



EUROPEAN COMMISSION
Directorate-General Justice, Security and Freedom
Directorate D: Internal security and criminal justice

OPERATING GRANT AGREEMENT

AGREEMENT NUMBER – JLS/2008/ISEC/XXX/OP
ABAC NUMBER: 30-CE-XXXXXXXX/XX-XX

The European Community (“the Community”), represented by the Commission of the European Communities (“the Commission”), itself represented for the purposes of signature of this agreement by

Name, function, of Directorate ‘Internal security and criminal justice’ of the Directorate General ‘Justice, Freedom and Security’, of the one part,
and

[full official name]

[*official legal form*]

[official address in full]

[*VAT number*],

(“the beneficiary”), [*represented for the purposes of signature of this agreement by [name, forename and function]*]

of the other part,

HAVE AGREED

the **Special Conditions, General Conditions** and **Annexes** below:

- Annex I** Beneficiary's work programme
- Annex II** Beneficiary's operating budget
- Annex III** Activity reports and financial statements to be submitted

which form an integral part of this agreement ("the agreement").

The terms set out in the Special Conditions shall take precedence over those in the other parts of the agreement.

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

I - SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1 The Commission has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the agreement, which the beneficiary hereby declares that he has taken note of and accepts, for the work programme of the beneficiary, which corresponds to the activities and objectives specified in the beneficiary's articles of association.
- I.1.2 The beneficiary undertakes to do everything in his power to implement the work programme as described in Annex I, acting on his own responsibility.

ARTICLE I.2 - DURATION

- I.2.1 The agreement shall enter into force on the date when the last of the two parties signs.
- I.2.2 The period of eligibility for Community funding shall be 12 months from the first day of the financial year of the beneficiary [...] (“the starting date”).

ARTICLE I.3 - FINANCING THE WORK PROGRAMME

- I.3.1 The total costs eligible for Community funding are estimated at EUR [...] as shown in the beneficiary's estimated operating budget in Annex II. The estimated operating budget shall be in balance and shall show all the operating costs and receipts estimated by the beneficiary for the period in question, making a distinction between costs eligible for Community funding and those not eligible, in accordance with the definition of eligible costs in Article II.12.
- I.3.2 The Commission shall contribute a maximum of EUR [...], equivalent to [...] %¹ of the estimated total eligible costs indicated in paragraph 1. The final amount of the grant shall be determined as specified in Article II.15, without prejudice to Article II.17.

The Community grant may not finance the entire costs of implementing the work programme. The amounts and sources of co-financing other than from Community funds shall be set out in the estimated budget referred to in paragraph 1.

The Commission does not accept that the external co-financing referred to above should be partially or entirely made up of contributions in kind, even if the conditions set out in Article II.12.4 are complied with.

- I.3.3 By way of derogation from Article II.11, the beneficiary may, when implementing the work programme, adjust the estimated budget by transfers between items of eligible costs, provided that this adjustment of expenditure does not affect the implementation of the work programme and the transfer between items does not exceed 20% of the amount of each item of eligible costs as shown in the estimated budget, and without exceeding

¹ Max 70%

the total eligible costs indicated in paragraph 1. He shall inform the Commission in writing.

ARTICLE I.4 - PAYMENT ARRANGEMENTS

I.4.1 Pre-financing:

Within 45 days of the date when the last of the two parties signs the agreement
or
[receipt of a financial guarantee amounting to EUR [...]]²,
a pre-financing payment of EUR [...] shall be made to the beneficiary, representing
[...]³% of the amount specified in Article I.3.2.

I.4.2 Interim payment:

No interim payment will be paid.

I.4.3. Payment of the balance

The request for payment of the balance shall be accompanied by the final activity report and financial statement specified in Article II.13.4 *[and by a certificate on the beneficiary's financial statements and underlying accounts for the period in question⁴]*.

The Commission shall have 90 days to approve or reject the report and to pay the balance in accordance with Article II.15, or to request additional supporting documents or information under the procedure laid down in Article II.13.4. The beneficiary shall have 30 days in which to submit additional information or a new report.

The Commission may suspend the period for payment in accordance with the procedure in Article II.14.2.

