ORIGINAL

Financing Agreement
ACA/2020/042-250

FINANCING AGREEMENT

between

THE SOCIALIST REPUBLIC OF VIET NAM

and

THE EUROPEAN UNION

"EU –Viet Nam Enhancing Economic Governance Programme"



FINANCING AGREEMENT

SPECIAL CONDITIONS

The Government of the Socialist Republic of Viet Nam, hereinafter referred to as "**the Partner**", represented by the Ministry of Planning and Investment,

of the one part, and

The European Commission, hereinafter referred to as "**the Commission**", acting on behalf of the European Union, hereinafter referred to as "**the EU**",

of the other part,

have agreed as follows:

Article 1 – Nature of the action

1.1. The EU agrees to finance and the Partner agrees to accept the financing of the following action:

EU - Viet Nam Enhancing Economic Governance Programme
Decision number: ACA/2020/042-250

This action is financed from the EU Budget under the following basic act: Instrument for Development Cooperation

1.2. The total estimated cost of this action is EUR 20 000 000 and the maximum EU contribution to this action is set at EUR 18 000 000.

1.3. The Partner shall not co-finance the action.

The action is co-financed in joint co-financing by the Government of Germany. The breakdown of this financial contribution is shown in Annex I (Technical and Administrative Provisions).

Article 2 – Execution period

2.1. The execution period of this Financing Agreement as defined in Article 15 of Annex II (General Conditions) shall commence on the entry into force of this Financing Agreement and end 90 months after this date.

2.2. The duration of the operational implementation period is fixed at 66 months.

2.3. The duration of the closure period is fixed at 24 months.

Article 3 – Addresses

All communications concerning the implementation of this Financing Agreement shall be in writing, shall refer expressly to this action as identificd in Article 1.1 of these Special Conditions and shall be sent to the following addresses:

a) **for the Commission**

The Delegation of the European Union to Viet Nam
24th Floor, West Wing, Lotte Center
54 Lieu Giai Street
Ha Noi, Viet Nam

b) **for the Partner**

Ministry of Planning and Investment
6B Hoang Dieu, Quan Thanh, Ba Dinh
Ha Noi, Viet Nam

Article 4 – OLAF contact point

The contact point of the Partner having the appropriate powers to cooperate directly with the European Anti-Fraud Office (OLAF) in order to facilitate OLAF's operational activities shall be:

Government Inspectorate
Address: D29 Lot Tran Thai Tong, Yen Hoa, Cau Giay, Ha Noi
Email: ttcp@thanhtra.gov.vn

Article 5 – Annexes

5.1. This Financing Agrcement is composed of:

(a) these Special Conditions;

(b) Annex I: Technical and Administrative Provisions, detailing the objectives, expected results, activities, description of the budget-implementation tasks entrusted and budget of this Action;

(c) Annex II: General Conditions;

5.2. In the event of a conflict between, on the one hand, the provisions of the Annexes and, on the other hand, the provisions of these Special Conditions, the latter shall take precedence. In the event of a conflict between, on the one hand, the provisions of Annex I (Technical and Administrative Provisions) and, on the other hand, the provisions of Annex II (General Conditions), the latter shall take precedence.

Article 6 – Provisions derogating from or supplementing Annex II (General Conditions)

6.1 Articles 18, 19, 25.3, 25.4 and 25.5 of Annex II (General Conditions) do not apply to those activities entrusted to an entity pursuant to Annex I under this Financing Agreement.

6.2 Article 24 of Annex II (General Conditions) is supplemented as follows:

i) Before exercising the right to suspend and terminate the Agreement as foreseen in Articles 26 and 27.1 of Annex II (General Conditions), either Party shall notify the other Party of its intention and consultation shall take place, on the basis of mutual respect and partnership.

ii) Upon the receipt of the notification, the notified Party shall provide observations within 15 working days.

6.3 Article 26.2 of Annex II (General Conditions) is not applicable to this Financing Agreement.

Article 7 – Entry into force

This Financing Agreement shall enter into force on the date on which it is signed by the last party.

Done in 4 original copies in the English language, 2 copies being handed to the Commission and 2 to the Partner.

For the Partner:

TRAN QUOC PHUONG
Deputy Minister
Ministry of Planning and Investment

Signature:

Date: 08.02.2022

For the Commission:

Jean-Louis Ville
Acting Director for Middle East, Asia and Pacific
Directorate General for International Partnerships

Signature:

Date: 10.12.2021

ANNEX I TO FINANCING AGREEMENT NO. ACA/2020/042-250

TECHNICAL AND ADMINISTRATIVE PROVISIONS

This document constitutes the annual work programme in the sense of Article 110(2) of the Financial Regulation and measure in the sense of Articles 2 and 3 of Regulation N° 236/2014.

1. SYNOPSIS

1.1. Action Summary Table

1. Title **CRIS reference** **Basic Act**	EU – Viet Nam Enhancing Economic Governance Programme CRIS number: ACA/2020/042-250 Financed under the Development Cooperation Instrument
2. Team Europe Initiative	No
3. Zone benefiting from the action	The action shall be carried out in Viet Nam
4. Programming document	Addendum N°1 to the Multiannual Indicative Programme (MIP) for Viet Nam 2014-2020 - C(2018)4741
5. Link with relevant MIP objectives / expected results	Specific Objective 2.2: The government's ability for accountable, transparent and cost-effective service delivery is enhanced Specific Objective 2.3: The citizen's effective participation in public governance is strengthened
PRIORITY AREAS AND SECTOR INFORMATION	
6. Priority Area(s), sectors	MIP Priority Area: Governance and Rule of Law
7. Sustainable Development Goals (SDGs)	Main SDG: 17 Other significant SDGs: 5, 8, 16
8 a) DAC code(s)	15111 - Public finance management (PFM) (48%) 15114 - Domestic revenue mobilisation (24%) 15125 - Public Procurement (11%) 15142 - Macroeconomic policy (17%)
8 b) Main Delivery Channel	13000 – Third Country Government: GIZ
9. Targets	☐ Migration ☐ Climate ☐ Social inclusion and Human Development

	☐ Gender ☐ Biodiversity ☐ Education ☒ Governance			
10. Markers (from DAC form)	**General policy objective**	**Not targeted**	**Significant objective**	**Principal objective**
	Participation development/good governance	☐	☐	☒
	Aid to environment	☒	☐	☐
	Gender equality and Women's and Girl's Empowerment	☐	☒	☐
	Trade Development	☐	☒	☐
	Reproductive, Maternal, New born and child health	☒	☐	☐
	Disaster Risk Reduction	☒	☐	☐
	Inclusion of persons with disabilities	☒	☐	☐
	Nutrition	☒	☐	☐
	RIO Convention markers	**Not targeted**	**Significant objective**	**Principal objective**
	Biological diversity	☒	☐	☐
	Combat desertification	☒	☐	☐
	Climate change mitigation	☒	☐	☐
	Climate change adaptation	☒	☐	☐
11. Internal markers and Tags	**Policy objectives**	**Not targeted**	**Significant objective**	**Principal objective**
	Digitalisation	☐	☒	☐
	Tags: digital connectivity		☐	☐
	digital governance		☒	☐
	digital entrepreneurship		☐	☐
	job creation		☐	☐
	digital skills/literacy		☐	☐
	digital services		☐	☐

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			☐	☐
	Connectivity Tags: transport people2people energy digital connectivity	☒	☐ ☐ ☐ ☐ ☐	☐ ☐ ☐ ☐ ☐
	Migration	☒		
	Reduction of Inequalities	☒	☐	☐
	COVID-19	☐	☒	☐
BUDGET INFORMATION				
12. Amounts concerned	Budget line: 21.020200 Total estimated cost: EUR 20 000 000 Total amount of EU budget contribution: EUR 18 000 000 This action is co-financed in joint co-financing by the Government of Germany for an amount of EUR 2 000 000			
MANAGEMENT AND IMPLEMENTATION				
13. Type of financing	Direct management through Procurement Indirect management with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)			

1.2. Summary of the Action

Since the launch of 'Đổi Mới' in 1986, Viet Nam has achieved significant economic and social progress. Today, it is one of the most open economies in the world (by trade-to-GDP ratio) and has enjoyed robust growth, one of the strongest among South East Asian countries. Viet Nam's openness to trade and investment and its recent success in improving its fiscal situation have put it in a good position to benefit from the current changes in trade and investment patterns in the region that work in Viet Nam's favour.

