



**Innovation and Networks Executive Agency**  
C2 CEF Transport  
Head of Unit

15 DEC. 2015

Brussels,  
INEA/ INEA/BB/apr  
ARES(2015) 5896787

***Sent by registered mail  
with acknowledgment of receipt***

**Mr Ralph Gallob**  
ILR Logistica Romania SRL  
Garii Street 30  
080447 Giurgiu  
Romania

[heimo.hintersteiner@ill.co.at](mailto:heimo.hintersteiner@ill.co.at)

**Subject: Grant agreement for Action "High Performance Green Port Giurgiu-  
Stage II Construction" - n°2014-RO-TMC-0313-W"**

Dear Mr Gallob,

Please find herewith an original signed exemplar of the Grant Agreement n° INEA/CEF/TRAN/M2014/1041944. A copy of this Grant Agreement has been transmitted for information to:

- Mr Dan M. Costescu, Minister of Transport
- Mr Nicolae Barbu, Mayor of Giurgiu
- Razvan Alexandru Cuc, General Manager, Giurgiu Free Zone Administration
- Ms Mihaela Toader, Director General, Ministry of European Funds
- Mr Catalin Costache, CEF committee member
- Ms Silvana Sava, CEF committee member

Furthermore I am pleased to inform you that, in line with article 4.1.2 of the above-mentioned Grant Agreement, a pre-financing payment of amount € 4,156,344.88 has been made as follows:

Account holder: ILR Logistica Romania SRL

Account n°: RO63RZBR0000060016366942

**Innovation and Networks Executive Agency (INEA)**  
W910  
Chaussée de Wavre 910 • B-1049 Brussels, Belgium  
Tel: +32 (0)2 29 95252 — Fax: +32 (0)2 29 73727  
[inea@ec.europa.eu](mailto:inea@ec.europa.eu) — <http://inea.ec.europa.eu> — Twitter: @inea\_eu

Please note that the financial guarantee with the Ref. No 615.1322 will cover the pre-financing payments. Therefore the guarantee letter signed by Industrie Logistik Linz is returned to you.

I would like to highlight that Article II.24.1.3 of the Agreement sets out the conditions against which further pre-financing payments may be authorised.

Should you have any questions relating to the implementation of the Grant Agreement, you may contact Mrs Barbara Bernardi [Barbara.bernardi@ec.europa.eu](mailto:Barbara.bernardi@ec.europa.eu) who is Project Manager in charge at INEA.

I take this opportunity to wish you successful implementation and look forward to continuing the good cooperation with you and your services for the successful outcome of the Action.

Yours sincerely,



Cristóbal MILLAN DE LA LASTRA

Encl.: Grant Agreement No INEA/CEF/TRAN/M2014/1041944  
Letter signed by Industrie Logistik Linz

Copies: Mr Nicolae Barbu, Mayor of Giurgiu, email: [primar@primariagiurgiu.ro](mailto:primar@primariagiurgiu.ro)  
Mr Razvan Alexandru Cuc, General Manager, Giurgiu Free Zone Administration,  
email: [razvancuc@zlg.ro](mailto:razvancuc@zlg.ro)



**Innovation and Networks Executive Agency**

**Department C - Connecting Europe Facility (CEF)**

**GRANT AGREEMENT  
UNDER THE CONNECTING EUROPE FACILITY (CEF) - TRANSPORT SECTOR**

**AGREEMENT No INEA/CEF/TRAN/M2014/1041944**

The **Innovation and Networks Executive Agency (INEA)** ("the Agency"), under the powers delegated by the European Commission ("the Commission"), represented for the purposes of signature of this Agreement by the Director of the Agency, Dirk Beckers,

on the one part,

**and**

**1. ILR Logistica Romania SRL (ILR)**

Registration No J52/282/11.05.2012

Garii Street 30

080447 Giurgiu

Romania

VAT No RO30185008,

hereinafter referred to as "the coordinator", represented for the purposes of signature of this Agreement by ILR General Manager, Ralph Gallob

and the following other beneficiaries:

2. Giurgiu Municipality (GM) - established in Romania

3. Giurgiu Free Zone Administration (GFZ) - established in Romania

duly represented by the coordinator by virtue of the mandates included in Annex IV for the signature of this Agreement,

hereinafter referred to collectively as "the beneficiaries", and individually as "beneficiary" for the purposes of this Agreement where a provision applies without distinction between the coordinator or another beneficiary,

on the other part,

HAVE AGREED

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

- Annex I Description of the action
- Annex II General Conditions (hereinafter referred to as "the General Conditions")
- Annex III Estimated budget of the action
- Annex IV Mandates provided to the coordinator by the other beneficiaries
- Annex V Model final report
- Annex VI Model financial statement(s)
- Annex VII Model terms of reference for the certificate on the financial statements

which form an integral part of this Agreement, hereinafter referred to as "the Agreement".

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

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



## SPECIAL CONDITIONS

### TABLE OF CONTENT

- ARTICLE 1 – SUBJECT MATTER OF THE AGREEMENT
- ARTICLE 2 – ENTRY INTO FORCE OF THE AGREEMENT AND DURATION OF THE ACTION
- ARTICLE 3 – MAXIMUM AMOUNT AND FORM OF THE GRANT
- ARTICLE 4 – ADDITIONAL PROVISIONS ON REPORTING, PAYMENTS AND PAYMENT ARRANGEMENTS
- ARTICLE 5 – BANK ACCOUNT FOR PAYMENTS
- ARTICLE 6 – DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES
- ARTICLE 7 – ENTITIES AFFILIATED TO THE BENEFICIARIES
- ARTICLE 8 – IMPLEMENTING BODIES DESIGNATED BY THE BENEFICIARIES
- ARTICLE 9 – MONO-BENEFICIARY GRANT
- ARTICLE 10 – ADDITIONAL PROVISIONS ON REIMBURSEMENT OF COSTS DECLARED ON THE BASIS OF THE BENEFICIARY'S USUAL COST ACCOUNTING PRACTICES
- ARTICLE 11 – ADDITIONAL PROVISIONS ON USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)
- ARTICLE 12 – OBLIGATION TO CONCLUDE AN INTERNAL CO-OPERATION AGREEMENT
- ARTICLE 13 – INAPPLICABILITY OF THE NO-PROFIT PRINCIPLE
- ARTICLE 14 – INELIGIBILITY OF VALUE ADDED TAX
- ARTICLE 15 – SPECIAL PROVISIONS ON ELIGIBLE COSTS
- ARTICLE 16 – WAIVING OF THE OBLIGATION TO PROVIDE CERTIFICATES ON THE FINANCIAL STATEMENTS
- ARTICLE 17 – FINANCIAL SUPPORT TO THIRD PARTIES
- ARTICLE 18 – IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING EU FUNDING
- ARTICLE 19 – SETTLEMENT OF DISPUTES WITH NON EU BENEFICIARIES
- ARTICLE 20 – BENEFICIARIES WHICH ARE INTERNATIONAL ORGANISATIONS
- ARTICLE 21 – JOINT AND SEVERAL FINANCIAL LIABILITY FOR RECOVERIES



## **ARTICLE 1 – SUBJECT MATTER OF THE AGREEMENT**

The Commission has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the other Annexes to the Agreement, for the action entitled "**High Performance Green Port Giurgiu- Stage II Construction**" ("the action"), action number **2014-RO-TMC-0313-W** as described in Annex I.

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

## **ARTICLE 2 – ENTRY INTO FORCE OF THE AGREEMENT AND DURATION OF THE ACTION**

- 2.1** The Agreement shall enter into force on the date on which the last party signs.
- 2.2** The action shall run from 01/09/2015 ("the starting date") until 31/08/2018 ("the completion date").

## **ARTICLE 3 - MAXIMUM AMOUNT AND FORM OF THE GRANT**

The grant for the action shall be of a **maximum amount of EUR 13,254,953.55**.

The grant shall take the form of:

- (a) the reimbursement of 85% of the eligible costs of the action ("reimbursement of eligible costs"), which are estimated at EUR 15,594,063 and which are:
- (i) actually incurred ("reimbursement of actual costs")
  - (ii) reimbursement of unit costs: not applicable
  - (iii) reimbursement of lump sum costs: not applicable
  - (iv) reimbursement of flat-rate costs: not applicable
  - (v) declared on the basis of an amount per unit calculated in accordance with the beneficiary's usual cost accounting practices ("reimbursement of costs declared on the basis of the beneficiary's usual cost accounting practices") for personnel costs
- (b) unit contribution: not applicable
- (c) lump sum contribution: not applicable
- (d) flat-rate contribution: not applicable

## **ARTICLE 4 – ADDITIONAL PROVISIONS ON REPORTING, PAYMENTS AND PAYMENT ARRANGEMENTS**

### **4.1 Reporting periods and payments**

In addition to the provisions set out in Articles II.23 and II.24, the following reporting and payment arrangements shall apply:

#### **4.1.1 Reporting periods**

The action is divided into the following reporting periods:

- Reporting period 1 from the starting date of the action to 31 December 2016;
- Reporting period 2 from 1 January 2017 to 31 December 2017;
- Last reporting period from 1 January 2018 to the completion date of the action.

#### **4.1.2 Payments**

Upon entry into force of the Agreement, the Agency shall make a first pre-financing payment of 50% of the amount of the first annual instalment of the maximum CEF contribution as indicated in Annex III to the coordinator in accordance with Article II.24.1.2, subject to the receipt of a guarantee of an amount equal to the first pre-financing payment to be made.

At the end of each reporting period, except the last reporting period, the coordinator may submit a request for further pre-financing payment in accordance with Article II.23.1.2. The further pre-financing payment shall be calculated on the basis of 50% of the cumulated financing needs and in accordance with Article II.24.1.3. The Agency shall make the further pre-financing payment to the coordinator in accordance with Article II.24.1.3, subject to the receipt of a further guarantee of an amount equal to the further pre-financing payment to be made.

At the end of at least every two reporting periods, the coordinator shall submit a request for interim payment in accordance with Article II.23.2.1. The Agency shall make an interim payment to the coordinator in accordance with Article II.24.2.

At the end of the last reporting period, the coordinator shall submit the request for payment of the balance in accordance with Article II.23.2.2. The Agency shall make the payment of the balance to the coordinator in accordance with Article II.24.3.

#### **4.1.3 Ceiling for pre-financing and interim payments**

The total amount of pre-financing and interim payments shall not exceed 80% of the maximum grant amount set out in Article 3.

#### **4.2 Time limit for payments**

The time limit for the Agency to make the interim payment(s) and payment of the balance is 90 days.

#### **4.3 Language and submission means of requests for payment, reports and financial statements**

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

The Action Status Report referred to in Article II.23.1 shall be submitted via TEN-Tec.

Other documents or, if applicable, scanned copies of the original signed paper versions and electronic files, shall be sent via e-mail to the address specified in Article 6.2.

## ARTICLE 5 – BANK ACCOUNT FOR PAYMENTS

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

Name of bank: Raiffeisen Bank  
Address of branch: Vlad Tepes 20  
Precise denomination of the account holder: ILR Logistica Romanian S.R.L  
Full account number (including bank codes): RO63RZBR0000060016366942  
BIC code: RZBRROBU

## ARTICLE 6 - DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES

### 6.1 Data controller

The entity acting as a data controller according to Article II.6 shall be the Director of the Agency.