ARTICLE I.5 - SUBMISSION OF REPORTS AND OTHER DOCUMENTS

The provisions relating to submission of the activity reports, financial statements and other documents referred to in Article I.4 are contained in Annex III.

ARTICLE I.6 - BANK ACCOUNT

Payments shall be made to the beneficiary's bank account or sub-account denominated in euro⁵, as indicated below:⁶

² *Provided that the pre-financing exceeds EUR 60 000*

³ *Maximum 80 % of the total amount of the grant*

⁴ *In case the amount of the grant exceeds EUR 100 000*

⁵ *Except in the case of bank accounts in countries that do not accept euro transactions*

⁶ *As shown by the account identification document issued or certified by the bank concerned-Financial Identification Form.*

Name of bank: [...]
Address of branch: [...]
Precise denomination of the account holder: [...]
Full account number (including bank codes): [...]
[IBAN account code⁷: (...)]

This account or accounting system of the beneficiary must identify the payments made by the Commission. If the funds paid to this account yield interest or equivalent benefits under the law of the State on whose territory the account is opened, such interest or benefits shall, if they are generated by pre-financing payments, be recovered by the Commission as specified in Article II.14.4.

ARTICLE I. 7 -GENERAL ADMINISTRATIVE PROVISIONS

Any communication in connection with this agreement shall be in writing, indicating the number of the agreement, and shall be sent to the following addresses:

For the Commission:

European Commission
Directorate-General Justice, Freedom and Security
Directorate D: Internal Security and Criminal Justice
Unit D4 Financial Support (Prevention of and Fight against Crime Programme)
LX-46 2/114
BE-1049 Brussels

Ordinary mail shall be considered to have been received by the Commission on the date on which it is formally registered by the Commission unit responsible referred to above.

For the beneficiary:

Mr/Ms (...)
[Function]
[Official denomination of beneficiary]
[Full official address]

ARTICLE I.8 - LAW APPLICABLE AND COMPETENT COURT

This grant is governed by the terms of the agreement, the Community rules applicable and, on a secondary level, by the law of Belgium relating to grants.

The beneficiary may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the agreement and the arrangements for implementing it before the Court of First Instance of the European Communities and, in the event of appeal, the Court of Justice of the European Communities.

ARTICLE I.9 – DATA PROTECTION⁸

⁷ BIC code for countries where the IBAN code does not apply

All personal data contained in the agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council 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 solely in connection with the implementation and follow-up of the agreement by data protection Officer in Directorate-General Justice, Freedom and Security, without prejudice to the possibility of passing the data to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Communities.

Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to the data protection Officer in Directorate-General Justice, Freedom and Security. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

The following special condition applies to this agreement:

The payment of honoraria, fees or other reimbursement of costs incurred due to the participation in the implementation of the work programme of civil servants (or national experts or other agents) of any Institutions of the European Communities, may at no time be charged to the budget of the project.

⁸ Any questions on the application of Regulation (EC) No 45/2001 should be referred to the Data Protection Coordinator of your DG or to the Data Protection Officer of the Commission (<http://www.cc.cec/dataprotectionofficer>).

II - GENERAL CONDITIONS

PART A: LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 - LIABILITY

II.1.1 The beneficiary shall have sole responsibility for complying with any legal obligations incumbent on him.

II.1.2 The Commission shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to any damage caused in the implementation of the work programme. Consequently, the Commission will not entertain any request for indemnity or reimbursement accompanying any such claim.

II.1.3 Except in cases of force majeure, the beneficiary shall make good any damage sustained by the Commission as a result of the implementation or faulty implementation of the work programme.

II.1.4 The beneficiary shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the work programme is being implemented.

ARTICLE II.2 - CONFLICT OF INTERESTS

The beneficiary undertakes to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.

Any situation constituting or likely to lead to a conflict of interests during the implementation of the agreement must be brought to the attention of the Commission, in writing, without delay. The beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once. The Commission reserves the right to check that the measures taken are appropriate and may demand that the beneficiary take additional measures, if necessary, within a certain time.

ARTICLE II.3 - CONFIDENTIALITY

The Commission and the beneficiary undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the agreement that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the period covered by Community funding.

ARTICLE II.4 - PUBLICITY

II.4.1 Unless the Commission requests otherwise, any communication or publication by the beneficiary about the implementation of the work programme, including at a conference or seminar, shall indicate that it has received funding from the Community.