Despite great achievement, challenges to its future and sustainable economic growth are numerous and becoming more and more complex. Facing a fast ageing society, increasing trade tension, rapid changes in global production networks through trade and digitalisation as well as increasing pollution and climate change, Viet Nam needs to upgrade its capabilities to ensure sustainable and inclusive development. Institutional legacies and incomplete market economy have become impediments to productivity growth, especially for the private sector. Viet Nam continues to leverage commitments under various free trade agreements (FTAs) including with the European Union (EVFTA). While this presents opportunities for Viet Nam to tap into major international markets and climb up in global value chains, much needs to be done by the Partner in terms of reforming institutional framework and strengthening domestic capacity.

The public financial management system, though being gradually modernized, still need to be further upgraded to ensure efficient and effective financing for development. Domestic resource mobilization is currently below its potential and tax policy reform has great potential for improvement. Fiscal consolidation measures over past years have contained the public debt, however public debt management system needs to be upgraded.

The Action was designed to provide the Partner with technical assistance to strengthen its (i) planning management, (ii) doing business environment, (iii) public financial management including budget planning and implementation, public debt management, tax policy and administration, public investment and public procurement. By doing so, the action is expected to improve the quality of economic governance, thus contribute to sustainable development and inclusive growth in Viet Nam.

While this action is not part of the COVID-19 response package for Viet Nam it will be implemented in times of the COVID-19 pandemic and will provide timely support to the country's recovery process. The Action will be adapted to the situation as necessary to ensure its success. Besides, good economic governance is even more crucial in challenging times and the programme can help establish good practices for a "new normal".

2. DESCRIPTION OF THE ACTION

2.1. Objectives and Expected Outputs

The Overall Objective (Impact) of this action is to contribute to sustainable development and inclusive growth in Viet Nam by strengthening economic governance.

The Specific Objectives (Outcomes) of this action are:

1. Doing business environment is improved
2. Planning management is strengthened
3. Public investment management is improved
4. Public procurement system is strengthened
5. State budget management and revenue forecasting is improved
6. Management of public debt is enhanced
7. Tax environment and revenue mobilization is enhanced

The Outputs to be delivered by this action contributing to the corresponding Specific Objectives (Outcomes) are:

contributing to Outcome 1 (or Specific Objective 1):

1.1 Methodology and technical tools to evaluate business performance and predict business development trend are developed

1.2 Databases on businesses are developed, updated and integrated to support business performance assessment and prediction of business development trend

1.3 Reporting system for the assessment of business performance and prediction of business development trend is developed

1.4 Policy framework to support private sector development, transparency and fair competition is enhanced

contributing to Outcome 2 (or Specific Objective 2):

2.1 Legal framework and analytical work for planning management is further developed supporting the implementation of the Law on Planning

2.2 Staff capacity is strengthened

2.3 Transparency in planning management is enhanced through application of information technology

contributing to Outcome 3 (or Specific Objective 3):

3.1 Legal and regulatory framework governing public investment is strengthened

3.2 The capacity and interoperation of information systems and databases on public investments are improved

3.3 Transparency of public investment is improved through application of information technology

3.4 Staff capacity is strengthened

contributing to Outcome 4 (or Specific Objective 4):

4.1 Legal and regulatory framework governing public procurement is strengthened

4.2 Guidance on implementation of the Partner's public procurement commitments in the EVFTA is developed

4.3 Capacity of relevant bodies of the Partner is enhanced to enable effective and efficient management of public investment and implementation of EVFTA commitments

4.4 Participation of local enterprises into the EU's public procurement is promoted

4.5 Participation of EU companies into Viet Nam's public procurement is promoted

contributing to Outcome 5 (or Specific Objective 5):

5.1 Assessment of the implementation of the State Budget Law 2015 in the past 5 years is conducted
5.2 Legal and regulatory framework is strengthened
5.3 Guidance, methodologies and technical tools for macro-fiscal-revenue forecasting are further developed
5.4 Staff capacity is enhanced
5.5 Citizens have improved knowledge and access to budget information
5.6 Information system is enhanced to enable better disclosure of budget information

contributing to Outcome 6 (or Specific Objective 6):

6.1 International standards are reviewed and necessary inputs are collected to develop public debt management strategy
6.2 Legal and regulatory framework is modernized and roles and responsibilities of relevant bodies are further clarified.
6.3 Detailed guidance are developed to support implementation
6.4 Staff capacity is strengthened

contributing to Outcome 7 (or Specific Objective 7)

7.1 International standards are reviewed and necessary inputs are collected to develop tax management strategy
7.2 Legal and regulatory framework is modernized, roles and responsibilities of relevant bodies are clarified
7.3 Organizational development is supported and guidance are developed
7.4 Staff capacity is strengthened

2.2. Indicative Activities

Activities related to Output 1.1:

- Review current methodology and technical tools, including relevant international practices, used to assess and monitor performance of business and predict business development trend;
- Develop methodology and technical tools to evaluate business performance, including business credit score;
- Support piloting of newly developed technical tools to assess business performance in some sectors/provinces;
- Advise the application of technical tools to assess business performance in selected sectors.

Activities related to Output 1.2:

- Review and assess current databases on businesses managed by ministries as a basis to develop methodology, criteria and indexes to measure business performance and predict business development trend;
- Assess current information infrastructure and suggest solutions to improve the connectivity and integration of existing databases on businesses to enable efficient assessment of business performance and prediction of business development trend;
- Study good practices and provide recommendations to improve rules and regulations necessary to improve system connectivity and sharing databases on businesses across ministries and Partner bodies;
- Provide trainings to improve staff capacity on management and use of databases on businesses.

Activities related to Output 1.3:

- Develop reporting templates for the assessment of business performance and prediction of business development trend;
- Support to conduct business surveys in selected industrial sectors;
- Advise and support the dissemination of report on business performance and business development trend.

Activities related to Output 1.4:

- Assess the implementation of policies on business development and provide recommendations to enable sustainable development of private sector;
- Review the consistency between regulations on state own enterprises and those on private sector;
- Provide policy recommendations to improve the transparency and fair competition among business sectors.

Activities related to Output 2.1:

- Review current legal framework on planning; provide international experiences and support the revision and development of guiding documents for the implementation of the Law on Planning and related legislation;
- Review the current system and practices; support the automation of procedures and processes in the national information system on planning; advise on the technical requirements, functions and database for the establishment and functioning of the National information system and database on planning;
- Support consultations with relevant ministries and bodies.

Activities related to Output 2.2:

- Develop training materials for the training of officers at central and provincial levels;
- Organize trainings on regulatory framework, information system and databases.

Activities related to Output 2.3:

- Collect data and information relevant for planning; review and assess the adequacy of data and information collected as necessary for the establishment of national database on planning;
- Design and develop model and framework for national database on planning with the view to have interconnection and interoperation between sectors, ministries and provinces. Develop processes for the transfer, standardization and integration of data into the national database on planning and national information system on planning;
- Develop methodology for: (i) management and connection of national database on planning in accordance with Article 41.1 and 41.2 of the Law on Planning, develop data fields on planning; (ii) provision of information on planning to relevant bodies and individuals, division of roles and segregation of duties in using information system and databases in accordance with Article 42 of the Law on Planning; (iii) Sharing and receiving of data and information on planning in the national information system on planning; (iv) achieving planning dossiers; (v) updating during the management and implementation of planning;
- Analyze, design and develop a national information system on planning which is consistent with the overarching E-government system and MPI e-government system in particular, ensure the centralization of the system and the consistency with the national standards, and enable the publication, searching and sharing of information on planning as well as receiving feedbacks from relevant bodies;
- Support the installation and testing of the information system;
- Support the implementation of the national information system on planning at the central and provincial level.