### 6.2 Communication details of the Agency

Any communication addressed to the Agency by post or e-mail shall be sent to the following address:

Innovation and Networks Executive Agency (INEA)  
Department C - Connecting Europe Facility (CEF)  
Unit C2 Transport  
B-1049 Brussels  
Fax: +32(0)2 297 37 27  
E-Mail addresses:  
For general communication: [inea@ec.europa.eu](mailto:inea@ec.europa.eu)  
For the submission of requests for payment, reports (except ASRs) and financial statements: [INEA-C2@ec.europa.eu](mailto:INEA-C2@ec.europa.eu)

Any communication addressed to the Agency by registered mail, courier service or hand-delivery shall be sent to the following address:

Innovation and Networks Executive Agency (INEA)  
Avenue du Bourget, 1  
B-1140 Brussels (Evere)

TEN-Tec shall be accessed via the following URL:  
<https://webgate.ec.europa.eu/tentec/>

### 6.3 Communication details of the beneficiaries

Any communication from the Agency to the beneficiaries shall be sent to the following addresses:



6



For ILR Logistica Romania SRL:  
Bujor Marian  
Regional Manager ILR  
Garii Street 30, 080447 Giurgiu, Romania  
E-mail address: marian.bujor@ilr.com.ro

**ARTICLE 7 – ENTITIES AFFILIATED TO THE BENEFICIARIES**

Not applicable.

**ARTICLE 8 - IMPLEMENTING BODIES DESIGNATED BY THE BENEFICIARIES**

Not applicable.

**ARTICLE 9 - MONO-BENEFICIARY GRANT**

Not applicable.

**ARTICLE 10 – ADDITIONAL PROVISIONS ON REIMBURSEMENT OF COSTS DECLARED ON THE BASIS OF THE BENEFICIARY'S USUAL COST ACCOUNTING PRACTICES**

Not applicable.

**ARTICLE 11 – ADDITIONAL PROVISIONS ON USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

In addition to the provisions of Article II.8.3, the beneficiaries shall warrant that the Agency has the rights to:

- summarise the results of the action and distribute the summary;
- extract a part (e.g. audio or video files) of, divide into parts or compile the results of the action.

**ARTICLE 12 – OBLIGATION TO CONCLUDE AN INTERNAL CO-OPERATION AGREEMENT**

Not applicable.

**ARTICLE 13 - INAPPLICABILITY OF THE NO-PROFIT PRINCIPLE**

Not applicable.

**ARTICLE 14 - INELIGIBILITY OF VALUE ADDED TAX**

Not applicable.

**ARTICLE 15 - SPECIAL PROVISIONS ON ELIGIBLE COSTS**

By way of derogation from point (l) of Article II.19.4, the following costs may be eligible:



- (i) costs of purchase of land not built on and land built on, up to 10 % of the total eligible costs of the action,
- (ii) costs of purchase of derelict sites and purchase of sites formerly in industrial use which comprise buildings, up to 15 % of the total eligible costs of the action.

**ARTICLE 16 – WAIVING OF THE OBLIGATION TO PROVIDE CERTIFICATES ON THE FINANCIAL STATEMENTS**

Not applicable.

**ARTICLE 17 - FINANCIAL SUPPORT TO THIRD PARTIES**

Article II.11 is not applicable.

**ARTICLE 18 — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING EU FUNDING**

Not applicable.

**ARTICLE 19 – SETTLEMENT OF DISPUTES WITH NON EU BENEFICIARIES**

Not applicable.

**ARTICLE 20 – BENEFICIARIES WHICH ARE INTERNATIONAL ORGANISATIONS**

Not applicable.

**ARTICLE 21 – JOINT AND SEVERAL FINANCIAL LIABILITY FOR RECOVERIES**

Not applicable.

**SIGNATURES**

For the coordinator



Ralph Gallob

Done at Giurgiu, on 11-11-2015

For the Agency



Dirk Beckers

Done at Brussels, on 24/11/2015



In duplicate in English



## ANNEX I DESCRIPTION OF THE ACTION

### ARTICLE I.1 – IMPLEMENTATION OF THE TEN-T NETWORK

The action contributes to the implementation of:

- the core network
  - Corridor(s): Rhine - Danube.
  - Pre-identified section(s) on the core network corridor(s):
    - Danube (Kehlheim - Constanța/Midia/Sulina)

### ARTICLE I.2 – LOCATION OF THE ACTION

- 1.2.1 Member State(s): Romania
- 1.2.2 Region(s) (using the NUTS2 nomenclature): Sud - Muntenia (RO31)
- 1.2.3 Third country(ies): not applicable

### ARTICLE I.3 – SCOPE AND OBJECTIVES OF THE ACTION

The port of Giurgiu located at river km 493 of the Danube, in the proximity of Bucharest and the Bulgarian port of Ruse, is a crossroad for flows and transshipment of freight between inland waterway, rail and road transport. Its infrastructure upgrade will contribute to enhance the connections between different modes of transport allowing an increase of freight handled along the Romanian section of the Danube and the overall Rhine-Danube core network corridor. The construction works foreseen in this Action will aim to develop Giurgiu as a green port that embraces environmental and climate protection.

The general objectives of the Action are:

- Improving the quality of the existing port infrastructure in Romania on the Rhine-Danube Corridor;
- Increasing the capacity by upgrading the port of Giurgiu's existing basic infrastructure and by procuring facilities for enhancing loading and transshipment at the port;
- Turning Giurgiu into the first "Green Danube Port" based on "Joint Statement on Guiding Principles for Development of Inland Navigation in the Danube River Basin" (ICPDR, Danube Commission, Sava Commission, 2008);
- Supporting modal split by fostering the use of inland waterway transport and eliminating bottlenecks by building the missing links with rail/road/inland waterway networks.

The scope of the Action is to:

- Construct the missing links with road, rail and inland waterway networks;
- Build a covered "all-weather" trimodal terminal;
- Develop and implement a supply chain system within the intermodal terminal;
- Upgrade the port water side basic infrastructure;
- Apply for obtaining the EMAS certification for the trimodal "all-weather" terminal .

The fulfilment of EU environmental law, in particular, the provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the

environment, Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna, Directive 2000/60/EC establishing a framework for community policy in the field of water, is a pre-condition for the disbursement of EU financial aid to the Action. The compulsory assessments must be duly completed and approved by the competent authorities according to national law and in line with requirements of relevant EU legislation before the start of the physical intervention. If this information is not provided or is not positively assessed by the Commission services, the Agency may suspend, reduce, recover or terminate financial assistance in accordance with articles II.15, II.16, II.24.5 and II.25.4.

## ARTICLE I.4 – ACTIVITIES

### I.4.1 Activities timetable

Activity number	Activity title	Indicative start date	Indicative end date	Milestone number
1	Project Management and Communication	01/09/2015	31/08/2018	1, 2, 4
2	Construction works	01/09/2015	30/04/2018	3, 5, 6, 7, 8
3	Supply chain management system	01/08/2016	30/06/2017	9, 10
4	Environmental certification for the port of Giurgiu	01/06/2017	31/08/2018	11, 12

### I.4.2 Activities description

#### **Activity 1: Project Management and Communication**

##### Sub-Activity 1.1: Project Management

This sub-activity comprises all tasks and responsibilities to efficiently coordinate and manage the project. The co-ordinator of the action ILR Logistica Romania SRL will be responsible for the project management. The beneficiaries will form a Project Steering Committee (SCOM) which will be the central decision making platform of the Action.

The tasks of this sub-activity are the preparation and submission of progress, interim and final reports, monitoring of milestones, cost/budget control, quality assurance, communication with European Commission DG MOVE/INEA, Romanian Ministries of EU Regional Funds and Transport and other relevant authorities, and the organisation of meetings and workshops.

##### Sub-activity 1.2: Communication and dissemination

This sub-activity comprises all tasks related to communication and dissemination of the Action's results:

- Information about the Action on beneficiaries' websites;
- Billboards visible to the public during construction;
- EU Logo on cover of study reports;
- Permanent commemorative plaque after completion;
- Press releases, articles, presentations, etc.;
- Dissemination events.

Expected deliverables include:

- Action Communication plan.

## **Activity 2: Construction works**

This Activity concerns the construction works to upgrade the port's waterside basic infrastructure and its connections with the other transport networks.

### **Sub-activity 2.1: Set-up of the work site**

This Sub-Activity includes all preparatory works to start the construction. Safety and security measures will have to be put in place before the start of the works.

### **Sub-activity 2.2: Upgrade and construction of the road infrastructure, including the connection with the regional/national road network**

The objective of this Sub-Activity is to upgrade the road network within the port area and to ensure its connection with the regional/national road network. These works include the upgrade of the access road to the quay at the basin of Veriga and of the connecting road to the port terminal, the so called "cereal road". The total length of the roads to be upgraded is 1.38 km.

### **Sub-activity 2.3: Upgrade and construction of the rail infrastructure, including the connection with the regional/national rail network**

The objective of this Sub-Activity is to upgrade the rail network within the port area and to ensure its connection with the regional/national rail network. A set of precautionary measures to ensure railway traffic safety and reduce noise pollution will be carried out. Sound-absorbing panels will be installed alongside ca. 510 meters of railway tracks.

This Sub-Activity entails the following tasks:

- Construction of a new railway line of 736 m long to connect the existing railway network with the trimodal terminal;
- Construction of a two railway level crossings at the entrance of the trimodal terminal and close to the Giurgiu railway station;
- Planting vegetation along the railway tracks to prevent erosion.

### **Sub-activity 2.4: Upgrade of the port waterside infrastructure**

The objective of the Sub-Activity is to create a water basin to connect the Veriga basin with the trimodal terminal and to upgrade the capacity of the port of Giurgiu's waterside infrastructure.

This Sub-Activity entails the following tasks:

- Capital dredging to create a water basin to connect the Veriga basin with the trimodal terminal;
- Reinforcement of the existing quays in front of the terminal and at the entrance of the Veriga basin, and of the embankments along the new basin in the proximity of the terminal;
- Improvement of the mooring area;

### **Sub-activity 2.5: Intermodal logistics terminal**

The objective of this sub-activity is to upgrade the port of Giurgiu existing infrastructure by constructing a covered "all-weather" tri-modal terminal for handling freight.

The terminal will be a sbuilding 200 m in length and 15 m high. Four rolling gates will be installed at the four main entrances of the terminal. A truck parking area for loading/unloading freight of about 850 m<sup>2</sup> will be constructed to increase safety and reduce congestion.

The terminal will be equipped with the following equipment:

- Two bridge cranes with a span of 38 m and a lifting capacity of 42 tons;
- Two forklifts for the transportation of goods.

Expected deliverables for Activity 2 include:



- Certificates of completion for all construction works and the delivery of equipment for Sub-Activities 2.1, 2.2, 2.3, 2.4 and 2.5.

**Activity 3: Supply chain management system**

This activity covers the design and implementation of a supply-chain management system to handle the freight flows from, to and within the trimodal "all-weather" terminal.