Any communication or publication by the beneficiary, in any form and medium, shall indicate that sole responsibility lies with the author and that the Commission is not responsible for any use that may be made of the information contained therein.

II.4.2 The beneficiary authorises the Commission to publish the following information in any form and medium, including via the Internet:

- the beneficiary's name and the address,
- the subject and purpose of the grant,
- the amount granted and the proportion of the beneficiary's total operating budget covered by the funding.

Upon a reasoned and duly substantiated request by the beneficiary, the Commission may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security or prejudicing his commercial interests.

ARTICLE II.5 - EVALUATION

Whenever the Commission carries out an interim or final evaluation of the grant's impact measured against the objectives of the Community programme concerned, the beneficiary undertakes to make available to the Commission and/or persons authorised by it all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.17.

ARTICLE II.6 - FORCE MAJEURE

II.6.1 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, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party.

II.6.2 A party faced with force majeure shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

II.6.3 Neither of the parties shall be held in breach of their obligations under the agreement if they are prevented from fulfilling them by force majeure. The parties shall make every effort to minimise any damage due to force majeure.

ARTICLE II.7 - AWARD OF CONTRACTS

II.7.1 If the beneficiary has to conclude contracts in order to implement the work programme and they involve eligible costs for the operating budget, he shall award the contract to the bid offering best value for money; in doing so he shall take care to avoid any conflict of interests.

II.7.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:

- (a) they may only cover the execution of a limited part of the work programme;
- (b) recourse to the award of contracts must be justified having regard to the nature of the tasks covered by the work programme and what is necessary for its implementation;
- (c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
- (d) any recourse to the award of contracts while the work programme is being implemented shall be subject to prior written authorisation by the Commission;
- (e) the beneficiary shall retain sole responsibility for implementing the work programme and for compliance with the provisions of the agreement. The beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Commission under the agreement;
- (f) the beneficiary must undertake to ensure that the conditions applicable to him under Articles II.1, II.2, II.3, II.4, II.5, II.8 and II.17 of the agreement are also applicable to the contractor.

ARTICLE II.8 - ASSIGNMENT

Claims against the Commission may not be transferred.

In exceptional circumstances, where the situation warrants it, the Commission may authorise the assignment to a third party of the agreement and payments flowing from it, following a written request to that effect, giving reasons, from the beneficiary. If the Commission agrees, it must make its agreement known in writing before the proposed assignment takes place. In the absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Commission.

In no circumstances shall such an assignment release the beneficiary from his obligations to the Commission.

ARTICLE II.9 – TERMINATION OF THE AGREEMENT

II.9.1 Termination by the beneficiary

In duly justified cases, the beneficiary may withdraw his request for a grant and terminate the agreement at any time by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the Commission does not accept the reasons, the beneficiary shall be deemed to have cancelled this agreement improperly, with the consequences set out in the third subparagraph of paragraph 4.

II.9.2 Termination by the Commission

The Commission may decide to terminate the agreement, without any indemnity on its part, in the following circumstances:

- (a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- (c) in the event of force majeure, notified in accordance with Article II.6;
- (d) if the beneficiary is declared bankrupt, is being wound up or is the subject of any other similar proceedings;
- (e) if the beneficiary is found guilty of an offence involving his professional conduct by a judgment having the force of res judicata or if he is guilty of grave professional misconduct proven by any justified means;
- (f) if the beneficiary is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the agreement;
- (g) if the beneficiary has intentionally or by negligence committed a substantial irregularity in performing the agreement or in the event of fraud, corruption or any other illegal activity on the part of the beneficiary to the detriment of the Communities' financial interests. A substantial irregularity consists of any infringement of a provision of an agreement or regulation resulting from an act or an omission on the part of the beneficiary which causes or might cause a loss to the Community budget.

II.9.3 Termination procedure

The procedure is initiated by registered letter with advice of delivery or equivalent.

In the cases referred to in points (a), (b) and (d) of paragraph 2, the beneficiary shall have 30 days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the agreement. If the Commission fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Commission's decision to terminate the agreement is received.

If notice is not given in the cases referred to in points (c), (e), (f) and (g) of paragraph 2, termination shall take effect from the day following the date on which notification of the Commission's decision to terminate the agreement is received.

