Application;
- h) Costs arising from compensations in-kind or in cash to the beneficiaries for any activity not covered by an employment contract, largely to encourage motivation, availability and involvement on the part of those concerned in the implementation of activities that are part of the Action;
- i) Costs of activities by personnel of national administrations to the extent that the concerned administrations would not have carried out these activities if the Actions were not undertaken;
- j) Other costs deriving directly from the requirements of the Contribution Agreement (dissemination of information, evaluation, reporting, translation,

reproduction, insurance, etc.) including financial service costs (in particular bank fees for transfers and, when required by the Commission, financial guarantees).

- k) in accordance with Article 126(3)(c) of the Financial Regulation and Article 187 of the Rules of application, duties, taxes and charges paid by the International Organisation, including value added tax (VAT), provided that they cannot be recovered and are included in eligible direct costs, unless specified otherwise in the Agreement.

### 18.3. Depreciation costs

- a) Pro rata the number of months that the equipment was allocated to the Action, the International Organisation may charge linear depreciation costs in accordance with the following values:
- Equipment with a historic purchase price up to EUR 2,000 shall be depreciated over 24 months;
  - Equipment with a historic purchase price above EUR 2,000 and up to EUR 10,000 shall be depreciated over 36 months;
  - Equipment with a historic purchase price above EUR 10,000 and up to EUR 30,000 shall be depreciated over 48 months;
  - Equipment with a historic purchase price above EUR 30,000 shall be depreciated over 60 months.
- b) The International Organisation may charge a different depreciation rate for equipment when the P-control mechanism is applicable to the Action, as specified in Article 1.3 of the Special Conditions.

The International Organisation depreciation rates have to be compliant with the following requirements:

- The identification in a regularly updated inventory covering the International Organisation's assets;
- The codification of the accounting practices and the method to be used for the depreciation of equipment;
- Transparent application, guaranteeing equal treatment of donors and consistency with the operations financed with the International Organisation's own resources.

### 18.4. Allowance for low value equipment

The budget of the Action may include an allowance for covering low value equipment fully purchased with the Commission's financial support and for which donation to final beneficiaries and local implementing partners is either not suitable, not advisable or contrary to the principles of sound financial management. The maximum cost per single item under this allowance shall not exceed EUR 2,000 and the costs must be itemised and proven.

For Actions where the total budget is equal to or less than EUR 500,000, the amount of the

allowance will not be higher than the amount of costs incurred up to the maximum of EUR 5,000. For Actions where the total budget exceeds EUR 500,000 the amount of the allowance will not be higher than the amount of costs incurred up to the maximum of EUR 15,000.

#### 18.5. Cost allocation systems

If the International Organisation shares out certain costs to different uses and projects according to a cost allocation system, the related costs may be eligible provided that they are linked to the Action and are in proportion to the different sources of funding.

The cost allocation system must be based on the International Organisation's standard practice and must be justifiable and reasonable. The International Organisation must be able to demonstrate how the costs charged were derived at any time.

#### 18.6. Non-eligible costs

The following costs shall not be considered eligible:

- debts and provisions for possible future losses or debts;
- interest owed by the International Organisation to any third party;
- items already financed from other sources; purchases of land or buildings;
- currency exchange losses;
- cessions and rebates by the implementing partners, contractors or staff of the International Organisation of part of declared costs for the Action;
- duties, taxes and charges (including recoverable value added tax (VAT)), unless the International Organisation can demonstrate that it is not able to reclaim them in accordance with Article 126(3)(c) of the Financial Regulation and Article 187 of the Rules of application. If reimbursement occurs after the submission of the Final report, the International Organisation shall inform the Commission, who will launch its recovery.

#### 18.7. Indirect costs

A percentage of direct eligible costs of the Action, not exceeding 7%, may be claimed as indirect costs.

Indirect costs shall not be eligible where the Contribution Agreement concerns the financing of an Action conducted by a body which is already receiving a financial contribution equivalent to an operating grant from the Commission during the period in question.

#### 18.8. Contribution in-kind

In the case of co-financing, contributions in-kind made by other donors or by the International Organisation itself may neither be considered as co-financing nor as eligible costs. Costs directly arising out of, or related to, accepting or distributing contributions in-kind may be considered eligible to the extent that they comply with the conditions laid down in Article 18.1 herein.