**Sub-activity 3.1: Supply chain design**

This sub-activity covers the design of computer-based supply-chain management system software to trace and track freight arriving at the terminal and facilitate the transshipment process.

**Sub-activity 3.2: Implementation of the system**

This sub-activity covers the implementation of the supply-chain management system at the terminal.

**Sub-activity 3.3: Testing and training of the supply-chain management system**

This sub-activity covers the testing of the functionalities of the implemented supply-chain management system. This sub-activity also covers the organisation of 10 trainings for the intermodal center employees.

**Expected deliverables for Activity 3:**

- Successful development and implementation of the supply-chain management system.
- Completion of 10 trainings for potential operators and employees of the intermodal centre.

**Activity 4: Environmental certification for the port of Giurgiu**

The objective of this Activity is to finalise the application for obtaining the Eco-Management and Audit Scheme (EMAS) certification for the trimodal "all weather" terminal at Port of Giurgiu.

This Activity includes:

- Development of the environmental management scheme;
- Preparatory activities for obtaining the EMAS certificate;
- Preliminary review of the environmental performance of the Green Port of Giurgiu

Expected deliverables for Activity 4:

- Application for the EMAS certificate;

**ARTICLE 1.5 – MILESTONES AND MEANS OF VERIFICATION**

<b>Milestone number</b>	<b>Milestone description</b>	<b>Indicative completion date</b>	<b>Means of verification</b>
<b>1</b>	Action kick-off meeting	03/09/2015	Minutes approved by the Steering Committee
<b>2</b>	EIA approval by the competent authorities. No physical intervention will start without this approval	15/11/2015	Notice issued by the Romanian competent authorities
<b>3</b>	Transfer of rights for the construction works	29/02/2016	Official notification by Giurgiu Municipality
<b>4</b>	Action Communication Plan	31/03/2016	INEA approval



5	Completion of works for Sub-Activity 2.2	31/05/2016	Final report of the Acceptance Commission
6	Completion of works for Sub-Activity 2.3	31/12/2017	Final reports of the Acceptance Commissions
7	Completion of works for Sub-Activity 2.4	30/04/2018	Final report of the Acceptance Commission
8	Completion of works for Sub-Activity 2.5	30/04/2018	Final report of the Acceptance Commission
9	Delivery and successful testing of the supply chain management system	30/06/2017	Steering Committee Approval
10	Trainings organised	01/01/2017	Agenda and list of participants for each of the 10 trainings
11	Start of preparatory activities to apply for EMAS certification	31/08/2017	Preliminary report on steps to be followed by ILR for EMAS certification
12	Application sent for EMAS certification	03/08/2018	Copy of the application sent to the European Commission/INEA





## ANNEX II GENERAL CONDITIONS

### TABLE OF CONTENT

#### **PART A – LEGAL AND ADMINISTRATIVE PROVISIONS**

- II.1 – GENERAL OBLIGATIONS AND ROLES OF THE BENEFICIARIES
- II.2 – COMMUNICATIONS BETWEEN THE PARTIES
- II.3 – LIABILITY FOR DAMAGES
- II.4 – CONFLICT OF INTERESTS
- II.5 – CONFIDENTIALITY
- II.6 – PROCESSING OF PERSONAL DATA
- II.7 – VISIBILITY OF UNION FUNDING
- II.8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS  
(INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)
- II.9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE  
ACTION
- II.10 – SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION
- II.11 – FINANCIAL SUPPORT TO THIRD PARTIES
- II.12 – AMENDMENTS TO THE AGREEMENT
- II.13 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES
- II.14 – FORCE MAJEURE
- II.15 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION
- II.16 – TERMINATION OF THE AGREEMENT
- II.17 – ADMINISTRATIVE AND FINANCIAL PENALTIES
- II.18 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE  
DECISION

#### **PART B – FINANCIAL PROVISIONS**

- II.19 – ELIGIBLE COSTS
- II.20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED
- II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARIES  
AND OF IMPLEMENTING BODIES DESIGNATED BY THE BENEFICIARIES
- II.22 – BUDGET TRANSFERS
- II.23 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT  
AND SUPPORTING DOCUMENTS
- II.24 – PAYMENTS AND PAYMENT ARRANGEMENTS
- II.25 – DETERMINING THE FINAL AMOUNT OF THE GRANT
- II.26 – RECOVERY
- II.27 – CHECKS, AUDITS AND EVALUATION



## **PART A – LEGAL AND ADMINISTRATIVE PROVISIONS**

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

#### **II.1.1 General obligations and role of the beneficiaries**

The beneficiaries shall:

- (a) be jointly and severally responsible for carrying out the action in accordance with the terms and conditions of the Agreement;
- (b) be responsible for complying with any legal obligations incumbent on them jointly or individually under applicable EU, international and national law;
- (c) make appropriate internal arrangements for the proper implementation of the action, consistent with the provisions of this Agreement; where provided for in the Special Conditions, those arrangements shall take the form of an internal co-operation agreement between the beneficiaries.

#### **II.1.2 General obligations and role of each beneficiary**

Each beneficiary shall:

- (a) inform the coordinator immediately of any change likely to affect or delay the implementation of the action of which the beneficiary is aware;
- (b) inform the coordinator immediately of any change in its legal, financial, technical, organisational or ownership situation or of its affiliated entities and of any change in its name, address or legal representative or of its affiliated entities;
- (c) submit in due time to the coordinator:
  - (i) the data needed to draw up the reports, financial statements and other documents provided for in the Agreement;
  - (ii) all the necessary documents in the event of audits, checks or evaluation in accordance with Article II.27;
  - (iii) any other information to be provided to the Agency according to the Agreement, except where the Agreement requires that such information is submitted directly by the beneficiary to the Agency.

#### **II.1.3 General obligations and role of the coordinator**

The coordinator shall:

- (a) monitor that the action is implemented in accordance with the Agreement;



- (b) be the intermediary for all communications between the beneficiaries and the Agency, except where provided otherwise in the Agreement, and, in particular, the coordinator shall:
  - (i) immediately provide the Agency with the information related to any change in the name, address, legal representative as well as in the legal, financial, technical, organisational or ownership situation of any of the beneficiaries or of its affiliated entities, or to any event likely to affect or delay the implementation of the action, of which the coordinator is aware;
  - (ii) bear responsibility for supplying all documents and information to the Agency which may be required under the Agreement, except where provided otherwise in the Agreement; this includes responsibility for submitting the deliverables identified in Annex I, in accordance with the timing and conditions set out in it; where information is required from the other beneficiaries, the coordinator shall bear responsibility for obtaining and verifying this information before passing it on to the Agency;
- (c) make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) establish the requests for payment in accordance with the Agreement;
- (e) ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;
- (f) bear responsibility for providing all the necessary documents in the event of checks and audits initiated before the payment of the balance, and in the event of evaluation in accordance with Article II.27.

The coordinator shall not subcontract any part of its tasks to the other beneficiaries or to any other party.

## **ARTICLE II.2 – COMMUNICATIONS BETWEEN THE PARTIES**

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

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

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

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



17

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II.5 – CONFIDENTIALITY**

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

confidential.

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

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

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

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

### **II.6.1 Processing of personal data by the Agency**

Any personal data included in the Agreement shall be processed by the Agency pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

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

The beneficiaries shall have the right of access to their personal data and the right to rectify any such data. Should the beneficiaries have any queries concerning the processing of their personal data, they shall address them to the data controller, identified in Article 6.1.

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

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

Where the Agreement requires the processing of personal data by the beneficiaries, the beneficiaries may act only under the supervision of the data controller identified in Article 6.1, in particular with regard to the purpose of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his or her rights.

The access to data that the beneficiaries grant to their personnel shall be limited to the extent

strictly necessary for the implementation, management and monitoring of the Agreement.

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

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

## **ARTICLE II.7 – VISIBILITY OF UNION FUNDING**

### **II.7.1 Information on Union funding and use of European Union emblem**

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

When displayed in association with another logo, the European Union emblem must have appropriate prominence.

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

For the purposes of the first, second and third subparagraphs and under the conditions



specified therein, the beneficiaries are exempted from the obligation to obtain prior permission from the Agency to use the European Union emblem.

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

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

## **ARTICLE II.8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

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

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

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

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

The beneficiaries shall ensure that they or their affiliated entities have all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Agreement.

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

Without prejudice to Articles II.1.1, II.3 and II.8.1, the beneficiaries grant the Agency the right to use the results of the action for the following purposes:

- (a) use for its own purposes, and in particular, making available to persons working for the Agency, Union institutions, other Union agencies and bodies and to Member States' institutions, as well as copying and reproducing in whole or in part and in unlimited number of copies;
- (b) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on the Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;
- (c) translation;



- (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (e) storage in paper, electronic or other format;
- (f) archiving in line with the document management rules applicable to the Agency;
- (g) rights to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

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

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

Information about the copyright owner shall be inserted when the result is divulged by the Agency. The copyright information shall read: "© – [year] – [name of the copyright owner]. All rights reserved. Licenced to the Innovation and Networks Executive Agency under conditions."

## **ARTICLE II.9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION**

**II.9.1** Where the implementation of the action requires the procurement of goods, works or services, the beneficiaries 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, they shall avoid any conflict of interests.

The beneficiaries shall ensure that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights under Article II.27 also towards the contractor.

**II.9.2** Beneficiaries acting in their capacity of contracting authorities 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 contracting entities within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall abide by the applicable national public procurement rules.

**II.9.3** The beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiaries shall ensure that any procurement contract contains provisions stipulating that the contractor has no



rights vis-à-vis the Agency under the Agreement.

**II.9.4** The beneficiaries shall ensure that the conditions applicable to them under Articles II.3, II.4, II.5 and II.8 are also applicable to the contractor.

**II.9.5** Where, in accordance with Article 3(a), the grant takes the form of the reimbursement of eligible costs:

- If a beneficiary breaches any of its obligations under Article II.9.1, the costs related to the contract concerned shall be ineligible;
- If a beneficiary breaches any of its obligations under Article II.9.2, II.9.3 or II.9.4, the grant may be reduced in proportion to the seriousness of the breach of obligations.

Where, in accordance with Article 3(b), (c) or (d) the grant takes the form of a unit, lump sum or flat-rate contribution, if a beneficiary breaches any of its obligations under Article II.9.1, II.9.2, II.9.3 or II.9.4, the grant may be reduced in proportion to the seriousness of the breach of obligations.

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

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

**II.10.2** Beneficiaries may subcontract tasks forming part of the action, provided that, in addition to the conditions specified in Article II.9.1, the following conditions are complied with:

- (a) subcontracting only covers the implementation of a limited part of the action;
- (b) recourse to subcontracting is justified having regard to the nature of the action and what is necessary for its implementation;
- (c) not applicable;
- (d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the coordinator and approved by the Agency without prejudice to Article II.12.2.

**II.10.3** Beneficiaries acting in their capacity of contracting authorities 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 contracting entities within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall abide by the applicable

national public procurement rules.

**II.10.4** The beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiaries shall ensure that any subcontract contains provisions stipulating that the subcontractor has no rights vis-à-vis the Agency under the Agreement.