II.9.4 Effects of termination

In the event of termination, payments by the Commission shall be limited to the eligible costs actually incurred by the beneficiary up to the date when termination takes effect in accordance with the provisions of Article II.15. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The beneficiary shall have 60 days from the date when termination takes effect, as notified by the Commission, to produce a request for final payment in accordance with Article II.13.4. If no request for final payment is received within this time limit, the Commission shall not reimburse the expenditure incurred by the beneficiary up to the date of termination and it shall recover any amount if its use is not substantiated by the activity reports and financial statements approved by the Commission.

By way of exception, at the end of the period of notice referred to in paragraph 3, when the Commission is terminating the agreement on the grounds that the beneficiary has failed to produce the final activity report and financial statement within the deadline stipulated in Article I.5 and the beneficiary has still not complied with this obligation within two months following the written reminder sent by the Commission by registered letter with advice of delivery or equivalent, the Commission shall not reimburse the expenditure incurred by the beneficiary up to the end of the period of eligibility for Community funding and it shall recover any amount if its use is not substantiated by the activity reports and financial statements approved by the Commission.

By way of exception, in the event of improper termination by the beneficiary or termination by the Commission on the grounds set out in points (e), (f) or (g) of paragraph 2, the Commission may require the partial or total repayment of sums already paid under the agreement on the basis of the activity reports and financial statements approved by the Commission, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his observations.

ARTICLE II.10 - FINANCIAL PENALTIES

By virtue of the Financial Regulation applicable to the general budget of the European Communities, any beneficiary declared to be in grave breach of his obligations under the agreement shall be liable to financial penalties of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality. This rate may be increased to between 4% and 20 % in the event of a repeated breach in the five years following the first. The beneficiary shall be notified in writing of any decision by the Commission to apply such financial penalties.

ARTICLE II.11 - SUPPLEMENTARY AGREEMENTS

II.11.1 Any amendment to the grant must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.

II.11.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.

II.11.3 If the amendment is requested by the beneficiary, he must send it to the Commission in good time before it is due to take effect and at all events one month before the date on which eligibility for Community funding ends, except in cases duly substantiated by the beneficiary and accepted by the Commission.

PART B - FINANCIAL PROVISIONS

ARTICLE II.12 - ELIGIBLE COSTS

II.12.1 Eligible costs of the work programme are costs actually incurred by the beneficiary, which meet the following criteria:

- they are incurred during the duration of the work programme as specified in Article I.2.2 of the agreement, with the exception of costs relating to final reports and certificates on the financial statements and underlying accounts;
- they are connected with the subject of the agreement and they are indicated in the estimated overall budget of the work programme annexed to the agreement;
- they are necessary for the implementation of the work programme which is the subject of the grant;
- 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 according to the usual cost-accounting practices of the beneficiary;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The beneficiary's internal accounting and auditing procedures must permit a direct reconciliation of the costs and revenue declared in respect of the work programme with the corresponding accounting statements and supporting documents.

II.12.2 In particular, the following operating costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

- the cost of staff, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration;
- travel and subsistence allowances for staff, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the period of eligibility for Community funding covered by the agreement may be taken into account by the Commission, except where the nature and/or the context of its use justifies different treatment by the Commission;
- costs of consumables and supplies;
- costs entailed by other contracts awarded by the beneficiary for the purposes of implementing the work programme, provided that the conditions laid down in Article II.7 are met;

- costs arising directly from requirements imposed by the agreement (in particular, audit costs), including the costs of any financial services (especially the cost of financial guarantees);
- overheads.

II.12.3 The following costs shall not be considered eligible:

- capital increases and return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the beneficiary can show that he is unable to recover it according to the applicable national legislation;
- costs declared and covered by a specific action receiving a Community grant;
- excessive or reckless expenditure.

II.12.4 Contributions in kind shall not constitute eligible costs. However, the Commission can accept, if considered necessary and appropriate, that the co-financing of the work programme referred to in Article I.3.2 should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be covered by this possibility.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the work programme as ineligible costs and in receipts of the work programme as co-financing in kind. The beneficiary shall undertake to obtain these contributions as provided for in the agreement.