Activities related to Output 3.1:

- Review the consistency between the public investment regulatory framework and other legislation to identify the inconsistency and bottlenecks and recommendation for improvement;
- Support the development/revision of legal and guiding documents and to address the conflicts and inconsistencies between laws and regulations on public investment,
- Assess training need of MPI and relevant bodies to support building capacity on public investment;
- Provide trainings to relevant officers on public investment regulatory framework and practices;
- Analyses IMF's recommendations on public investment and support MPI to implement relevant recommendations;
- Advise on a process for horizontal and vertical coordination between ministries and provinces in planning, appraisal and approval of annual and medium-term public investment plan;
- Support the review and assessment the implementation of public investment law;
- Support the development of new guidance to ensure consistent implementation of the Public Investment Law;
- Support consultations with relevant ministries and bodies

Activities related to Output 3.2:

- Review the current system and recommend fundamental functions of the system to ensure it can meet the requirements of the current law and legislation;
- Review and assess capacity of the current system and recommend to improve the system's capacity and security;
- Support to improve application capacity to implement new processes;

- Support to improve the database on public investment projects;
- Study MOF's system for budget management, assess the possibility to connect MPI's system and MOF's system, provide solutions and support the connection process.

Activities related to Output 3.3:

- Review the current legal framework on transparency of public investment and actual implementation;
- Advise on the application of information technology to improve disclosure of information and transparency in public investment management.

Activities related to Output 3.4:

- Conduct training need assessment;
- Develop training materials and training plan;
- Provide trainings to trainers, support rolling out of general and thematic trainings to different group of trainees at central and provincial level.

Activities related to Output 4.1:

- Review the implementation of Public Procurement Law no. 43/2013/QH13 to identify shortcomings;
- Develop regulations on central tendering, procurement of innovative/high-tech products, green procurement, procurement of domestically produced products replacing imported products, procurement from vulnerable groups etc.;
- Develop methodology and criteria for the selection of contractor for PPP projects;
- Develop methodology and criteria for the selection of contractor for non-PPP projects in different sectors (health, education, social, environmental, energy etc.);
- Develop e-catalogue in line with international practices;
- Study international experiences in implementation of FTA commitments in public procurement, including FTAs of which the EU is a party.

Activities related to Output 4.2:

- Develop guiding document the implementation of EVFTA commitments in public procurement, support the implementation process;
- Develop more detailed handbook guiding the implementation of commitments.

Activities related to Output 4.3:

- Disseminate information and provide trainings on public procurement regulations, EVFTA commitments and e-procurement system;
- Advise on solution to provide information and timely address questions on public procurements and respective commitments in the EVFTA;
- Assess the implementation of public procurement and respective EVFTA commitments.

Activities related to Output 4.4:

- Provide in-depth analysis of the EU's legal framework and requirements regarding public procurement;
- Assessment of potential for participation of local enterprises into EU's public procurement market
- Dissemination of information to local enterprises.

Activities related to Output 4.5:

- Develop handbook on public procurement in Viet Nam;
- Study good practices and solutions to improve efficiency and effectiveness of public procurement in Viet Nam, particularly in the context of EVFTA and similar commitments.

Activities related to Output 5.1:

- Assess the development and implementation of State Budget Law and its guiding documents
- Assess the management of state budget in relation with public debt management, public investment;
- Conduct other reviews related to the assessment of State Budget Law implementation;
- Analyse technical requirements and availability of data necessary for macro-economic and revenue forecasting;
- Study good practices and initiatives in public financial management.

Activities related to Output 5.2:

- Review and propose for amendment of the State Budget Law (if necessary) and its guiding documents.

Activities related to Output 5.3:

- Review and develop guidance to support implementation of the State Budget Law;
- Support to develop macro-economic and revenue forecasting models.

Activities related to Output 5.4:

- Organize trainings and workshop to discuss local and international experiences;
- Provide updated training to ensure effective implementation of the State Budget Law.

Activities related to Output 5.5:

- Support ministries and provinces to prepare citizen budget document to facilitate citizen's understanding and attract public interest in state budget matters, thereby increase citizen participation in budget management process.

Activities related to Output 5.6:

- Support ministries and provinces to establish and run a dedicated section for disclosure of budget documents on their website in a more consistent and structured way; and to connect them with MOF's portal to improve the availability, timeliness and accessibility of budget information and enable more efficient oversight of state budget by citizens.

Activities related to Output 6.1:

- Assess the public debt mobilization during 2011-2020 period and provide policy recommendations for public debt mobilization in the next period;
- Advise on the development of public debt strategy, public debt mobilization and repayment plan on medium-term perspective;
- Provide technical assistance based on international experience on management of public debt portfolio to support the achievement of sustainable development goals, improve the effectiveness and reduce associated risk (restructure portfolio);
- Improve reporting system for the management of public debt and national credit rating; support reaching out to investor community;
- Asses the current situation and advise to develop information system for management of public debt, integration of existing databases into a fiscal-public debt data warehouse for reporting, forecasting and analysing risks of public debt portfolio.

Activities related to Output 6.2:

- Advise on the modernization of public debt management system;
- Advise on the organisation of public debt management function in MOF in alignment with international good practices;
- Support to assess and report on operational risk in public debt management.

Activities related to Output 6.3:

- Support the development of detailed guidance guiding the implementation of major public debt management processes at both central and provincial level;
- Review, update and develop new guidance relevant for the modernization of public debt management system; advise on processes for control of operational risk in public debt management;
- Develop handbook on implementation of medium-term public debt management plan.

Activities related to Output 6.4:

- Provide trainings on public debt management processes to be implemented at national and provincial levels;
- Update the statistical models and macro-fiscal-debt analysis to support policy making process;
- Provide trainings on statistical tools, data analysis, application of macro-fiscal-public debt analytical framework and other necessary skills for management of public debt;
- Provide trainings on credit rating, investor relations.

Activities related to Output 7.1:

- Advise on requirements, priorities and action plan for implementation of BEPS (base erosion and profit shifting) packages, support the participation in Global Forum on Transparency and Exchange of Information for Tax Purposes;
- Support to conduct tax analysis and assessment of tax expenditure (linked to green growth, energy, gender mainstreamed), advise on strategic priorities for 2021-2030 reform strategy and the next 5-year tax reform plan;
- Support to assess tax policy system and provide recommendations on tax policy reforms;
- Advise to strengthen the risk management system.

Activities related to Output 7.2:

- Support to develop new and/or revise a number of tax laws, including Value Added Tax Law, Excise Tax Law, Export-Import Tax Law, Corporate Income Tax Law, Personal Income Tax Law, Environmental Protection Tax Law, Law on fees and charges during the 2021-2025 period;
- Provide international experiences to support the development of tax laws and relevant guiding documents;
- Support to develop legal basis regulating the implementation of other actions beyond BEPS' minimum requirements;
- Support to strengthen tax audit based on risk assessment;

Activities related to Output 7.3:

- Support to assess tax policies systems and advise on tax policy reform;

Activities related to Output 7.4:

- Provide trainings and workshop to discuss and share local and international practices and experiences
- Provide trainings on transfer pricing audit;
- Improve capacity on tax policies.

These activities are indicative and can be updated during the implementation phase

2.3. Mainstreaming

As a result of the donor community's advocacy for gender equality, the Partner has required gender to be mainstreamed in all socio-economic policies. By supporting a more efficient macro-fiscal-public finance management framework, the Action will contribute to more efficient implementation of public policies on gender equality. The Action will introduce gender responsive budgeting, gender neutral tax policies and other activities to promote for more gender balance under Results 5 and 7.

As the objective of the Action is to reinforce macro-economic stability, resilience will automatically become an induced result of the Action.

The Action does not include environment or climate change as significant objectives, however, it will advocate for a more environmental and climate friendly regulatory framework and macro-fiscal policies that promote a greener economy and align with environmental standards in international trade agreements. Tax and investment policies can be used as instruments to encourage investments in clean technologies and production of more environmental friendly goods and services.

The Action will provide training and capacity-building support to local authorities of provinces where ethnic minorities are prevalent.

This intervention is relevant for the United Nations 2030 Agenda for Sustainable Development. It contributes primarily to the progressive achievement of SDG 17 'Strengthen the means of implementation and revitalize the global partnership for sustainable development', but also promotes progress towards SDG 8 'Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all', SDG 5 'Achieve gender equality and empower all women and girls' and SDG 16 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.

2.4. The Intervention Logic

The underlying intervention logic for this action is that it will contribute to sustainable development and inclusive growth in Viet Nam by enhancing the Partner's ability in doing economic governance. A strengthened socio-economic planning system, an improved doing business environment and an enhanced tax environment create strong foundations for economic growth while enabling a broadened tax base and mobilization of private investment for further development. A stronger public financial management system, including improved budget planning and execution system, domestic resource mobilization, public debt management, public investment and public procurement system, will enable more effective and efficient collection and allocation of public resources, thereby reinforcing macroeconomic stability.