**II.10.5** The beneficiaries shall ensure that the conditions applicable to them under Articles II.3, II.4, II.5, II.7 and II.8 are also applicable to the subcontractor.

**II.10.6** Where, in accordance with Article 3(a), the grant takes the form of the reimbursement of eligible costs:

- If a beneficiary breaches any of its obligations under Article II.10.2, the costs related to the subcontract concerned shall be ineligible;
- If a beneficiary breaches any of its obligations under Article II.10.3, II.10.4 or II.10.5, the grant may be reduced in proportion to the seriousness of the breach of obligations.

Where, in accordance with Article 3(b), (c) or (d) the grant takes the form of a unit, lump sum or flat-rate contribution if a beneficiary breaches any of its obligations under Article II.10.2, II.10.3, II.10.4 or II.10.5, the grant may be reduced in proportion to the seriousness of the breach of obligations.

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

**II.11.1** Where the implementation of the action requires giving financial support to third parties, the beneficiaries shall give such financial support in accordance with the conditions specified in Annex I, which shall at least contain:

- (a) the maximum amount of financial support, which shall not exceed EUR 60 000 for each third party except where the financial support is the primary aim of the action as specified in Annex I;
- (b) the criteria for determining the exact amount of the financial support;
- (c) the different types of activity that may receive financial support, on the basis of a fixed list;
- (d) the definition of the persons or categories of persons which may receive financial support;
- (e) the criteria for giving the financial support.

The beneficiaries shall ensure that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights under Article II.27 also towards the third parties receiving financial support.

**II.11.2** By way of derogation from Article II.11.1, in case the financial support takes the form of a prize, the beneficiaries shall give such financial support in accordance with the conditions specified in Annex I, which shall at least contain:

- (a) the conditions for participation;
- (b) the award criteria;
- (c) the amount of the prize;
- (d) the payment arrangements.

The beneficiaries shall ensure that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights under Article II.27 also towards the third parties receiving a prize.

**II.11.3** The beneficiaries shall ensure that the conditions applicable to them under Articles II.3, II.4, II.5, II.7 and II.8 are also applicable to the third parties receiving financial support.

**II.11.4** Where, in accordance with Article 3(a), the grant takes the form of the reimbursement of eligible costs:

- If a beneficiary breaches any of its obligations under Article II.11.1 or II.11.2, the costs related to the financial support shall be ineligible;
- If a beneficiary breaches any of its obligations under Article II.11.3, the grant may be reduced in proportion to the seriousness of the breach of obligations.

Where, in accordance with Article 3(b), (c) or (d) the grant takes the form of a unit, lump sum or flat-rate contribution if a beneficiary breaches any of its obligations under Article II.11.1 II.11.2 or II.11.3, the grant may be reduced in proportion to the seriousness of the breach of obligations.

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

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

**II.12.2** An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.

**II.12.3** Any request for amendment shall be duly justified and shall be sent to the other party in due time before it is due to take effect, and in any case three months before the end of the period set out in Article 2.2, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.

**II.12.4** A request for amendment on behalf of the beneficiaries shall be submitted by the coordinator. If a change of coordinator is requested without its agreement, the request

shall be jointly submitted by all other beneficiaries or shall be submitted by a beneficiary acting on behalf of all beneficiaries.

- II.12.5** Amendments shall enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

Amendments shall take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

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

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

The assignment shall only be enforceable against the Agency if it has accepted the assignment on the basis of a written and reasoned request to that effect made by the coordinator on behalf of the beneficiaries.

In the absence of such an acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Agency.

- II.13.2** In no circumstances shall such an assignment release the beneficiaries from their obligations towards the Agency.

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

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

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

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

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

#### **ARTICLE II.15 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION**

### **II.15.1 Suspension of the implementation by the beneficiaries**

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

Unless the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.16.1, II.16.2 or points (c) or (d) of Article II.16.3.1, the coordinator shall, once the circumstances allow resuming the implementation of the action, inform the Agency immediately and present a request for amendment of the Agreement as provided for in Article II.15.3.

### **II.15.2 Suspension of the implementation by the Agency**

**II.15.2.1** The Agency may suspend the implementation of the action or any part thereof:

- (a) if the Agency has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement or if a beneficiary fails to comply with its obligations under the Agreement;
- (b) if the Agency has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;
- (c) if the Agency suspects substantial errors, irregularities, fraud or breach of obligations committed by a beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred;
- (d) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action; or
- (e) if the Agency does not receive all the documents required under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2000/60/EC establishing a framework for Community policy in the field of water, or any other relevant environmental legislation as listed in the application form (the section concerning compliance with Union policy on environmental protection).

**II.15.2.2** Before suspending the implementation the Agency shall formally notify the

coordinator of its intention to suspend, specifying the reasons thereof, and, in the cases referred to in points (a), (b), (d) and (e) of Article II.15.2.1, the necessary conditions for resuming the implementation. The coordinator shall be invited to submit observations on behalf of all beneficiaries within 30 calendar days from receipt of this notification.

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

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

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

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

Unless the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.16.1, II.16.2 or points (c), (i), (j), (k) or (m) of Article II.16.3.1, the Agency shall, as soon as it considers that the conditions for resuming the implementation have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify the coordinator thereof and invite the coordinator to present a request for amendment of the Agreement as provided for in Article II.15.3.

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

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

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

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

The right of the Agency to suspend the implementation is without prejudice to its right to terminate the Agreement or the participation of a beneficiary in accordance with Article II.16.3 and its right to reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

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

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

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

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

If no reasons are given or if the Agency considers that the reasons exposed cannot justify the termination, it shall formally notify the coordinator, specifying the grounds thereof, and the Agreement shall be deemed to have been terminated improperly, with the consequences set out in the fourth subparagraph of Article II.16.4.1.

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

In duly justified cases, the participation of any one or several beneficiaries in the Agreement may be terminated by the coordinator, acting on request of that beneficiary or those beneficiaries, or on behalf of all the other beneficiaries. When notifying such termination to the Agency, the coordinator shall include the reasons for the termination of the participation, the opinion of the beneficiary or beneficiaries the participation of which is terminated, the date on which the termination shall take effect and the proposal of the remaining beneficiaries relating to the reallocation of the tasks of that beneficiary or those beneficiaries or, where relevant, to the nomination of one or more replacements which shall succeed that beneficiary or those beneficiaries in all their rights and obligations under the Agreement. The notification shall be sent before the termination is due to take effect.

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

If no reasons are given or if the Agency considers that the reasons exposed cannot justify the termination, it shall formally notify the coordinator, specifying the grounds thereof, and the participation shall be deemed to have been terminated improperly, with the consequences set out in the fourth subparagraph of Article II.16.4.1.

Without prejudice to Article II.12.2, an amendment to the Agreement shall be made, in order to introduce the necessary modifications.

### **II.16.3 Termination of the Agreement or the participation of one or more beneficiaries by the Agency**



**II.16.3.1** The Agency may decide to terminate the Agreement or the participation of any one or several beneficiaries participating in the action, in the following circumstances:

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



failure to submit required information in order to obtain the grant provided for in the Agreement;

- (j) if the Agency has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;
- (k) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action;
- (l) if the action has not started within two years of the starting date set out in Article 2.2 or, for grants for studies, if the action has not started within one year of the starting date set out in Article 2.2;
- (m) if the Agency does not receive all the documents required under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2000/60/EC establishing a framework for Community policy in the field of water, or any other relevant environmental legislation as listed in the application form (the section concerning compliance with Union policy on environmental protection).

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

**II.16.3.2** Before terminating the Agreement or the participation of any one or several beneficiaries, the Agency shall formally notify the coordinator of its intention to terminate, specifying the reasons thereof and inviting the coordinator, within 45 calendar days from receipt of the notification, to submit observations on behalf of all beneficiaries and, in the case of point (c) of Article II.16.3.1, to inform the Agency about the measures taken to ensure that the beneficiaries continue to fulfil their obligations under the Agreement.

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

If no observations have been submitted or if, despite the observations submitted by the coordinator, the Agency decides to pursue the termination procedure, it may terminate the Agreement or the participation of any one or several beneficiaries by formally notifying the coordinator thereof, specifying the reasons for the termination.

In the cases referred to in points (a), (b), (c), (e), (g) and (k) of Article II.16.3.1,

the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), (i), (j), (l) and (m) of Article II.16.3.1, the termination shall take effect on the day following the date on which the formal notification was received by the coordinator.

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

**II.16.4.1** Where the Agreement is terminated, payments by the Agency shall be limited to the amount determined in accordance with Article II.25 on the basis of the eligible costs incurred by the beneficiaries and the actual level of implementation of the action on the date when the termination takes effect. Costs relating to current commitments, which are not due for execution until after the termination, shall not be taken into account. The coordinator shall have 60 days from the date when the termination of the Agreement takes effect, as provided for in Articles II.16.1 and II.16.3.2, to produce a request for payment of the balance in accordance with Article II.23.2. If no request for payment of the balance is received within this time limit, the Agency shall not reimburse or cover any costs which are not included in a financial statement approved by it or which are not justified in an ASR or the final report approved by it. In accordance with Article II.26, the Agency shall recover any amount already paid, if its use is not substantiated by ASRs or the final report and, where applicable, by the financial statements approved by the Agency.

Where the participation of a beneficiary is terminated the beneficiary concerned shall submit to the coordinator an ASR and, where applicable, a financial statement covering the period from the end of the last reporting period according to Article 4.1.1 for which a report has been submitted to the Agency to the date on which the termination takes effect. The ASR and the financial statement shall be submitted in due time to allow the coordinator to draw up the corresponding payment request. Only those costs incurred by the beneficiary concerned up to the date when termination of its participation takes effect shall be reimbursed or covered by the grant. Costs relating to current commitments, which were not due for execution until after the termination, shall not be taken into account. The request for payment for the beneficiary concerned shall be included in the next payment request submitted by the coordinator in accordance with the schedule laid down in Article 4.

Where the Agency, in accordance with point (c) of Article II.16.3.1, is terminating the Agreement on the grounds that the coordinator has failed to produce the request for payment and, after a reminder, has still not complied with this obligation within the deadline set out in Article II.23.3, the first subparagraph shall apply, subject to the following:

- (a) there shall be no additional time period from the date when the termination of the Agreement takes effect for the coordinator to produce a request for payment of the balance in accordance with Article II.23.2; and
- (b) the Agency shall not reimburse or cover any costs incurred by the beneficiaries up to the date of termination or up to the end of the period set

out in Article 2.2, whichever is the earlier, which are not included in a financial statement approved by it or which are not justified in an ASR approved by it.

In addition to the first, second and third subparagraphs, where the Agreement or the participation of a beneficiary is terminated improperly by the coordinator within the meaning of Articles II.16.1 and II.16.2, or where the Agreement or the participation of a beneficiary is terminated by the Agency on the grounds set out in points (c), (f), (h), (i), (j), (k) and (m) of Article II.16.3.1, the Agency may also reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26, in proportion to the gravity of the failings in question and after allowing the coordinator, and, where relevant, the beneficiaries concerned, to submit their observations.