**Article 19. Donation and transfer of supplies (goods and equipment)****19.1. Donation**

As a general rule and to the extent that the Commission is the single largest donor to the Action, the remaining supplies (durable equipment, goods and small equipment) purchased with the Commission's financial support shall be donated at the end of the implementation of the Action to the beneficiaries of the Action, local implementing partners or local authorities. When the recipient of the donation is a local authority, the International Organisation shall obtain the prior agreement of the Commission. Under no circumstances may the supplies be donated to contractors.

By derogation to the precedent paragraph, equipment included in the low value allowance established in Article 18.4 herein, remaining goods with a value up to EUR 500 per category of items, and supplies purchased in the framework of multi-donor Actions are excluded from this obligation. The International Organisation pledges to use these to the benefit of humanitarian Actions.

**19.2. Transfer to another Action**

If the International Organisation intends to transfer the supplies (durable equipment, goods, or small equipment) to another Action funded by the Commission, it shall submit to the Commission a justified written request with an inventory of the remaining supplies and a proposal concerning their use. This request must be submitted in due time and at the latest with the submission of the Final reports.

The submission of this request and the reply thereto will be done by exchange of letters in accordance with the procedures laid down in Article 11.4 herein. If the request is sent with the Final report, the Commission shall not reply by exchange of letters but shall instead decide in the framework of the establishment of the final amount of Union funding as laid down in Article 21 herein.

**19.3. Reporting on end destination**

The International Organisation shall report on the end use of the supplies (durable equipment, goods and small equipment) in the Final report. In accordance with Article 23.4 herein, it shall keep documentary proof of any transfer of property. In case of non-compliance, the related costs may not be eligible for European Union funding and will, if necessary, be recovered in accordance with the procedure established in Article 24 herein.

**Article 20. Pre-financing and Bank Interest****20.1. Pre-financing**

The Commission shall make a pre-financing payment to the International Organisation within 30 calendar days following the entry into force of the Contribution Agreement.

The level of pre-financing shall be established taking into account the specificities of the Action and the control mechanism applied. The pre-financing will range from 50 to 80 %

of the Commission's contribution to the Action. In case of a pre-financing of 50%, the Commission can decide to make a second pre-financing payment instalment amounting to 30% of the Commission's contribution to the Action.

20.2. Bank interests generated by pre-financing

Bank interests generated on pre-financing payments are not due to the European Commission.

**Article 21. Establishment of the Final Amount of European Union financing**

21.1. Final Amount

The amount of the contribution shall not become final until the Commission has accepted the Final reports and the payment request presented by the International Organisation, without prejudice to Article 23 herein and subsequent recoveries established in accordance with Article 24 herein.

21.2. Final narrative and financial reports

The International Organisation shall present a Final narrative report and a Final financial report complying with Article 10.2 herein within the deadline established in Article 4.2 of the Special Conditions.

Any report shall be deemed accepted by the Commission 45 calendar days after registration, in the absence of any other reaction by the Commission.

The Commission shall assess whether the Action has been carried out in all respects in compliance with the Contribution Agreement on the basis of the Final reports and, where applicable, the supporting documentation and additional information submitted by the International Organisation.

If the Commission cannot accept the Final narrative or financial reports, it shall request the International Organisation to submit the additional information it requires within 30 calendar days following its request. After that delay, the Commission may either reject the Final reports as submitted or continue the procedure on the basis of the available information. The deadline for accepting the reports shall be suspended pending receipt of the requested information. The deadline starts running again on the date on which the Commission receives the required information.

The acceptance of the Final reports does not constitute recognition of the eligibility of the costs, nor of the regularity, authenticity, completeness and correctness of the declarations and information contained in the reports.

21.3. Payment request

Together with the Final reports and, where applicable, supporting documentation, the International Organisation shall submit a payment request identifying the amounts

prefinanced by the Commission, the expenditure engaged by the International Organisation and the balance requested from the Commission.

Following the acceptance of the Final reports, the Commission shall assess the eligibility of the costs claimed by the International Organisation. The information submitted by the International Organisation must be sufficiently detailed in order to allow the Commission to formulate an opinion on the eligibility of costs. If the Commission deems that the payment request cannot be met, it may request the International Organisation to submit additional information within 30 calendar days. After that delay, the Commission may either reject the payment request as submitted or continue the procedure on the basis of the available information. The payment deadline set in Article 22.1 herein shall be suspended pending receipt of the requested information. The payment deadline starts running again on the date on which the Commission receives the required information.