ARTICLE II.13 - REQUESTS FOR PAYMENT

Payments shall be made in accordance with Article I.4 of the Special Conditions.

II.13.1 Pre-financing

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

Where required by the provisions of Article I.4 on pre-financing, the beneficiary shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.

The guarantor shall stand as first call guarantor and shall not require the Commission to have recourse against the principal debtor (the beneficiary).

The financial guarantee shall remain in force until final payments by the Commission match the proportion of the total grant accounted for by pre-financing. The Commission undertakes to release the guarantee within 30 days following that date.

II.13.2 Further pre-financing payments

Where pre-financing is divided into several instalments, the beneficiary may request a further pre-financing payment once he has used up the percentage of the previous payment specified in the provisions of Article I.4 on further pre-financing. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred;
- where required by the above-mentioned provisions of Article I.4, a financial guarantee in accordance with paragraph 1;
- where required by the above-mentioned provisions of Article I.4, a certificate on the beneficiary's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The purpose of the audit is to certify that the financial documents submitted to the Commission by the beneficiary comply with the financial provisions of the agreement, that the costs declared are the actual costs, and that all receipts have been declared.
- any other documents in support of his request that may be required by the Special Conditions in support of the request for further pre-financing payments.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.5 and the annexes.

II.13.3 Interim payments

Interim payments are intended to reimburse the beneficiary for expenditure on the basis of a detailed statement of the costs incurred, once the work programme has reached a certain level of completion. It may clear all or part of any pre-financing.

By the appropriate deadline indicated in Article I.5, the beneficiary shall submit a request for interim payment accompanied by the following documents:

- an interim report on implementation of the work programme;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- where required by the provisions of Article I.4 on interim payment, a certificate on the beneficiary's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the beneficiary in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.5 and the annexes. The beneficiary shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all

receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Commission shall have the period specified in Article I.4 in order to:

- approve the interim report on implementation of the work programme;
- ask the beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Commission within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this article shall apply.

In the event of renewed rejection, the Commission reserves the right to terminate the agreement by invoking Article II.9.2(b).

II.13.4 Payment of the balance

Payment of the balance, which may not be repeated, is made after the end of the period of eligibility for Community funding on the basis of the costs actually incurred by the beneficiary in carrying out the work programme. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article II.15.

By the appropriate deadline indicated in Article I.5, the beneficiary shall submit a request for payment of the balance accompanied by the following documents:

- a final report on implementation of the work programme;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- a full summary statement of the receipts and expenditure in the beneficiary's accounts for the period of eligibility covered by the agreement;
- where required by the provisions of Article I.4 on payment of the balance, a certificate on the beneficiary's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the beneficiary in the financial statements on which the request

of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.5 and the annexes. The beneficiary shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Commission shall have the period specified in Article I.4 in order to:

- approve the final report on implementation of the work programme;
- ask the beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Commission within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this article shall apply.

In the event of renewed rejection, the Commission reserves the right to terminate the agreement by invoking Article II.9.2(b).

ARTICLE II.14 -GENERAL PROVISIONS ON PAYMENTS

II.14.1 Payments shall be made by the Commission in euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Commission, unless the Special Conditions of the agreement lay down specific provisions.

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

II.14.2 The Commission may suspend the period for payment laid down in Article I.4 at any time by notifying the beneficiary that his request for payment is not admissible, 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 a suspicion that some of the expenses in the request for payment are not eligible and additional checks are being conducted.

The Commission may also suspend its payments at any time if the beneficiary is found or presumed to have infringed the provisions of the agreement, in particular in the wake of the audits and checks provided for in Article II.17.

The Commission shall inform the beneficiary as soon as possible of any such suspension by registered letter with advice of delivery or equivalent, setting out the reasons for suspension. Suspension shall take effect on the date when the letter is sent by the Commission. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Commission.

II.14.3 On expiry of the period for payment specified in Article I.4, and without prejudice to paragraph 2 of this Article, the beneficiary is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the European Union.

Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 1, inclusive. The interest shall not be treated as a receipt for the purposes of determining the final grant within the meaning of Article II.15.4. The suspension of payment by the Commission may not be considered as late payment.

By way of exception, when the interest calculated in accordance with the provisions of the first and second subparagraphs is lower than or equal to EUR 200, it shall be paid to the beneficiary only upon demand submitted within two months of receiving late payment.