The Action foresees supports at both policy and implementation level. At the policy level, the Action seeks to align better the country system to international standards and good practices, and to create a more consistent regulatory framework to be applied at all levels. At the implementation level, advisory services

will be provided to the Partner to support the implementation process. Local and international experts will be mobilized to work side by side with officers of the Partner to enable direct transfer of knowledge, thereby building their knowledge and implementation capacity.

Economic governance remains an important priority in the Partner's development agenda. The EU has strong advantages as a traditional and long-term partner with excellent technical expertise in this area. The EU Delegation has been maintaining a good level of collaboration with other active development partners to ensure technical assistance is provided to the Partner in a coherent and coordinated way.

Outcome 7	7. Tax environment and revenue mobilization is enhanced	7.1 Domestic revenue as share of GDP 7.2 Paying tax score 7.3 Selected TADAT indicators 7.4 Status of Tax Reform Plan			7.1 Partner's reports 7.2 WB Doing business report 7.3 TADAT report 7.4 Partner document	
Outputs related to Outcome 1	1.1 Methodology and technical tools to evaluate business performance and predict business development trend are developed 1.2 Databases on businesses are developed, updated and integrated to support business performance assessment and prediction of business development trend 1.3 Reporting system for the assessment of business performance and prediction of business development trend is established 1.4 Policy framework to support private sector development, transparency and fair competition is enhanced	1.1.1 Number of methodology and technical tools developed and provided 1.2.1 No. of databases system updated and integrated 1.3.1 Status of the reporting system 1.4.1 No. of legal documents revised/developed.			Project reports	Strong leadership of MPI Good level of inter-ministerial cooperation MPI allocates sufficient human resources (staff time and technical inputs)
Outputs related to Outcome 2	2.1 Legal framework and analytical work for planning management is further developed supporting the implementation of the Law on Planning 2.2 Staff capacity is strengthened 2.3. Transparency in planning management is enhanced	2.1.1 No. of legal documents revised/developed 2.2.1 No. of Partner's staff trained (m/f) 2.2.2 No. of studies conducted 2.2.3 No. of persons trained in workshops (m/f)			Project reports	

2.5. Indicative Logical framework matrix

Results	Results chain: Main expected results	Indicators	Baselines (values and years)	Targets (values and years)	Sources of data	Assumptions
Impact	To contribute sustainable development and inclusive growth in Viet Nam by strengthening economic governance	1.1 Poverty rate (persons living below poverty line) 1.2 GDP/capita in current USD 1.3 Number of targets under the VSDGs met	*Projects to carry out baseline collection exercise / baseline study during inception phase*	*Projects to define targets during inception phase*	Partner's reports Development partners' reports	Not applicable
Outcome 1	1. Doing business environment is improved	1.1 World Bank doing business index of Viet Nam			1.1. WB annual Doing Business report	There are no major events (such as COVID19 pandemic) that could deteriorate significantly the country's socio-economic condition or reorient Partner's focus on economic governance.
Outcome 2	2. Planning management is strengthened	2.1 Status of planning framework at the national and provincial level			2.1 Partner's reports and published documents;	
Outcome 3	3. Public Investment Management is improved	3.1 Status of availability of information on public investment			3.1. IMF PIMA report	
Outcome 4	4. Public procurement system is strengthened	4.1 Score of PEFA indicator on public procurement 4.2 Number of procurements done through e-procurement system			4.1 PEFA assessment 4.2 Partner's reports	
Outcome 5	5. State budget management and revenue forecasting is improved	5.1 PEFA indicator scores (PI14, PI15, PI16) 5.2. Status of the new PFM Reform Strategy			5.1 PEFA assessment 5.2 Partner's documents	
Outcome 6	6. Management of public debt is enhanced	6.1 Status of Risk management framework at the national and provincial level 6.2 Rating of Public Debt Sustainability Analysis 6.3 Status of Public Debt Management Plan			6.1 Partner's reports 6.2 IMF article IV DSA 6.3 Partner's documents	

	through application of information technology	2.3.1 Status of publication of information on planning				
Outputs related to Outcome 3	3.1 Legal and regulatory framework governing public investment is strengthened 3.2 The capacity and interoperation of information systems and databases on public investments are improved 3.3 Transparency of public investment is improved through application of information technology 3.4 Staff capacity is strengthened	3.1.1 No. of legal documents revised/developed 3.2.1 Number of information systems and databases upgraded and integrated 3.3.1 Status of preparatory steps for making information on public investment available 3.4.1 No. of Partner's staff trained (m/f) 3.4.2 No. of studies conducted 3.4.3 No. of persons trained in workshops (m/f)			Project reports	
Outputs related to Outcome 4	4.1 Legal and regulatory framework governing public procurement is strengthened 4.2 Guidance on implementation of the Partner's public procurement commitments in the EVFTA is developed 4.3 Capacity of relevant Partner's bodies is enhanced to enable effective and efficient management of public investment and implementation of EVFTA commitments 4.4 Participation of local enterprises into the EU's public procurement is promoted	4.1.1 No. of legal documents revised/developed 4.2.1 No. of guidance documents produced 4.3.1 No. of Partner's staff trained on public investment in EVFTA (m/f) 4.3.2 No. of studies conducted 4.3.3 No. of persons (m/f) trained in workshops 4.4.1 No. of Vietnamese businesses informed about the EU's Partner's procurement market requirements and opportunities			Project reports	

	4.5 Participation of EU companies into Viet Nam's public procurement is promoted	4.5.1 Status of E-catalogue 4.5.2 Status of E-procurement system				
Outputs related to Outcome 5	5.1 Assessment of the implementation of the State Budget Law 2015 in the past 5 years is conducted 5.2 Legal and regulatory framework is strengthened 5.3 Guidance, methodologies and technical tools for macro-fiscal-revenue forecasting are further developed 5.4 Staff capacity is enhanced 5.5 Citizens have improved knowledge and access to budget information 5.6 Information system is enhanced to enable better disclosure of budget information	5.1.1 Status of assessment/analysis on the law implementation 5.2.1 No. of legal documents revised/developed 5.3.1 No. of guidance, methodologies and technical tools provided 5.4.1 No. of Partner's staff trained (m/f) 5.4.2 No. of studies conducted 5.4.3 No. of persons trained in workshops (m/f) 5.5.1 Status of publication of citizen budget document 5.6.1 Status of information system			Project reports	Sufficient horizontal and vertical collaboration MOF allocates sufficient human resources (staff time and technical inputs)
Outputs related to Outcome 6	6.1 International standards are reviewed and necessary inputs are collected to develop public debt management strategy 6.2 Legal and regulatory framework is modernized and roles and responsibilities of relevant bodies are further clarified 6.3 Detailed guidance are developed to support implementation 6.4 Staff capacity is strengthened	6.1.1 Status of Assessment report 6.1.2 Status of draft public debt management strategy/plan 6.2.1 No. of legal documents revised/developed 6.3.1 No. of guidance developed and provided to the Partner 6.4.1 No. of Partner's staff trained (m/f) 6.4.2 No. of studies conducted 6.4.3 No. of persons trained in workshops (m/f)			Project reports	

3. IMPLEMENTATION ARRANGEMENTS

3.1. Implementation Modalities

The Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures[1].

3.1.1 Direct Management (Procurement)

A part of this action may be implemented through a service contract. This implementation entails the attainment of Specific Objectives (Outcomes) 1, 2, 3 and 4 as specified under section 2.

3.1.2 Indirect Management with a Member State Organization

A part of this action may be implemented in indirect management with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). This implementation entails the attainment of Specific Objectives (Outcomes) 5, 6 and 7 as specified under section 2. The envisaged entity has been selected using the following criteria:

- Several years of experience in providing technical assistance to the Partner in the areas of macroeconomic and PFM reform;
- Good working relationship with the Partner.

In case the envisaged entity would need to be replaced, the Commission's services may select a replacement entity using the same criteria. If the entity is replaced the decision to replace it needs to be justified.

3.2. Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply, subject to the following provisions.