**II.16.4.2** Where the Agency, in accordance with point (l) of Article II.16.3.1, is terminating the Agreement on the ground that the action has not started by the set deadline, the following shall apply:

- (a) the coordinator shall not produce a request for payment of the balance; and
- (b) the final amount of the grant shall be EUR 0 (zero euro). The Agency shall recover any amounts unduly paid in accordance with Article II.26.

**II.16.4.3** Neither party shall be entitled to claim compensation on account of a termination by the other party.

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

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

- (a) administrative penalties consisting of exclusion from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established and confirmed following a contradictory procedure with the beneficiary; and/or
- (b) financial penalties of 2% to 10% of the estimated CEF contribution it is entitled to receive, as indicated in Table 3 of Annex III as last amended or, if the grant takes exclusively the form of a lump sum, of the maximum amount of the grant as set out in Article 3.

In the event of another infringement within five years following the establishment of the first infringement, the period of exclusion under point (a) may be extended to 10

years and the range of the rate referred to in point (b) may be increased to 4% to 20%.

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

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

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

#### **ARTICLE II.18 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISION**

**II.18.1** The Agreement is governed by the applicable Union law complemented, where necessary, by the law of Belgium.

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

**II.18.3** By virtue of Article 299 TFEU, for the purposes of recoveries within the meaning of Article II.26 or financial penalties, the Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States. An action may be brought against such decision before the General Court of the European Union pursuant to Article 263 TFEU.



## **PART B – FINANCIAL PROVISIONS**

### **ARTICLE II.19 – ELIGIBLE COSTS**

#### **II.19.1 Conditions for the eligibility of costs**

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

- (a) they are incurred in the period set out in Article 2.2, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article II.23.2.

Costs of contracts for goods, works or services or of subcontracts are considered to be incurred when the contract or subcontract (or a part of it) is executed, i.e. when the goods, works or services (including studies) are supplied, delivered or provided;

- (b) they are indicated in the estimated budget of the action set out in Annex III;
- (c) they are incurred in connection with the action as described in Annex I and are necessary for its implementation; in particular, for the costs of contracts for goods, the goods are supplied in a Member State or in any other countries where the action is implemented as described in Annex I; for the costs of contracts for works, the works are delivered in a Member State or in any other countries where the action is implemented as described in Annex I; for the costs of contracts for services (including studies), the services provided concern a Member State or any other countries where the action is implemented as described in Annex I;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

#### **II.19.2 Eligible direct costs**

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

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

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

conditions:

- (a) the costs of personnel working under an employment contract with the beneficiary or an equivalent appointing act and assigned to the action, comprising actual salaries plus social security contributions and other statutory costs included in the remuneration, provided that these costs are in line with the beneficiary's usual policy on remuneration; those costs may also include additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used;

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

- (i) the natural person works under the instructions of the beneficiary and, unless otherwise agreed with the beneficiary, in the premises of the beneficiary;
  - (ii) the result of the work belongs to the beneficiary; and
  - (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary;
- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the beneficiary's usual practices on travel;
- (c) the full costs of purchase of equipment and other assets shall be eligible, provided that they are treated as capital expenditure in accordance with the tax and accounting rules applicable to the beneficiary and are recorded in the fixed assets account of its balance sheet and if the asset has been purchased in accordance with Article II.9.1.

The costs of rental or lease of equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

- (d) costs of consumables and supplies, provided that they are purchased in accordance with the first subparagraph of Article II.9.1 and are directly assigned to the action;
- (e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with the first subparagraph of Article II.9.1;
- (f) costs entailed by service contracts, including costs of environmental studies on the protection of the environment and on compliance with the relevant Union law, provided that the corresponding services are purchased in accordance with the first subparagraph of Article II.9.1 and costs entailed by subcontracts within the meaning of Article II.10, provided that the conditions laid down in Article II.10.2 are met;

- (g) costs of financial support to third parties within the meaning of Article II.11, provided that the conditions laid down in Article II.11.1 or II.11.2 are met;
- (h) duties, taxes and charges paid by the beneficiary, notably non-recoverable value added tax (VAT) under national VAT legislation, provided that they are included in eligible direct costs.

### **II.19.3 Indirect costs**

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

Indirect costs shall not be eligible.

### **II.19.4 Ineligible costs**

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

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





## **ARTICLE II.20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

### **II.20.1 Reimbursement of actual costs**

Where, in accordance with Article 3(a)(i), the grant takes the form of the reimbursement of actual costs, the beneficiary must declare as eligible costs the costs it actually incurred for the action.

If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records. In addition, the beneficiary's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements as well as with the amounts indicated in the supporting documents.

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

Where, in accordance with Article 3(a)(ii) or (b), the grant takes the form of the reimbursement of unit costs or of a unit contribution, the beneficiary must declare as eligible costs or as requested contribution the amount obtained by multiplying the amount per unit specified in Article 3(a)(ii) or (b) by the actual number of units used or produced.

If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the number of units declared. However, the beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared per unit.

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

Where, in accordance with Article 3(a)(iii) or (c), the grant takes the form of the reimbursement of lump sum costs or of a lump sum contribution, the beneficiary must declare as eligible costs or as requested contribution the global amount specified in Article 3(a)(iii) or (c), subject to the proper implementation of the corresponding tasks or part of the action as described in Annex I.

If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the proper implementation. However, the beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared as lump sum.

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



Where, in accordance with Article 3(a)(iv) or (d), the grant takes the form of the reimbursement of flat-rate costs or of a flat-rate contribution, the beneficiary must declare as eligible costs or as requested contribution the amount obtained by applying the flat rate specified in Article 3(a)(iv) or (d).

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

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

Where, in accordance with Article 3(a)(v), the grant takes the form of the reimbursement of unit costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary must declare as eligible costs the amount obtained by multiplying the amount per unit calculated in accordance with its usual cost accounting practices by the actual number of units used or produced. If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the number of units declared.

Where, in accordance with Article 3(a)(v), the grant takes the form of the reimbursement of lump sum costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary must declare as eligible costs the global amount calculated in accordance with its usual cost accounting practices, subject to the proper implementation of the corresponding tasks or part of the action. If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the proper implementation.

Where, in accordance with Article 3(a)(v), the grant takes the form of the reimbursement of flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary must declare as eligible costs the amount obtained by applying the flat rate calculated in accordance with its usual cost accounting practices. If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the eligible costs to which the flat rate applies.

In all three cases provided for in the first, second and third subparagraphs, the beneficiary does not need to identify the actual eligible costs covered, but it must ensure that the cost accounting practices used for the purpose of declaring eligible costs are in compliance with the following conditions:

- (a) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;

- (b) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
- (c) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant in accordance with Article 3.

#### **ARTICLE II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARIES AND OF IMPLEMENTING BODIES DESIGNATED BY THE BENEFICIARIES**

- II.21.1** Where the Special Conditions contain a provision on entities affiliated to the beneficiaries or a provision on implementing bodies, costs incurred by such an entity or body are eligible, provided that they satisfy the same conditions under Articles II.19 and II.20 as apply to the beneficiary, and that the beneficiary to which the entity is affiliated or by which the implementing body is designated ensures that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights under Article II.27 also towards the entity or body.
- II.21.2** The beneficiary to which the entity is affiliated or by which the implementing body is designated shall ensure that the conditions applicable to it under Articles II.3, II.4, II.5, II.7, II.9 and II.10 are also applicable to the entity or body.
- II.21.3** The beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiaries shall ensure that any agreement or contract with an affiliated entity or implementing body contains provisions stipulating that the affiliated entity or implementing body has no right vis-à-vis the Agency under the Agreement.

#### **ARTICLE II.22 – BUDGET TRANSFERS**

The estimated budget set out in Table 2 of Annex III may be adjusted by transfers of amounts between beneficiaries and between budget categories, without this adjustment being considered as an amendment of the Agreement within the meaning of Article II.12, provided that the action is implemented as described in Annex I.

The beneficiaries may not however adjust amounts which, in accordance with Article 3(a)(iii) or (c), take the form of lump sums.

By way of derogation from the first subparagraph, should beneficiaries want to modify the value of the estimated CEF contribution that each of them is entitled to as referred to in point (b) of Article II.17.1 and point (c) of II.26.3, the coordinator shall request an amendment in accordance to Article II.12.

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

## **II.23.1 Action Status Reports - Requests for further pre-financing payments and supporting documents**

### **II.23.1.1** The coordinator shall submit an Action Status Report (ASR) no later than 31 March following the end of each reporting period.

The ASR shall be drawn up in accordance with the template provided by the Agency via TEN-Tec and include the following:

- (a) the Agreement number, the action number, the transport mode and the project of common interest it relates to;
- (b) the name and contact details of the author of the ASR;
- (c) information on the progress achieved by the action;
- (d) the updated indicative breakdown by activity of the estimated eligible costs of the action referred to in Annex III, including:
  - i. the estimated eligible costs incurred for the implementation of the action during the previous reporting periods.
  - ii. the updated estimated eligible costs to be incurred for the implementation of the action during the on-going reporting period and for each of the next reporting periods;
- (e) the financing needs per reporting period calculated as the amount obtained by application of the reimbursement rate(s) set out in Article 3 to the eligible costs referred to in indents (i) and (ii) of point (d);
- (f) the cumulated financing needs until the end of the on-going reporting period;
- (g) information on the contracts awarded for the implementation of the action and on compliance with the requirements set out in Articles II.9 and II.10;
- (h) environmental information;
- (i) information about measures taken to publicise the action;
- (j) for beneficiaries established in the European Union, the certification by the Member State in which the beneficiary is established that the information provided in the ASR is full, reliable and true; in exceptional cases, at the request of the beneficiary, the certification may be provided by the Member State in which the action is implemented;
- (k) in the first ASR, information on implementation schedule (such as critical path, key performance rates and risk analysis), governance and monitoring of the action (such as organisational structure, internal coordination, communication and reporting, and decision making process), and other relevant administrative provisions (such as quality controls and audits);
- (l) in subsequent ASRs, information on any modifications and, if applicable, on the progress of implementation of the arrangements referred to in point (k).

### **II.23.1.2** Where Article 4.1 provides for further pre-financing payments, the coordinator may submit a request for a further pre-financing payment together with the ASR referred to in Article II.23.1.1.

The request for a further pre-financing payment shall be accompanied by:

- (a) a statement on the amount of the previous pre-financing payments used to cover costs of the action;
- (b) where required by Article 4.1, a financial guarantee.

## **II.23.2 Interim and final reports - Requests for interim payments or for payment of the balance and supporting documents**

### **II.23.2.1 Interim reports - Requests for interim payments and supporting documents**

The coordinator shall submit a request for interim payment at least every two reporting periods. The request for interim payment shall be submitted within 8 months following the end of the reporting period.

The request for interim payment shall be accompanied by the following documents:

- (a) an interim financial statement drawn up in accordance with Annex VI and containing a consolidated statement of the eligible costs incurred for the implementation of the action during the reporting period or the two reporting periods covered as well as a breakdown of the eligible costs incurred by each beneficiary, its affiliated entities and its implementing bodies;
- (b) unless the Special Conditions provide otherwise, for each beneficiary for which the total contribution in the form of reimbursement of actual costs is at least EUR 750 000 and which requests a reimbursement in that form of at least EUR 325 000 (when adding all previous reimbursements in that form for which a certificate on the financial statements has not been submitted), a certificate on the financial statements and underlying accounts ("certificate on the financial statements").