No tacit approval of the payment request can be presumed on expiry of the payment deadline. In case of late payment, Article 22.5 herein shall apply.

#### 21.4. Maximum European Union contribution

The final amount shall not exceed the maximum European Union contribution established in Article 3.2 of the Special Conditions, even if the total of eligible costs exceeds the estimated total budget of the Action referred to in Article 3.1 of the Special Conditions.

Where Article 3.2 of the Special Conditions sets out a maximum percentage of estimated total eligible cost to be financed by the European Union, and the eligible costs at the end of the Action are less than the estimated total cost specified in Article 3.1 of the Special Conditions, the contribution of the European Union may be limited to the amount produced by multiplying the actual expenditure by the percentage laid down in Article 3.2 of the Special Conditions.

#### 21.5. No profit

The International Organisation accepts that the financial contribution of the European Union shall be limited to the amount required to balance income and expenditure for the Action and that it may not in any circumstances result in a profit for the International Organisation.

### **Article 22. Payment of the balance**

#### 22.1. Payment deadline

The Commission shall establish the total eligible costs of the Action and, when applicable, pay the balance due to the International Organisation within 60 calendar days following the registration of the final report and relative request for payment, provided that the report has been accepted.

#### 22.2. Notification of the final amount

The Commission shall notify the International Organisation of the Final Amount and the amounts to be paid or recovered.

If the International Organisation does not agree with the Final Amount, it may request

clarification of this amount explaining why the calculation should be revised. Such a request will be sent to the Commission in writing within two months following the date of notification of the final amount or, in the absence of such notification, following the date on which payment of the balance or the recovery notice is received. Requests reaching the Commission after this deadline shall not be admissible. Within 45 calendar days following receipt of an admissible request, the Commission shall provide the requested clarification in writing.

22.3. Currency for payments

The Commission shall pay in EUR.

22.4. Suspension of payments

The Commission may suspend payments at any time following presumed infringements of the Contribution Agreement. The purpose of such a suspension is to give time to check whether the presumed infringements have in fact occurred and, where appropriate, to rectify them. The Commission shall inform the International Organisation in writing of the grounds for the suspension of payments and invite the International Organisation to submit its comments.

As soon as circumstances allow, the Commission shall end the suspension of payments and inform the International Organisation accordingly in writing.

22.5. Late payment interests

The Commission shall pay interest for late payment. A late payment is a payment which takes place after expiry of the time-limit set in Article 22.1 herein.

The applicable rate is the rate applied by the European Central Bank for its main refinancing operations, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment was due, increased by three and a half percentage points.

The interest on late payment shall cover the period from the day following the payment deadline until the date of actual payment. The interest shall not be treated as a receipt for the Action for the purposes of determining the final amount within the meaning of Article 20 herein.

Suspension of payments by the Commission in the sense of Article 22.4 herein shall not be considered as late payment.

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 International Organisation only upon request submitted within two months of receiving late payment.

22.6. Reduction of contributions

Where the Action is not carried out at all, or is not carried out properly, in full or on time, the Commission may, by duly reasoned decision, reduce the contribution on the basis of

the actual implementation of the Action and the results achieved and the eligibility of the indirect costs claimed by the International Organisation. The International Organisation may contest the Commission decision in accordance with the procedures laid down in Article 22.2 herein.

Equally, when the Contribution Agreement is wrongfully terminated in the sense of Article 16.1 herein, or if it is terminated on the grounds set out in Articles 16.2 and 16.3, b), d), e), f), g) or h) the Commission may, by duly reasoned decision, reduce the amount of the contribution. The International Organisation may contest the Commission decision in accordance with the procedures laid down in Article 22.2 herein.

## **Article 23. Controls, verifications and audits**

### **23.1. Right of Access**

Subject to the International Organisation's privileges and immunities, the International Organisation shall give the Commission or any other organisation authorised by the Commission access to any location where the Action is implemented and to all relevant financial information necessary to verify the implementation of the Action and the Contribution Agreement.

The European Court of Auditors and the competent bodies of the European Union shall have the same rights as the Commission, including the right of access, for verification purposes.

The provisions of this Article shall be applied in accordance with any specific agreement concluded in this respect by the International Organisation and the European Union.