The Commission's authorising officer responsible may extend the geographical eligibility on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

3.3. Indicative budget

Indicative Budget components	**EU contribution (amount in EUR)**	**Third-party contribution (amount in EUR)**
Implementation modalities – cf. section 3.1		
Direct management (Procurement) – cf. section 3.1.1	5 500 000	N/A
Indirect management with GIZ – cf. section 3.1.2	12 000 000	2 000 000

[1] www.sanctionsmap.eu Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website it is the OJ version that prevails.

Outputs related to Outcome 7	7.1 International standards are reviewed and necessary inputs are collected to develop tax management strategy 7.2 Legal and regulatory framework is modernized, roles and responsibilities of relevant bodies are clarified 7.3 Organizational development is supported and guidance are developed 7.4 Staff capacity is strengthened	7.1.1 Status of Assessment report 7.1.2 Status of draft tax reform plan 7.2.1 No. of legal documents/guidance revised/produced 7.3.1 No. of guidance/manual developed 7.4.1 No. of Partner's staff trained (m/f) 7.4.2 No. of studies conducted 7.4.3 No. of persons trained in workshops (m/f)			Project reports	

Evaluation (cf. section 4.2) **Audit and Verifications** (cf. section 4.3)	500 000	N/A
Communication and visibility (cf. section 5)	N/A	N/A
Total	**18 000 000**	**2 000 000**

3.4. Organisational set-up and responsibilities

The Ministry of Planning and Investment (MPI) is the Partner's lead agency for the implementation of this Action. MPI is the primary Partner's agency for the implementation of the procurement contract. The Ministry of Finance (MOF) is the primary Partner's agency for the implementation of the delegated agreement with GIZ.

The entire Action will be supervised through an Annual Coordination Meeting. The Annual Coordination Meeting will be organized on an annual basis to (i) oversee and coordinate the overall implementation of the Action and its component projects and (ii) to ensure the effective collaboration between relevant stakeholders.

The Annual Coordination Meeting will consist of representatives of MPI, MOF, EU Delegation to Viet Nam, German Embassy in Viet Nam and GIZ. The Annual Coordination Meeting will be chaired by MPI and co-chaired by the EU Delegation to Viet Nam. The committee's decisions will be taken by consensus.

In case the Annual Coordination Meeting cannot be held either in person or virtually, the representatives will communicate using suitable means to take decisions by consensus.

A committee for each project will also be established to oversee the implementation of each project.

The Steering Committee of the project with MPI shall be made up of: a senior representative of MPI (Chair), a senior representative of the EU Delegation to Viet Nam (Co-chair), and representatives of relevant departments and units of MPI.

The Steering Committee of the project with MOF shall be made up of: a senior representative of MOF (Chair), a senior representative of the EU Delegation to Viet Nam (Co-chair), a representative of the German Embassy in Viet Nam, a representative of GIZ, and representatives of relevant departments and units of MOF.

As part of its prerogative of budget implementation and to safeguard the financial interests of the Union, the Commission may participate in the above governance structures set up for governing the implementation of the action.

4. PERFORMANCE MEASUREMENT

4.1. Monitoring and reporting

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process, and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and final reports. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (Outputs and direct Outcomes) as measured by corresponding indicators, using as reference the Logframe matrix (for project modality) or the partner's strategy, policy or reform action plan list (for budget support).

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring

reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

Reports shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

4.2. Evaluation

Having regard to the nature of the action, mid-term and final evaluations will be carried out for this action or its components via independent consultants contracted by the Commission.

The mid-term evaluation will be carried out for problem solving, learning purposes, in particular with respect to the effectiveness and sustainability of the action and will offer recommendations for improvement.

The final evaluation will be carried out for accountability and learning purposes at various levels (including for policy recommendation), taking into account in particular the fact that the Action supports the country's post 2020 development strategy and 2030 Sustainable Development Agenda.

The Commission shall inform the implementing partner at least one month in advance of the dates foreseen for the evaluation missions. The implementing partner shall collaborate efficiently and effectively with the evaluation experts, and inter alia provide them with all necessary information and documentation, as well as access to the project premises and activities.

The evaluation reports shall be shared with the partner country and other key stakeholders following the best practice of evaluation dissemination[2]. The implementing partner and the Commission shall analyse the conclusions and recommendations of the evaluations and, where appropriate, in agreement with the partner country, jointly decide on the follow-up actions to be taken and any adjustments necessary, including, if indicated, the reorientation of the project.

Evaluation services may be contracted under a framework contract.

4.3. Audit and Verifications

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

It is foreseen that audit and verifications services may be contracted under a framework contract.

5. COMMUNICATION AND VISIBILITY

Communication and visibility is a contractual obligation for all entities implementing EU-funded external actions to advertise the European Union's support for their work to the relevant audiences.

To that end they must comply with the instructions given in the *Communication and Visibility Requirements of 2018* (or any successor document), notably with regard to the use of the EU emblem and the elaboration of a dedicated communication and visibility plan, to be completed for every action at the start of implementation.

These obligations apply equally, regardless of whether the actions concerned are implemented by the Commission, the partner country (for instance, concerning the reforms supported through budget support), contractors, grant beneficiaries or entrusted entities. In each case, a reference to the relevant contractual obligations must be included in the respective financing agreement, procurement and grant contracts, and delegation agreements.

Communication and visibility measures may be funded from the amounts allocated to the action. For the purpose of enhancing the visibility of the EU and its contribution to this action, the Commission

[2] See best practice of evaluation dissemination

may sign or enter into joint declarations or statements, as part of its prerogative of budget implementation and to safeguard the financial interests of the Union. Visibility and communication measures should also promote transparency and accountability on the use of funds.

Effectiveness of communication activities on awareness about the action and its objectives as well as on EU funding of the action should be measured.

Implementing partners shall keep the Commission and concerned EU Delegation fully informed of the planning and implementation of specific visibility and communication activities before work starts. Implementing partners will ensure adequate visibility of EU financing and will report on visibility and communication actions as well as the results of the overall action to the relevant monitoring committees.

ANNEX II - GENERAL CONDITIONS

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Part One: Provisions Applicable to Activities for which the Partner is the Contracting Authority

Article 1 - General principles

1.1 The purpose of Part One is to define the tasks entrusted to the Partner in indirect management as described in Annex I (Technical and Administrative Provisions) and to define the rights and obligations of the Partner and of the Commission in carrying out these tasks.

Part One shall apply to the tasks related to the EU contribution alone or in combination with the funds of the Partner or of a third party where such funds are implemented in joint co-financing, i.e. where they are pooled.

These tasks encompass the implementation by the Partner as contracting authority of procedures for the award of procurement contracts, grant contracts and contribution agreements as well as the awarding, signing and enforcing of the resulting procurement contracts, grant contracts and contribution agreements. For the purpose of Part One of this Financing Agreement, every reference to grant contracts shall also include contribution agreement and every reference to grant beneficiaries shall also include organisations having signed contribution agreements.

The designation of entities pertaining to the Partner's government or administrative structure and identified in Annex I (Technical and Administrative Provisions) to carry out certain tasks, does not qualify as sub-delegation. Such entities shall respect the rights and obligations laid down in Part One for the Partner as contracting authorities, while at the same time the Partner remains fully responsible for the fulfilment of the obligations stipulated in this Financing Agreement. References in the Financing Agreement to Partner also encompass those entities.

As contracting authority, the Partner shall act under partial delegation, except when it acts under the imprest component of a programme estimate or under a Partner managed pool fund:

- Under partial delegation, the Partner acts as contracting authority for procurement contracts, grant contracts , whereby the Commission controls ex ante all award procedures and executes all related payments to the contractors and grant beneficiaries;

- Under the imprest component of a programme estimate, the Partner acts as contracting authority for procurement and grant contracts, whereby it may, up to established thresholds, conduct procurement and grant award procedures without or with limited ex ante control of the Commission and execute payments to the contractors and grant beneficiaries, as well as in the context of direct labour.

- Under a Partner managed pool fund, the Partner acts as contracting authority for procurement contracts and grant contracts, whereby the Commission does not control ex ante any award procedure and the Partner executes all related payments to the contractors and grant beneficiaries.

Where the Partner is an ACP State and the action is financed by the EDF pursuant to Article 1.1

of the Special Conditions, the tasks entrusted shall be those listed in points (c) to (k) of the sixth subparagraph of Article 35(1) and in Article 35(2) of Annex IV to the ACP-EC Partnership Agreement

Where the Partner is an OCT and the action is financed by the EDF pursuant to Article 1.1 of the Special Conditions, the implementation of tasks entrusted shall also respect the conditions of Article 86(3) of Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision).