This certificate shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VII. It shall certify that the costs declared in the interim financial statement by the beneficiary concerned, its affiliated entities or its implementing bodies for the categories of costs reimbursed on the basis of actual costs are real, accurately recorded and eligible in accordance with the Agreement.

The coordinator shall certify that the information provided in the request for interim payment is full, reliable and true. It shall also certify that the costs declared in the interim financial statement are real and eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27.

### **II.23.2.2 Final report - Request for payment of the balance and supporting documents**

The coordinator shall submit a request for payment of the balance within 12 months following the completion date of the action as referred to in Article 2.2.

The request for payment of the balance shall be accompanied by the following documents:



- (a) the final report drawn up in accordance with Annex V and containing the following:
- (i) the Agreement number, the action number, the transport mode and the project of common interest it relates to;
  - (ii) the name and contact details of the author of the report;
  - (iii) the objectives of the action (if any deviation is reported);
  - (iv) technical information on how the action was implemented and fulfilled its objectives;
  - (v) information on the contracts awarded for the implementation of the action and on compliance with the requirements set out in Articles II.9 and II.10;
  - (vi) environmental information;
  - (vii) information about measures taken to publicise the action;
  - (viii) information on other sources of Union funds (CEF, ERDF, Cohesion Fund, H2020, TEN-T, EIPA, etc.) that have been used for the global project (e.g. previous or subsequent phases not covered by this Agreement).
- (b) the final financial statement drawn up in accordance with Annex VI and containing:
- (i) a consolidated statement of the eligible costs incurred for the implementation of the action during the last reporting period or the last two reporting periods since the last interim financial statement as well as a breakdown of the eligible costs incurred by each beneficiary, its affiliated entities and its implementing bodies;
  - (ii) a summary financial statement ("summary financial statement"); this statement must include a consolidated financial statement and a breakdown of the amounts declared or requested by each beneficiary, its affiliated entities and its implementing bodies, aggregating the financial statements already submitted previously and indicating the receipts referred to in Article II.25.3.2 for each beneficiary, its affiliated entities and its implementing bodies; it must be drawn up in accordance with Annex VI.
- (c) for beneficiaries established in the European Union, the certification by the Member State in which the beneficiary is established that i) the information provided is full, reliable and true and ii) the costs declared in the final financial statement are real and eligible in accordance with this Agreement; in exceptional cases, at the request of the beneficiary, the certification may be provided by the Member State in which the action is implemented;
- (d) unless the Special Conditions provide otherwise, for each beneficiary for which the total contribution in the form of reimbursement of actual costs is at least EUR 750 000 and which requests a reimbursement in that form of at least EUR 325 000 (when adding all previous reimbursements in that form for which a certificate on the financial statements has not been submitted) a certificate on the financial statements and underlying accounts ("certificate on the financial statements").



This certificate shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VII. It shall certify that the costs declared in the final financial statement by the beneficiary concerned, its affiliated entities and its implementing bodies for the categories of costs reimbursed on the basis of actual costs are real, accurately recorded and eligible in accordance with the Agreement. It shall also certify that all the receipts referred to in Article II.25.3.2 have been declared.

The coordinator shall certify that the information provided in the request for payment of the balance is complete, reliable and true. It shall also certify that the costs incurred can be considered eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27. In addition, it shall certify that all the receipts referred to in Article II.25.3.2 have been declared.

### **II.23.3 Non-submission of documents**

Where the coordinator has failed to submit a request for interim payment or payment of the balance accompanied by the documents referred to above by the deadline set out in Article II.23.2 and where the coordinator still fails to submit such a request within 60 days following a written reminder sent by the Agency, the Agency reserves the right to terminate the Agreement in accordance with Article II.16.3.1(c), with the effects described in the third and the fourth subparagraphs of Article II.16.4.1.

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

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

Beneficiaries with general accounts in a currency other than the euro shall convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of *Official Journal of the European Union*, determined over the corresponding reporting period. Where no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, conversion shall be made at the average of the monthly accounting rates established by the Commission and published on its website ([http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)), determined over the corresponding reporting period.

Beneficiaries with general accounts in euro shall convert costs incurred in another currency into euro according to their usual accounting practices.

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

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

**II.24.1.1** The pre-financing is intended to provide the beneficiaries with a float. It remains the property of the Union until it is cleared against interim payments or payment of the balance to the coordinator.





Where payment of pre-financing is conditional on receipt of a financial guarantee, the financial guarantee shall fulfill the following conditions:

- (a) it is provided by an approved bank or an approved financial institution. The guarantee shall be denominated in euros. Where a beneficiary is established in a third country, the Agency may agree that a bank or a financial institution established in that third country may provide the guarantee if it considered that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State. At the request of the coordinator and acceptance by the Agency, the financial guarantee may be replaced by a joint and several guarantee by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Agency to have recourse against the principal debtor (i.e. the beneficiary concerned); and
- (c) it provides that it remains in force until the pre-financing is cleared against interim payments or payment of the balance by the Agency and, in case the payment of the balance is made in the form of a debit note, three months after the debit note is notified to the coordinator. The Agency shall release the guarantee within the following month.

#### **II.24.1.2 First pre-financing payment**

Without prejudice to Article II.24.5, where Article 4.1 provides for a first pre-financing payment upon entry into force of the Agreement or following a later date, the Agency shall pay to the coordinator within 30 days following that date or, where required by Article 4.1, following receipt of the request for pre-financing payment or of the financial guarantee, whichever is the latest.

#### **II.24.1.3 Further pre-financing payments**

Where Article 4.1.2 provides for further pre-financing payments, the amount of the further pre-financing payment shall be calculated as follows:

- (a) the percentage specified in Article 4.1.2 shall be applied to the cumulated financing needs referred to in point (f) of Article II.23.1.1;
- (b) the total amount of previous pre-financing payments already made shall be deducted from the amount obtained in accordance with point (a);
- (c) where the statement on the amount of the previous pre-financing payments used submitted in accordance with Article II.23.1.2 shows that less than 70 % of the total amount of the previous pre-financing payments already made has been used, the amount obtained in accordance with points (a) and (b) shall be reduced by the difference between the 70 % threshold and the amount used;
- (d) the amount obtained in accordance with points (a), (b) and (c) shall be limited to the difference between the ceiling for pre-financing and interim payments set out in Article



4.1.3 and the total amount of pre-financing and interim payments already made.

Without prejudice to Articles II.24.4 and II.24.5, the Agency shall pay to the coordinator the amount due as further pre-financing payment within 60 days following receipt of the request for further pre-financing payment and of documents referred to in Article II.23.1.1 or, where required by Article 4.1, following receipt of the financial guarantee.

#### **II.24.2 Interim payments**

Interim payments are intended to reimburse the eligible costs incurred in implementing the action during the corresponding reporting periods.

Without prejudice to Articles II.24.4 and II.24.5, on receipt of the documents referred to in Article II.23.2, the Agency shall pay to the coordinator the amount due as interim payment within the time limit specified in Article 4.2.

This amount shall be determined following approval of the request for interim payment and the accompanying documents and of the ASR for the reporting period or the two reporting periods covered. Approval of those documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

The amount due as interim payment shall be determined as follows:

- (a) the following amounts, which depends on the form of the grant, shall be added:
  - (i) where, in accordance with Article 3(a), the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate(s) specified in that Article to the eligible costs of the action approved by the Agency for the concerned reporting period(s) and the corresponding categories of costs, beneficiaries, affiliated entities and implementing bodies;
  - (ii) where, in accordance with Article 3(b), the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified in that Article by the actual number of units approved by the Agency for the concerned reporting period(s) and for the corresponding beneficiaries, affiliated entities and implementing bodies;
  - (iii) where, in accordance with Article 3(c), the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the corresponding beneficiaries, affiliated entities and implementing bodies, subject to approval by the Agency of the proper implementation during the concerned reporting period(s) of the corresponding tasks or part of the action in accordance with Annex I;
  - (iv) where, in accordance with Article 3(d), the grant takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Agency for the

concerned reporting period(s) and the corresponding beneficiaries, affiliated entities and implementing bodies.

- (b) the interim payment shall clear 100% of the pre-financing payments already made for the reporting periods covered by the request for interim payment or previous interim payments and which have not been cleared against previous interim payments. The amount of the pre-financing payments to be cleared shall be deducted from the amount obtained in accordance with point (a);
- (c) the amount obtained in accordance with points (a) and (b) shall be limited to the difference between the ceiling for pre-financing and interim payments set out in Article 4.1.3 and the total amount of the pre-financing and interim payments already made.

### **II.24.3 Payment of the balance**

The payment of the balance, which may not be repeated, is intended to reimburse or cover after the end of the period set out in Article 2.2 the remaining part of the eligible costs incurred by the beneficiaries for its implementation. Where the total amount of earlier payments is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance may take the form of a recovery as provided for by Article II.26.

Without prejudice to Articles II.24.4 and II.24.5, on receipt of the documents referred to in Article II.23.2, the Agency shall pay the amount due as the balance within the time limit specified in Article 4.2.

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

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

### **II.24.4 Suspension of the time limit for payment**

The Agency may suspend the time limit for payment specified in Articles 4.2 and II.24.1.3, at any time by formally notifying the coordinator that its request for payment cannot be met, either because it does not comply with the provisions of the Agreement, or because the appropriate supporting documents have not been produced, or because there is doubt about the eligibility of the costs declared in the financial statement.

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

Suspension shall take effect on the date when notification is sent by the Agency. The remaining payment period shall start to run again from the date on which the requested

information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension exceeds two months, the coordinator may request a decision by the Agency on whether the suspension is to be continued.

Where the time limit for payment has been suspended following the rejection of one of the ASRs, the final report or one of the financial statements provided for by Article II.23 and the new report or statement submitted is also rejected, the Agency reserves the right to terminate the Agreement in accordance with Article II.16.3.1(c), with the effects described in Article II.16.4.

## **II.24.5 Suspension of payments**

**II.24.5.1** The Agency may, at any time during the implementation of the Agreement, suspend the pre-financing payments, interim payments or payment of the balance for all beneficiaries, or suspend the pre-financing payments or interim payments for any one or several beneficiaries:

- (a) if the Agency has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if a beneficiary fails to comply with its obligations under the Agreement;
- (b) if the Agency has evidence that a 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 that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;
- (c) if the Agency suspects substantial errors, irregularities, fraud or breach of obligations committed by a beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred;
- (d) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action; or
- (e) if the Agency does not receive all the documents required under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2000/60/EC establishing a framework for Community policy in the field of water, or any other relevant environmental legislation as listed in the application form (the section concerning compliance with Union policy on environmental protection).

**II.24.5.2** Before suspending payments, the Agency shall formally notify the coordinator of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a), (b), (d) and (e) of Article II.24.5.1, the necessary

conditions for resuming payments. The coordinator shall be invited to make any observations on behalf of all beneficiaries within 30 calendar days from receipt of this notification.