### **23.2. Audit**

Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the Financial Regulations, Rules and directives of the International Organisation. A copy of the audited financial statements shall be submitted to the European Commission by the International Organisation.

### **23.3. Verification missions**

The Commission or any other organisation mandated by the Commission, may verify the International Organisation's use made of the European Union contribution. Such verification missions may be initiated during the implementation of the Contribution Agreement until five years after Final payment of the Contribution Agreement. The International Organisation assures full assistance to the Commission or any other organisation mandated by the Commission in the course of verification missions. This period shall be limited to three years if the maximum amount of the European Union's contribution is not more than EUR 60 000.

The provisions of this Article shall be applied in accordance with any specific agreement concluded in this respect by the International Organisation and the European Union.

### **23.4. Record keeping**

The International Organisation shall ensure that all the relevant information is available to

ensure at all times a sufficiently detailed audit trail. For each Action the International Organisation shall therefore make available upon request from the Commission or any other organisation authorised by the Commission, accurate and regular records and accounts detailing all income and expenditure, and all other documents necessary to verify the implementation of the Action and the Grant Agreement. These documents will be kept in original form (as the case may be in electronic form) 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 of the European Union's contribution is not more than EUR 60 000.

They will be submitted upon first request to the Commission or organisation authorised by the Commission within the deadline established in Article 10.3 herein.

The International Organisation's standard accounting and control procedures will be in a form which makes it possible for the Union to verify the use to which its funds or contributions have been put.

### 23.5 Contradictory verification procedure

On the basis of the findings made during the verification, a provisional report (“draft verification report”) shall be drawn up and sent by the Commission or its authorised representative to the International Organisation concerned, to the extent possible, within 30 days from the completion of the verification mission. The International Organisation concerned, shall have 30 days from the date of receipt to submit observations. The final report (“final verification report”) shall be sent to the International Organisation concerned within 60 days of expiry of the time limit for submission of observations.

## **Article 24. Recovery**

### 24.1. Recovery order

The Commission shall send a recovery order to the International Organisation for the amounts paid by the Commission which exceed the final amount. The International Organisation shall reimburse the amounts within 45 calendar days following receipt of the recovery order.

The Commission may claim payment of interests at the rate indicated in Article 22.5 herein if the International Organisation does not pay within the above time limit. These late payment interests shall be payable for the period starting on the day following the expiry of the time limit for payment until the day of payment. Any partial payment shall be used to cover the interest.

### 24.2. Offsetting

The Commission may offset amounts to be repaid against amounts of any kind payable to the International Organisation, after informing the International Organisation accordingly. The International Organisation's prior consent is not required. Both Parties may agree on payment in instalments.

### 24.3. Bank Charges

The International Organisation shall bear the costs of all bank charges related to the recovery of the amounts due to the Commission.

#### **IV. FINAL PROVISIONS**

##### **Article 25. Interpretation**

All mentions made to Council or Commission Regulations should be understood as referring to the most recent applicable version of the legislative text as published in the Official Journal of the European Union. The Commission will inform International Organisations on the application of any relevant modification of the mentioned Regulations. If required by the substance of the modification, references to European legislation will be updated by means of amendments.

Headings in these General Conditions have no legal significance and do not affect their interpretation.

Nothing in the agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.

##### **Article 26. Settlement of disputes**

###### **26.1. Amicable settlement**

The Parties shall endeavour to settle amicably any dispute arising between them relating to the interpretation, application or fulfilment of the Contribution Agreement, including with regard to its existence, validity or termination.

###### **26.2. Choice of law**

In case of Actions subject to the "A-control mechanism", without prejudice to the International Organisation's privileges and immunities, the Contribution Agreement shall be governed by the European Union rules applicable and, on a secondary level, by Belgian law.

###### **26.3. Jurisdiction**

Subject to the International Organisation's privileges and immunities and in case of Actions subject to the "P-control mechanism", any dispute between the Parties arising from the interpretation or application of the Contribution Agreement that cannot be settled amicably shall be brought before the Permanent Court of Arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of the agreement. The language to be used in the arbitral proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

In case of Actions subject to the "A-control mechanism", any dispute between the Parties arising from the interpretation or application of the Contribution Agreement that cannot be settled amicably shall be brought before the Court of First Instance of the European Union and, in the event of an appeal, the Court of Justice of the European Union.