1.2 The Partner shall remain responsible for the fulfilment of the obligations stipulated in this Financing Agreement even if it designates other entities identified in Annex I (Technical and Administrative Provisions) to carry out certain tasks. The Commission, in particular, reserves the right to suspend payments, and to suspend and/or terminate this Financing Agreement on the basis of the acts, omissions and/or situations of any designated entity.

1.3 The Partner shall set up and ensure the functioning of an effective and efficient internal control system. The Partner shall respect the principles of sound financial management, transparency, non-discrimination, visibility of the European Union in the implementation of the action and avoid situations of conflict of interest.

A conflict of interest exists where the impartial and objective exercise of the functions of any responsible person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

Internal control system is a process aimed at providing reasonable assurance that operations are effective, efficient and economical, that the reporting is reliable, that assets and information are safeguarded, that fraud and irregularities are prevented, detected and corrected, and that risks relating to the legality and regularity of the financial operation are adequately managed, taking into account the multiannual character of the activities as well as the nature of the payments concerned.

In particular, where the Partner carries out payments under the imprest component of a programme estimate or in the framework of a Partner managed pool fund, the functions of the authorising and accounting officers shall be segregated and mutually incompatible and the Partner shall operate an accounting system that provides accurate, complete, reliable and timely information.

1.4 Outside the cases where the Partner applies its own (including in the case of a Partner managed pool fund, those agreed upon by the pool fund's donors) procedures and standard documents for the award of procurement contracts and grant contracts, the Partner shall conduct the award procedures and conclude the resulting contracts and agreements in the language of this Financing Agreement.

1.5 The Partner shall take the necessary measures to ensure the visibility of EU funding for the activities entrusted to it or for other activities under this action. These measures shall either be defined in Annex I (Technical and Administrative Provisions) or shall be agreed later between the Partner and the Commission.

These communication and information measures shall comply with the Communications and Visibility Requirements for EU External Actions laid down and published by the Commission, in force at the time of the measures.

1.6 Under partial delegation and under the imprest component of a programme estimate, the Partner shall keep all relevant financial and contractual supporting documents from the date of the entry into force of this Financing Agreement or as from an earlier date which is stipulated as the start date of cost eligibility in Article 6 of the Special Conditions for five years as from the end of the execution period, in particular, the following:

Procurement procedures:

a. Forecast notice with proof of publication of the procurement notice and any corrigenda
b. Appointment of shortlist panel
c. Shortlist report (incl. annexes) and applications
d. Proof of publication of the shortlist notice
e. Letters to non-shortlisted candidates
f. Invitation to tender or equivalent
g. Tender dossier including annexes, clarifications, minutes of the meetings, proof of publication
h. Appointment of the evaluation committee
i. Tender opening report, including annexes
j. Evaluation / negotiation report, including annexes and bids received[1]
k. Notification letter
l. Supporting documents
m. Cover letter for submission of contract
n. Letters to unsuccessful candidates
o. Award / cancellation notice, including proof of publication
p. Signed contracts, amendments, riders and relevant correspondence

Calls for proposals and direct award of grants:

a. Appointment of the evaluation committee
b. Opening and administrative report including annexes and applications received[2]
c. Letters to successful and unsuccessful applicants following concept note evaluation
d. Concept note evaluation report

[1] Elimination of unsuccessful bids five years after the closure of the procurement procedure
[2] Elimination of unsuccessful applications three years after the closure of the grant procedure.

e. Evaluation report of the full application or negotiation report with relevant annexes

f. Eligibility check and supporting documents

g. Letters to successful and unsuccessful applicants with approved reserve list following full application evaluation

h. Cover letter for submission of grant contract

1. Award/cancellation notice with proof of publication

j. Signed contracts, amendments, riders and relevant correspondence.

1.7 The Partner shall ensure an appropriate protection of personal data. Personal data means any information relating to an identified or identifiable natural person.

Personal data shall be:

- Processed lawfully, fairly and in a transparent manner in relation to the data subject;
- Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- Accurate and, where necessary, kept up to date;
- Processed in a manner that ensures appropriate security of the personal data and
- Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed. Personal data included in documents to be kept by the Partner in accordance with Article 16.1 has to be deleted once the deadline set out in Article 16.1 has expired.

Any operation involving the processing of personal data, such as collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on rules and procedures of the Partner and shall only be done as far as it is necessary for the implementation of this Financing Agreement.

In particular, the Partner shall take appropriate technical and organisational security measures concerning the risks inherent in any such operation and the nature of the information relating to the natural person concerned, in order to:

a) Prevent any unauthorised person from gaining access to computer systems performing such operations, and especially unauthorised reading, copying, alteration or removal of storage media; unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored information;

b) Ensure that authorised users of an IT system performing such operations can access only the information to which their access right refers;

c) Design its organisational structure in such a way that it meets the above requirements.

Article 2 - Deadline for the signature of contracts and agreements by the Partner

2.1 The procurement contracts and grant contracts shall be signed during the operational implementation period of this Financing Agreement.

When implementing a multi-donor Action, the procurement contracts and grant contracts shall be concluded within the contracting deadline set out in the Special Conditions or set out for the imprest component of the programme estimate.

When the Action is not a multi-donor Action, procurement contracts and grant contracts shall be concluded at the latest within three years of the entry into force of this Financing Agreement.

Additional procurement contracts and grant contracts resulting from an amendment to this Financing Agreement which increases the EU contribution shall be signed at the latest within three years of the entry into force of that amendment to this Financing Agreement, or for a multi-donor Action within the fixed contracting deadline for the additional EU contribution.

The three years-deadline for non-multi-donor Actions may not be extended, except when the action is financed by the EDF. In such cases, the extension shall be stipulated in Article 6 of the Special Conditions.

2.2 However, the following transactions may be signed at any time during the operational implementation period:

a. amendments to procurement contracts and grant contracts already signed;

b. procurement contracts and grant contracts to be concluded after early termination of existing procurement contracts and grant contracts;

c. contracts relating to audit and evaluation, which may also be signed during the closure period;

d. operating costs referred to in Article 5.1;

2.3 After expiry of the deadlines referred to in Article 2.1, the financial balance for the related activities entrusted to the Partner for which contracts have not been duly signed shall be decommitted by the Commission.

2.4 No such decommitment shall apply to the funds budgeted for audit and evaluations referred to in Article 2.2.c) or the operating costs referred to in Article 2.2.d).

Likewise, no such decommitment shall apply to any financial balance of the contingency reserve or to funds available again after early termination of a contract referred to in Article 2.2.b), which both may be used to finance contracts referred to in Article 2.2.

Article 3 – Exclusion and administrative sanctions

3.1 Exclusion criteria

3.1.1 When applying the procedures and standard documents laid down and published by the Commission for the award of procurement and grant contracts, the Partner shall accordingly ensure that no EU financed procurement or grant contract is awarded to an economic operator or grant applicant if the economic operator or grant applicant either itself, or a person having powers of representation, decision making or control over it, is in one of the exclusion situations provided for in the relevant procedures and standard documents of the Commission.

3.1.2 When applying its own (including, in the case of a Partner managed pool fund, those agreed upon by the pool fund's donors) procedures and standard documents for the award of procurement and grant contracts, the Partner shall adopt measures, in accordance with its own national legislation, to ensure that no EU financed procurement or grant contract is awarded to an economic operator or grant applicant if the Partner becomes aware that these entities:

a) or persons having powers of representation, decision making or control over them, have been the subject of a final judgement or of a final administrative decision for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings;

b) or persons having powers of representation, decision making or control over them have been the subject of a final judgement or of a final administrative decision for an irregularity affecting the EU's financial interest;

c) are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information;

d) have been the subject of a final judgment or of a final administrative decision establishing that the entities have created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business;

e) have been created with the intention described in point d) above as established by a final judgment or a final administrative decision.