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

If no observations have been submitted or if, despite the observations submitted by the coordinator, the Agency decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the coordinator, specifying the reasons for the suspension and, in the cases referred to in points (a), (b), (d) and (e) of Article II.24.5.1, the definitive conditions for resuming payments or, in the case referred to in point (c) of Article II.24.5.1, the indicative date of completion of the necessary verification.

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

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

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

During the period of suspension of payments and without prejudice to the right to suspend the implementation of the action in accordance with Article II.15.1 or to terminate the Agreement or the participation of a beneficiary in accordance with Article II.16.1 and Article II.16.2, the coordinator is not entitled to submit any requests for payments or, where the suspension concerns the pre-financing payments or interim payments for one or several beneficiaries only, any requests for payments and supporting documents relating to the participation of the concerned beneficiary or beneficiaries in the action.

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

#### **II.24.6 Notification of amounts due**

The Agency shall formally notify the amounts due, specifying whether it is a further pre-financing payment, an interim payment or the payment of the balance. In the case of payment of the balance, it shall also specify the final amount of the grant determined in accordance with Article II.25.



#### **II.24.7 Interest on late payment**

On expiry of the time limits for payment specified in Articles 4.2 and II.24.1, and without prejudice to Articles II.24.4 and II.24.5, the beneficiaries are entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros ("the reference rate"), plus three and a half points. The reference rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

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

The suspension of the time limit for payment in accordance with Article II.24.4 or of payment by the Agency in accordance with Article II.24.5 may not be considered as late payment.

Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article II.24.9. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of Article II.25.3.

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

#### **II.24.8 Currency for payments**

Payments by the Agency shall be made in euro.

#### **II.24.9 Date of payment**

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

#### **II.24.10 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 Agency shall be borne by the Agency;
- (b) costs of transfer charged by the bank of a 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.

#### **II.24.11 Payments to the coordinator**

The Agency shall make all payments to the coordinator. Payments to the coordinator shall discharge the Agency from its payment obligation.

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

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

Without prejudice to Articles II.25.2, II.25.3 and II.25.4, the final amount of the grant shall be determined as follows:

- (a) where, in accordance with Article 3(a), the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate(s) specified in that Article to the eligible costs of the action approved by the Agency for the corresponding categories of costs, beneficiaries, affiliated entities and implementing bodies;
- (b) where, in accordance with Article 3(b), the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified in that Article by the actual number of units approved by the Agency for the corresponding beneficiaries, affiliated entities and implementing bodies;
- (c) where, in accordance with Article 3(c), the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the corresponding beneficiaries, affiliated entities and implementing bodies, subject to approval by the Agency of the proper implementation of the corresponding tasks or part of the action in accordance with Annex I;
- (d) where, in accordance with Article 3(d), the grant takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Agency for the corresponding beneficiaries, affiliated entities and implementing bodies.

Where Article 3 provides for a combination of different forms of grant, these amounts shall be added.

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

The total amount paid by the Agency for the action may in no circumstances exceed the maximum amount of the grant specified in Article 3.

Where the amount determined in accordance with Article II.25.1 exceeds this maximum amount, the final amount of the grant shall be limited to the maximum amount specified in Article 3.

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

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

**II.25.3.2** The receipts to be taken into account are the consolidated receipts established,



generated or confirmed on the date on which the request for payment of the balance is drawn up by the coordinator, which fall within one of the following two categories:

- (a) income generated by the action; or
- (b) financial contributions specifically assigned by the donors to the financing of the eligible costs of the action reimbursed by the Agency in accordance with Article 3(a)(i).

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

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


**II.25.3.4** The eligible costs to be taken into account are the consolidated eligible costs approved by the Agency for the categories of costs reimbursed in accordance with Article 3(a).

**II.25.3.5** Where the final amount of the grant determined in accordance with Articles II.25.1 and II.25.2 would result in a profit for the beneficiaries, the profit shall be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the action approved by the Agency for the categories of costs referred to in Article 3(a)(i). This final rate shall be calculated on the basis of the final amount of the grant in the form referred to in Article 3(a)(i), as determined in accordance with Articles II.25.1 and II.25.2.

#### **II.25.4 Reduction for poor, partial or late implementation, or breach of contractual obligations**

If the action is not implemented properly in accordance with Annex I, or if any beneficiary fails to comply with any other obligations under this Agreement, the Agency may reduce the grant amount set out in Article 3 in proportion to the improper implementation of the action or to the seriousness of the breach of obligations.

This includes the case where the Agency does not receive all the documents required under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2000/60/EC establishing a framework for Community policy in the field of water, or any other relevant environmental legislation as listed in the application form (the section concerning compliance with Union policy on environmental protection).





## ARTICLE II.26 – RECOVERY

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

Where the payment of the balance takes the form of a recovery, the Agency shall formally notify the coordinator of its intention to recover the amount unduly paid:

- (a) specifying the amount due and the reasons for recovery;
- (b) inviting the coordinator to make any observations within a specified period ; and
- (c) requesting the coordinator to submit a report on the distribution of payments to the beneficiaries within a specified period.

If no observations have been submitted or if, despite the observations submitted by the coordinator, the Agency decides to pursue the recovery procedure, the Agency may confirm recovery by formally notifying to the coordinator a debit note (“debit note”), specifying the terms and the date for payment.

If the coordinator does not repay the Agency by the date specified in the debit note and has not submitted the report on the distribution of payments, the Agency or the Commission shall recover the amount due from the coordinator in accordance with Article II.26.3, even if it has not been the final recipient of the amount due.

If the coordinator does not repay the Agency by the date specified in the debit note but has submitted the report on the distribution of payments made to the beneficiaries, the Agency shall recover the amount due from the beneficiary which has been the final recipient of the amount due.

For that purpose, the Agency shall:

- (a) where, in accordance with Article 3(a), the grant takes the form of the reimbursement of eligible costs:
  - (i) identify the beneficiaries for which the amount calculated as follows is negative:

{{{ {Beneficiary's costs (including the costs of its affiliated entities and implementing bodies if applicable) declared in the final financial statement and approved by the Agency multiplied by the reimbursement rate(s) set out in Article 3(a) for the beneficiary concerned}

divided by

the amount calculated according to Article II.25.1}

multiplied by

the final grant amount calculated according to Article II.25},

minus



the pre-financing and interim payments received by the beneficiary }

- (ii) formally notify to each beneficiary identified according to point (i) a debit note specifying the terms and date for payment. The amount of the debit note shall be calculated as follows:

{ amount calculated according to point (i) for the beneficiary concerned

divided by

the sum of the amounts calculated according to point (i) for all the beneficiaries identified according to point (i) }

multiplied by

the amount set out in the debit note formally notified to the coordinator }

- (b) where, in accordance with Article 3(b), (c) or (d) the grant takes the form of a unit, lump sum or flat-rate contribution, formally notify to each beneficiary a debit note specifying the terms and date for payment. The amount of the debit note shall be calculated as follows:

{ the pre-financing and interim payments received by the beneficiary

divided by

the total amount of pre-financing and interim payments paid by the Agency }

multiplied by

the amount set out in the debit note formally notified to the coordinator };

- (c) where Article 3 provides for a combination of different forms of grant, these amounts shall be added.

If the beneficiary concerned does not repay the Agency by the date specified in the debit note, the Agency or the Commission shall recover the amount due from the beneficiary in accordance with Article II.26.3.

## II.26.2 Recovery after payment of the balance

Where an amount is to be recovered in accordance with Articles II.27.6, II.27.7 and II.27.8, the beneficiary concerned by the audit or OLAF findings shall repay the Agency the amount in question.

Where the audit findings do not concern a specific beneficiary, the coordinator shall repay the Agency the amount in question, even if it has not been the final recipient of the amount due.

Before recovery, the Agency shall formally notify the beneficiary concerned or the coordinator of its intention to recover the amount unduly paid:

- (a) specifying the amount due (including any amount unduly paid by the Agency as a contribution towards the costs incurred by its affiliated entities or its implementing bodies) and the reasons for recovery;
- (b) inviting the beneficiary concerned or the coordinator to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary concerned or the coordinator, the Agency decides to pursue the recovery procedure, the Agency may confirm recovery by formally notifying to the beneficiary concerned or the coordinator a debit note ("debit note"), specifying the terms and the date for payment.

If the beneficiary concerned or the coordinator does not repay the Agency by the date specified in the debit note, the Agency shall recover the amount due from the beneficiary concerned or the coordinator in accordance with Article II.26.3.

### **II.26.3 Recovery procedure failing repayment by the date specified in the debit note**

If payment has not been made by the date specified in the debit note, the Agency or the Commission shall recover the amount due:

- (a) by offsetting it against any amounts owed to the beneficiary concerned 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 Agency may recover by offsetting before the due date; the beneficiary's prior consent shall not be required; an action may be brought against such offsetting before the General Court of the European Union pursuant to Article 263 TFEU;
- (b) by drawing on the financial guarantee where provided for in accordance with Article 4.1 ("drawing on the financial guarantee");
- (c) where provided for in the Special Conditions, by holding the beneficiaries jointly and severally liable;
- (d) by taking legal action in accordance with Article II.18.2 or with the Special Conditions or by adopting an enforceable decision in accordance with Article II.18.3.

### **II.26.4 Interest on late payment**

If payment has not been made by the date set out in the debit note, the amount due shall bear interest at the rate established in Article II.24.7. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when the Agency or the Commission actually receives payment in full of the outstanding amount.

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

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

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

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

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

The Commission or the Agency may carry out technical and financial checks and audits in relation to the use of the grant. It may also check the statutory records of the beneficiaries for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

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

In addition, the Commission or the Agency may carry out interim or final evaluation of the impact of the action measured against the objective of the Union programme concerned, in order to assess whether the objectives, including those relating to environmental protection, have been attained.

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

Such checks, audits or evaluations may be initiated during the implementation of the Agreement and for a period of five years starting from the date of payment of the balance. This period shall be limited to three years if the maximum amount specified in Article 3 is not more than EUR 60 000.

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

### **II.27.2 Duty to keep documents**

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

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

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

such audits, appeals, litigation or pursuit of claims are closed.

### **II.27.3 Obligation to provide information**

Where a check or audit is initiated before the payment of the balance, the coordinator shall provide any information, including information in electronic format, requested by the Commission or the Agency, or by any other outside body authorised by it. Where appropriate, the Commission or the Agency may request such information to be provided directly by a beneficiary. Where a check or audit is initiated after payment of the balance, such information shall be provided by the beneficiary concerned.

For an evaluation, the coordinator shall provide any information, including information in electronic format, requested by the Commission or the Agency, or by any other outside body authorised by it. Where appropriate, the Commission or the Agency may request such information to be provided directly by a beneficiary.

In case the beneficiary concerned does not comply with the obligations set out in the first and second subparagraphs, the Commission or the Agency may consider:

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

### **II.27.4 On-the-spot visits**

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

They 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 a beneficiary refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Commission or the Agency may consider:

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

### **II.27.5 Contradictory audit procedure**

On the basis of the findings made during the audit, a provisional report ("draft audit report") shall be drawn up. It shall be sent by the Commission or the Agency or its authorised

representative to the beneficiary concerned, which shall have 30 days from the date of receipt to submit observations. The final report ("final audit report") shall be sent to the beneficiary concerned within 60 days of expiry of the time limit for submission of observations.