II.14.4 The beneficiary shall inform the Commission of the amount of any interest or equivalent benefit yielded by pre-financing it has received from the Commission. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request is made for interim payment or for payment of the balance that clears the pre-financing. The Commission shall deduct the interest yielded by pre-financing which exceeds EUR 50 000 as provided for in Article I.4 from the payment of the balance of the amount due to the beneficiary. The interest shall not be treated as a receipt within the meaning of Article II.15.4.

Where the pre-financing payments exceed EUR 750 000 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the Commission may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year in accordance with Article II.16.

Where the interest yielded exceeds the balance of the amount due to the beneficiary as indicated in Article II.13.4, or is generated by pre-financing referred to in the previous subparagraph, the Commission shall recover it in accordance with Article II.16.

Interest yielded by pre-financing paid to Member States is not due to the Commission.

II.14.5 The beneficiary shall have two months from the date of notification by the Commission of the final amount of the grant determining the amount of the payment of the balance or the recovery order in application of Article II.15, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests will no longer be considered. The Commission undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the beneficiary's right to appeal against the Commission's decision pursuant to Article I.8. Under the terms of Community legislation in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

ARTICLE II.15 - DETERMINING THE FINAL GRANT

II.15.1 Without prejudice to information obtained subsequently pursuant to Article II.17, the Commission shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in Article II.13.4 which it has approved.

II.15.2 The total amount paid to the beneficiary by the Commission may not in any circumstances exceed the maximum amount of the grant laid down in Article I.3.2, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article I.3.1.

II.15.3 If the actual eligible costs at the end of the period of eligibility are lower than the estimated total eligible costs, the Commission's contribution shall be limited to the amount obtained by applying the Community grant percentage specified in Article I.3.2 to the actual eligible costs approved by the Commission.

II.15.4 The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the receipts and expenditure in the operating budget which allows the work programme to be implemented and that it may not in any circumstances produce a profit for him.

Profit shall mean any surplus of the beneficiary's total actual operating receipts over his total actual operating costs. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary for financing other than the Community grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this article. For the purposes of this article, only operating costs shown in the beneficiary's financial statements and falling within the categories set out in the estimated budget referred to

in Article I.3.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-Community resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.

II.15.5 Without prejudice to the right to terminate the agreement under Article II.9, and without prejudice to the right of the Commission to apply the penalties referred to in Article II.10, if the approved work programme is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the work programme on the terms laid down in this agreement.

II.15.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Commission shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Commission shall issue a recovery order for the surplus.

ARTICLE II.16 - RECOVERY

II.16.1 If any amount is unduly paid to the beneficiary or if recovery is justified under the terms of the agreement, the beneficiary undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.

II.16.2 If the beneficiary fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.14.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.

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

II.16.3 If payment has not been made by the due date, sums owed to the Commission may be recovered by offsetting them against any sums owed to the beneficiary, after informing him accordingly by registered letter with advice of delivery or equivalent, or by calling in the financial guarantee provided in accordance with Article II.13.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the Commission may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.

II.16.4 Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the beneficiary.

II.16.5 The beneficiary understands that under Article 256 of the Treaty establishing the European Community, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the Court of First Instance of the European Communities.

ARTICLE II.17 - CHECKS AND AUDITS

- II.17.1 The beneficiary undertakes to provide any detailed information requested by the Commission or by any other outside body authorised by the Commission to check that the work programme and the provisions of the agreement are being properly implemented.
- II.17.2 The beneficiary shall keep at the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement for a period of five years from the date of payment of the balance specified in Article I.4.
- II.17.3 The beneficiary agrees that the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
- II.17.4 The beneficiary undertakes to allow Commission staff and outside persons authorised by the Commission the appropriate right of access to the beneficiary's premises and to all the information, including information in electronic format, needed in order to conduct such audits.
- II.17.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Community law for the protection of the financial interests of the European Communities against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Commission.
- II.17.6 The European Court of Auditors shall have the same rights as the Commission, notably right of access, as regards checks and audits.

SIGNATURES

For the beneficiary

[name / forename / function]

[signature]

Done at [place], [date]

For the Commission

[name /forename]

[signature]

Done at [place], [date]

In duplicate in English.