The Partner may take into account, as appropriate and on its own responsibility, the information contained in the Commission's Early Detection and Exclusion System when awarding procurement and grant contracts. Access to the information can be provided through the liaison point(s) or via consultation to the Commission (European Commission, Directorate-General for Budget, Accounting Officer of the Commission, BRE2-13/505, B-1049 Brussels, Belgium and by email to BUDG-C01-EXCL-DB@ec.europa.eu in copy to the Commission address identified in Article 3 of the Special Conditions). The Commission may refuse payments to a contractor or grant beneficiary in an exclusion situation.

3.2 Information duty

The Partner shall inform the Commission when an economic operator or grant applicant is in a situation referred to in Article 3.1, or has committed irregularities and fraud, or has been found in serious breach of its contractual obligations.

3.3 Administrative sanctions

Where the Partner becomes aware of one of the situations referred to in Article 3.1 in the implementation of the tasks described in Annex I, the Partner shall, under the conditions of its national legislation, impose upon the economic operator or grant applicant, an exclusion from its future procurement or grant award procedures and/or a financial penalty proportional to the value of the contract concerned. Such financial penalties or exclusions shall be imposed following an adversarial procedure ensuring the right of defence of the person concerned.

The Partner may be exempted from the obligations under the first paragraph where:

- the Partner's national legislation does not allow to impose an exclusion and/or a financial penalty,
- the protection of the EU's financial interests requires to impose an administrative sanction within deadlines incompatible with the Partner's internal procedures,
- the imposition of an administrative sanction requires a mobilisation of resources beyond the Partner's means,
- its national legislation does not allow to exclude an economic operator from all EU financed award procedures.

In such cases, the Partner will notify its impediment to the Commission. The Commission may decide to impose to the economic operator or grant applicant an exclusion from future EU financed award procedures and/or a financial penalty between 2 % and 10 % of the total value of the contract concerned.

Article 4 - Partial delegation

Award procedures

4.1 The tasks shall be carried out by the Partner in accordance with the procedures and standard documents laid down and published by the Commission for the award of procurement contracts and grant contracts, in force at the time of the launch of the procedure in question.

Ex ante control

4.2 To allow ex ante control, the Partner shall submit tender dossiers and documents for calls for proposals, to the Commission for approval before launching invitations to tender and calls for proposals. Likewise, the Partner shall invite the Commission to the opening of tenders and proposals, and shall provide the Commission with copies of tenders and proposals received. The Partner shall notify the Commission of the results of the examination of tenders and proposals and shall submit the award proposal, as well as the draft procurement contracts and grant contracts to the Commission for approval.

During the implementation of the procurement contracts and grant contracts, the Partner shall equally submit draft addenda and draft administrative orders thereto, to the Commission for prior approval.

The Partner shall invite the Commission for provisional and final acceptance.

Report / Management Declaration

4.3 If Article 5 of the Special Conditions so provides, the report on the implementation of the tasks entrusted to the Partner shall follow the template provided in Annex III and the management declaration shall follow the template provided in Annex IV. An independent external audit opinion on the management declaration, performed in accordance with internationally accepted auditing standards, does not have to be provided in this case as the Commission shall conduct the audits for this action. These audits will verify the truthfulness of the assertions made in the management declaration and the legality and regularity of the underlying transactions made.

Payment procedures

4.4 The Partner shall provide the Commission with the approved payment requests within the following deadlines, starting from the date of receipt of the payment request, not counting the periods of suspension of the time-limit for payment:

(a) for pre-financing specified in the procurement contract and grant contract:

(i) 15 calendar days for an action financed under the Budget;

(ii) 30 calendar days for an action financed under the EDF;

b) 45 calendar days for other payments

The Commission shall act in accordance with Articles 4.9 and 4.10 within the period amounting to the time-limit for payment provided for in the procurement contract and grant contracts minus the above deadlines.

4.5 Upon receipt of a payment request from a contractor, or grant beneficiary, the Partner shall inform the Commission of its receipt and shall immediately examine whether the request is admissible, i.e. whether it contains the identification of that contractor or grant beneficiary, the contract or agreement concerned, the amount, the currency and the date. If the Partner concludes that the request is inadmissible, it shall reject it and inform the contractor or grant beneficiary of this rejection and of its reasons within 30 days of receipt of the request. The Partner shall also inform the Commission of this rejection and its reasons.

4.6 Upon receipt of an admissible payment request, the Partner shall examine whether a payment is due, i.e. whether all contractual obligations justifying the payment have been fulfilled, including examining a report, where applicable. If the Partner concludes that a payment is not due, it shall inform the contractor or grant beneficiary thereof and of the reasons. The dispatch of this information suspends the time-limit for payment. The Commission shall receive a copy of the information so dispatched. The Commission shall also be informed of the reply or corrective action of the contractor or grant beneficiary. That reply or action aimed at correcting the non-compliance with its contractual obligations shall restart the time-limit for payment. The Partner shall examine this reply or action pursuant to this paragraph.

4.7 If the Commission disagrees with the Partner's conclusion that a payment is not due, it shall inform the Partner thereof. The Partner shall re-examine its positions and, if it concludes that the payment is due, it shall inform thereof the contractor or, grant beneficiary. The suspension of the time-limit for payment shall be lifted upon dispatch of this information. The Partner shall also inform the Commission. The Partner shall further proceed as provided for in Article 4.8.

If disagreement between the Partner and the Commission persists, the Commission may pay the undisputed part of the invoiced amount provided that it is clearly separable from the disputed amount. It shall inform the Partner and the contractor or grant beneficiary of this partial payment.

4.8 Where the Partner concludes that the payment is due, it shall transfer the payment request and all necessary accompanying documents to the Commission for approval and payment. It shall provide an overview of how many days of the time-limit for payment are left and of all periods of suspension of this time-limit.

4.9 After transfer of the payment request pursuant to Article 4.8, if the Commission concludes that the payment is not due, it shall inform the Partner and, in copy, the contractor or grant beneficiary thereof and of the reasons. Informing the contractor or grant beneficiary shall have the effect of suspending the time-limit for payment, as provided for in the contract concluded. A reply or corrective action of the contractor or grant beneficiary shall be treated by the Partner in accordance with Article 4.6.

4.10 Where the Partner and the Commission conclude that the payment is due, the Commission shall execute the payment.

4.11 Where late-payment interest is due to the contractor or grant beneficiary, it shall be allocated between the Partner and the Commission pro rata to the days of delay in excess of the time limits stipulated in Article 4.4, subject to the following:

(a) the number of days used by the Partner is calculated from the date of the registration of an admissible payment request referred to in Article 4.6 to the date of the transfer of the request to the Commission referred to in Article 4.8 and from the date of information by the Commission referred to Article 4.9 to the following transfer of the request to the Commission referred to in Article 4.8. Any period of suspension of the time-limit for payment shall be deducted.

(b) the number of days used by the Commission is calculated from the date following that of transfer of the request by the Partner referred to in Article 4.8 to the date of payment and from the date of transfer to the date of informing the Partner pursuant to Article 4.9.

4.12 Any circumstances unforeseen by the above procedure shall be solved in a spirit of cooperation between the Partner and the Commission by analogy to the above provisions while respecting the contractual relations of the Partner with the contractor or grant beneficiary.

Where feasible, one party shall cooperate at the request of the other party in providing useful information for the assessment of the payment request, even before the payment request is formally transferred to or returned from the first party.

4.13 A procurement contract or grant contract which has not given rise to any payment within two years of its signature shall be automatically terminated and its funding shall be decommitted, except in case of litigation before judicial courts or arbitral bodies.

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Article 5 - Imprest component of the programme estimate

Application

5.1 The programme estimate is a document laying down the programme of activities to be carried out and the human and material resources required, the corresponding budget and the detailed technical and administrative implementing arrangements for the execution of these operational activities over the operational implementation period of this Financing Agreement.

The programme estimate implementing the Financing Agreement must respect the procedures and standard documents concerning programme estimates laid down by the Commission, in force at the time of the adoption of the programme estimate in question.

The body implementing those operational activities within the programme estimate, may be the central government of the Partner itself (central operations) or a commissioned public law or private law body with a public-service mission (public commissioned operations) or, under EDF only, a private law body without a public-service mission on the basis of a service contract (private commissioned operations).

The programme estimate shall have an imprest component and may have a component of specific commitments.

Under the component of specific commitments, Article 4 shall apply.

Under the imprest component of the programme estimate, the implementing body may, up to established thresholds, conduct procurement and grant award procedures without or with limited ex ante control of the Commission and execute payments to the contractors and grant beneficiaries, as well as in the context of direct labour.