#### **II.27.6 Effects of audit findings**

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

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

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

**II.27.7.1** The Commission or the Agency may take all measures which it considers necessary, including recovery at the time of payment of the balance or after payment of the balance of all or part of the payments made by it under the Agreement, in accordance with Article II.26, 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 II.27.1.

**II.27.7.2** The Commission or the Agency shall determine the amount to be corrected under the Agreement:

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

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

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final



amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by the Commission or the Agency, and the total amount paid to the beneficiaries under the Agreement for the implementation of the action;

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

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

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

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

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

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

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

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

If no observations have been submitted or if the Commission or the Agency



does not accept the observations or the alternative flat rate proposed by the beneficiary, the Commission or the Agency shall formally notify the beneficiary concerned thereof and correct the grant amount by applying the flat rate initially notified to the beneficiary.

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

#### **II.27.8 Checks and inspections by OLAF**

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

By virtue of Council Regulation (Euratom, EC) No 2185/96<sup>1</sup> of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/2013<sup>2</sup> of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), 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 Agency. They may also lead to criminal prosecution under national law.

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

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



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<sup>1</sup> OJ L 292, 15.11.1996, p.2

<sup>2</sup> OJ L 248, 18.09.2013, p.1

**ANNEX III  
ESTIMATED BUDGET OF THE ACTION**

**Table 1: Planned sources of financing of the eligible costs of the action**

Financing sources	Amount of financial contribution to the action eligible costs (EUR)	Amount of financial contribution to the action eligible costs (EUR)	Amount of financial contribution to the action eligible costs (EUR)
	ILR	GM	GFZ
1. CEF-Transport financing	11,019,231.7	1,769,515.55	466,206.3
2. Beneficiary's own resources	1,944,570.45	0	82,272
of which:			
(a) EIB loan	0	0	0
3. State budget(s)	0	0	0
4. Regional/ local budget(s)	0	312,267	0
5. Income generated by the action	0	0	0
6. Other sources	0	0	0
<b>TOTAL</b>	<b>12,963,802.15</b>	<b>2,081,782.55</b>	<b>548,478.3</b>

**Table 2: Indicative breakdown per activity and per beneficiary of estimated eligible costs of the action by activity (EUR)**

Activities	2015	2016	2017	2018	Total	Pro-rata share of the estimated eligible costs (%)
<b>ELIGIBLE DIRECT COSTS</b>						
<b>Activity 1</b>	95,069	170,517	206,076	209,595	681,257	4.37
ILR	61,201	143,161	178,920	181,325	564,607	3.62
GM	22,568	23,906	24,706	25,970	97,150	0.62
GFZ	11,300	3,450	2,450	2,300	19,500	0.13
<b>Activity 2</b>	59,443	9,093,212	4,923,098	79,400	14,155,153	90.77
ILR	0	7,058,646	4,577,896	5,000	11,641,542	74.65
GM	0	1,692,916	217,317	74,400	1,984,633	12.73
GFZ	59,443	341,650	127,885	0	528,978	3.39
<b>Activity 3</b>	0	361,394	362,144	0	723,538	4.64
ILR	0	361,394	362,144	0	723,538	4.64
GM	0	0	0	0	0	0
GFZ	0	0	0	0	0	0
<b>Activity 4</b>	0	0	2,240	31,875	34,115	0.22
ILR	0	0	2,240	31,875	34,115	0.22
GM	0	0	0	0	0	0
GFZ	0	0	0	0	0	0
<b>TOTAL ELIGIBLE DIRECT COSTS</b>	154,512	9,625,123	5,493,558	320,870	15,594,063	100

Agreement number: INEA/CEF/TRAN/M2014/1041944

ILR	61,201	7,563,201	5,121,200	218,200	12,963,802	83.13
GM	22,568	1,716,822	242,023	100,370	2,081,783	13.35
GFZ	70,743	345,100	130,335	2,300	548,478	3.52
<b>Annual instalments of maximum CEF contribution</b>	<b>8,312,689.75</b>	<b>0</b>	<b>4,669,524.3</b>	<b>272,739.5</b>	<b>13,254,953.55</b>	<b>85</b>
ILR	6,480,741.70	0	4,353,020	185,470	11,019,231.7	70.66
GM	1,478,481.50	0	205,719.55	85,314.5	1,769,515.55	11.35
GFZ	353,466.55	0	110,784.75	1,955	466,206.3	2.99

**Table 3: Indicative breakdown per beneficiary of the maximum CEF contribution (EUR)**

	<b>Estimated contribution</b>	<b>Pro-rata share of the maximum CEF contribution (%)</b>
<b>ILR</b>	<b>11,019,231.7</b>	<b>83.13%</b>
<b>GM</b>	<b>1,769,515.55</b>	<b>13.35%</b>
<b>GFZ</b>	<b>466,206.3</b>	<b>3.52%</b>
<b>Total</b>	<b>13,254,953.55</b>	<b>100%</b>



## ANNEX IV

### MANDATE 1

I, the undersigned,

Nicolae Barbu, Mayor of Giurgiu,

representing,

Giurgiu Municipality (GM)

Registration No 4852455

Bucuresti Street 49-51

080044 Giurgiu

Romania

VAT No 13894972,

hereinafter referred to as "the beneficiary",

for the purposes of the signature and the implementation of the grant agreement No INEA/CEF/TRAN/M2014/1041944 for the Action No 2014-RO-TMC-0313-W entitled "High Performance Green Port Giurgiu- Stage II Construction" with the Innovation and Networks Executive Agency (hereinafter referred to as "the grant agreement")

hereby mandate:

ILR Logistica Romania SRL (ILR)

Registration No J52/282/11.05.2012

Garii Street 30

080447 Giurgiu

Romania

VAT No RO30185008,

represented by Ralph Gallob, General Manager ILR (hereinafter referred to as "the coordinator")

1. to sign in my name and on my behalf the grant agreement and its possible subsequent amendments with the Innovation and Networks Executive Agency,

and

2. to act on behalf of the beneficiary in compliance with the grant agreement.

I hereby confirm that the beneficiary accepts all terms and conditions of the grant agreement and, in particular, all provisions affecting the coordinator and the other beneficiaries. In particular, I acknowledge that, by virtue of this mandate, the coordinator alone is entitled to receive funds from the Innovation and Networks Executive Agency and distribute the amounts corresponding to the beneficiary's participation in the action.

I hereby accept that the beneficiary will do everything in its power to help the coordinator fulfil its obligations under the grant agreement, and in particular, to provide to the coordinator, on its request, whatever documents or information may be required.

I hereby declare that the beneficiary agrees that the provisions of the grant agreement, including this mandate, shall take precedence over any other agreement between the beneficiary and the coordinator which may have an effect on the implementation of the grant agreement.

This mandate shall be annexed to the grant agreement and shall form an integral part thereof.

SIGNATURE

A handwritten signature in black ink is written over a circular official seal. The seal contains text in Romanian, including "JUDEȚUL GIURGIU" and "CONSILIUL JUDEȚEAN".

Nicolae Barbu, Mayor of Giurgiu

Done at Giurgiu, on 06.10.2015

In duplicate in English



## MANDATE 2

I, the undersigned,

Alexandru-Razvan Cuc, Deputy General Director,

representing,

Giurgiu Free Zone Administration (GFZ)

Registration No J/388/1996

Portului Street 1-2

080302 Giurgiu

Romania

VAT No RO8941369,

hereinafter referred to as "the beneficiary",

for the purposes of the signature and the implementation of the grant agreement No INEA/CEF/TRAN/M2014/1041944 for the Action No 2014-RO-TMC-0313-W entitled "High Performance Green Port Giurgiu- Stage II Construction" with the Innovation and Networks Executive Agency (hereinafter referred to as "the grant agreement")

hereby mandate:

ILR Logistica Romania SRL (ILR)

Registration No J52/282/11.05.2012

Garii Street 30

080447 Giurgiu

Romania

VAT No RO30185008,

represented by Ralph Gallob, General Manager ILR (hereinafter referred to as "the coordinator")

1. to sign in my name and on my behalf the grant agreement and its possible subsequent amendments with the Innovation and Networks Executive Agency,

and

2. to act on behalf of the beneficiary in compliance with the grant agreement.

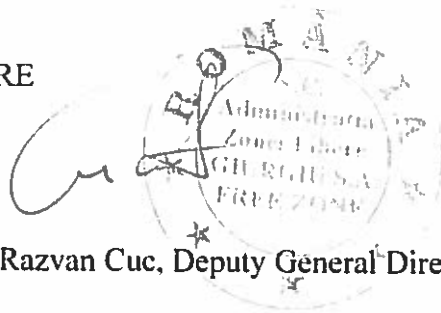
I hereby confirm that the beneficiary accepts all terms and conditions of the grant agreement and, in particular, all provisions affecting the coordinator and the other beneficiaries. In particular, I acknowledge that, by virtue of this mandate, the coordinator alone is entitled to receive funds from the Innovation and Networks Executive Agency and distribute the amounts corresponding to the beneficiary's participation in the action.

I hereby accept that the beneficiary will do everything in its power to help the coordinator fulfil its obligations under the grant agreement, and in particular, to provide to the coordinator, on its request, whatever documents or information may be required.

I hereby declare that the beneficiary agrees that the provisions of the grant agreement, including this mandate, shall take precedence over any other agreement between the beneficiary and the coordinator which may have an effect on the implementation of the grant agreement.

This mandate shall be annexed to the grant agreement and shall form an integral part thereof.

SIGNATURE



Alexandru-Razvan Cuc, Deputy General Director

Done at Giurgiu, on

In duplicate in English

**ANNEX V**  
**MODEL FINAL REPORT**

The templates for the final report as referred to in Article II.23 are those provided by the Agency, and are available on the Agency website at the following link:

<http://ec.europa.eu/inea/en/connecting-europe-facility/cef-transport/beneficiaries-info-point>

**ANNEX VI**  
**MODEL FINANCIAL STATEMENT(S)**

The templates for financial statements as referred to in Article II.23 are those provided by the Agency, and are available on the Agency website at the following link:

<http://ec.europa.eu/inea/en/connecting-europe-facility/cef-transport/beneficiaries-info-point>



**ANNEX VII**  
**MODEL TERMS OF REFERENCE FOR THE CERTIFICATE ON THE FINANCIAL STATEMENTS**

The model terms of reference for the certificate on the financial statements as referred to in Article II.23 are those provided by the Agency, and are available on the Agency website at the following link:

<http://ec.europa.eu/inca/en/connecting-europe-facility/cef-transport/beneficiaries-info-point>

The model terms of reference for the certificate on the financial statements include templates for:

- the Terms of Reference for an Independent Report of Factual Findings on costs declared under a Grant Agreement financed under the Connecting Europe Facility (CEF), and
- the independent report of factual findings on costs declared under a grant agreement financed under the Connecting Europe Facility (CEF), including its annex.