Direct labour relates to the operational activities which the implementing body executes directly using staff it employs and/or its existing resources (machinery, equipment, other inputs).

The operating costs incurred by the implementing body may be eligible for EU financing under the imprest component of the programme estimate. If so, they shall be eligible for EU financing during the entire duration of the execution period of this Financing Agreement, unless an earlier start of cost eligibility is stipulated in Article 6 of the Special Conditions. Operating costs are costs of the implementing body incurred in carrying out implementation tasks and include local staff, utilities (e.g. water, gas, and electricity), rental of premises, consumables, maintenance, short-term business trips and fuel for vehicles. They shall not include procurement of vehicles or of any other equipment, or any operational activity. Such ordinary operating costs may be charged and paid in accordance with the implementing body's own procedures.

Award procedures

5.2 Under the imprest component of the programme estimate, the implementing body may carry out, totally or partially, the award procedures for procurement and grant contracts in accordance with its own procedures and standard documents, to the extent that prior evidence is obtained by the Commission that the Partner's implementing body:

- ensures the functioning of an effective and efficient internal control system, and
- applies appropriate rules and procedures for procurement and/or grants.

To the extent that no such evidence is obtained, the award procedures for procurement and grant contracts shall be carried out by the implementing body in accordance with the procedures and standard documents laid down and published by the Commission, in force at the time of the launch of the procedure in question.

Ex ante control

5.3 Under the imprest component, unless the Technical and Administrative Arrangements of the programme estimate stipulate otherwise, the implementing body shall submit to the Commission for prior approval, the tender dossiers and proposals for award decision of procurement contracts whose value exceeds 100,000 EUR, as well as all guidelines for applications and proposals for award decisions of grant contracts, which follow the procedures and standard documents laid down and published by the Commission.

In addition to the record-keeping obligations laid down in Article 1.6 of these General Conditions, the Partner shall, during the same period, keep all relevant financial and contractual supporting documents.

Management declaration

5.4 The Partner shall submit to the Commission annually, by the date stipulated in Article 6 of the Special Conditions, a management declaration signed by the Partner using the template in Annex IV.

An independent external audit opinion on the management declaration, performed in accordance with internationally accepted auditing standards, does not have to be provided in this case as the Commission shall conduct the audits for this action. These audits will verify the truthfulness of the assertions made in the management declaration and the legality and regularity of the underlying transactions made.

Payments

5.5 The Commission shall transfer the first pre-financing instalment, upon signature of the programme estimate by all parties, within 60 calendar days where the programme estimate is financed by the EDF and 30 calendar days where it is financed from the EU Budget,

The Commission shall pay the further pre-financing instalments within 60 calendar days of receiving and approving the payment request and its reports.

Late-payment interest shall be due pursuant to the applicable Financial Regulation. The time-limit for the payment may be suspended by the Commission by informing the Partner, at any time during the period referred to above, that the payment request cannot be met, either because

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the amount is not due or because the appropriate supporting documents have not been produced. If information which puts in doubt the eligibility of expenditure appearing in a payment request comes to the notice of the Commission, the Commission may suspend the time-limit for the payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The suspension and the reasons for it shall be communicated to the Partner as soon as possible. The time-limit for the payment shall resume once the missing supporting documents have been provided or the payment request has been corrected.

5.6 The Commission shall make payments to a bank account opened at a financial institution accepted by the Commission.

5.7 The Partner shall guarantee that funds paid by the Commission can be identified in this bank account.

5.8 Transfers in euro shall, if necessary, be converted into the Partner's national currency as and when payments have to be made by the Partner, at the bank rate in force on the day of payment by the Partner.

Article 6 – Pool fund managed by the Partner

Application

6.1 The Partner managing a pool fund, may be eligible for an EU Contribution to that pool fund, to the extent that prior evidence is obtained by the Commission that the managing entity within the Partner:

- ensures the functioning of an effective and efficient internal control system,
- uses an accounting system that provides accurate, complete and reliable information in a timely manner;
- is subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of the entity or person concerned;
- applies appropriate rules and procedures for procurement and grants;
- ensures the ex post publication of information on recipients; and
- ensures a reasonable protection of personal data.

Award procedures

6.2 As regards the EU Contribution to a Partner managed pool fund, the managing entity within the Partner shall carry out the tasks in accordance with its own procedures and standard documents for the award of procurement and grant contracts, or with those agreed upon among the donors.

Implementation

6.3 As regards the EU Contribution to a Partner managed pool fund, in addition to the rights and obligations already laid down in these General Conditions, further rules detailed in Annex V to the Financing Agreement shall apply to the Partner for the implementation of the EU Contribution to the pool fund.

Article 7 - Publication of information on procurement and grant contracts by the Partner

7.1 The Partner undertakes to publish each year in a dedicated and easily accessible place of its internet site, for each procurement and grant contract for which it is contracting authority under the imprest component of the programme estimate referred to in Article 5 and the pool funds referred to in Article 6, its nature and purpose, the name and locality of the contractor (contractors in case of a consortium) or grant beneficiary (grant beneficiaries in case of a multi-beneficiary grant), as well as the amount of the contract.

The locality of a natural person shall be a region at NUTS2 level. The locality of a legal person shall be its address.

If such internet publication is impossible, the information shall be published by any other appropriate means, including the official journal of the Partner.

Article 6 of the Special Conditions shall stipulate the location, on the internet or otherwise, of the place of publication; reference shall be made to this location in the dedicated place of the internet site of the Commission.

7.2 Education support and direct financial support to natural persons most in need shall be published anonymously and in an accumulated manner by category of expenditure.

Names of natural persons shall be replaced by "natural person" two years after publication. The name of a legal entity containing that of a natural person involved in this entity shall be treated as a natural person's name.

Publication of names of natural persons shall be waived if such publication risks violating their fundamental rights or damaging their commercial interests.

The Partner shall present a list of data to be published on natural persons with any justifications for proposed waivers of publication to the Commission which must grant prior authorisation to this list. Where necessary, the Commission shall complete the locality of the natural person limited to a region at NUTS2 level.

7.3 Publication of the procurement and grant contracts concluded (i.e. signed by the Partner and the contractor or grant beneficiary) during the reporting period shall take place within six months following the date for submitting the report pursuant to Article 6 of Special Conditions.

7.4 Publication of contracts may be waived if such publication risks harming the commercial interests of contractors or grant beneficiaries. The Partner shall present a list with such justifications to the Commission which must grant prior authorisation to such publication

waiver.

7.5 Where the Commission carries out payments to contractors or grant beneficiaries pursuant to Article 4, it shall ensure the publication of information on procurement contracts and grant contracts according to its rules.

Article 8 - Recovery of funds

8.1 The Partner shall take any appropriate measures to recover the funds unduly paid.

Amounts unduly paid and recovered by the Partner, amounts from financial guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed by the Partner, as well as damages awarded to the Partner shall be returned to the Commission.

8.2 Without prejudice to the above responsibility of the Partner to recover funds unduly paid, the Partner agrees that the Commission may, in accordance with the provisions of the Financial Regulation applicable and this Financing Agreement, formally establish an amount as being unduly paid under procurement contracts and grant contracts financed under Part One and proceed to its recovery by any means on behalf of the Partner, including by offsetting the amount owed by the contractor or grant beneficiary against any of its claims against the EU and by forced recovery before the competent courts.

8.3 To this end, the Partner shall provide to the Commission all the documentation and information necessary. The Partner hereby empowers the Commission to carry out the recovery in particular by calling on a guarantee of a contractor or grant beneficiary of which the Partner is the contracting authority or by offsetting the funds to be recovered against any amounts owed to the contractor or grant beneficiary by the Partner as contracting authority and financed by the EU under this or another Financing Agreement or by forced recovery before the competent courts.

8.4 The Commission shall inform the Partner that the recovery proceedings have been initiated (including where necessary before a national court).

8.5 Where the Partner is a grant beneficiary of an entity with which the Commission concluded a contribution agreement, the Commission may recover funds from the Partner which are due to the entity but which the entity was not able to recover itself.

Article 9 - Financial claims under procurement and grant contracts

The Partner undertakes to confer with the Commission before taking any decision concerning a request for compensation made by a contractor or grant beneficiary and considered by the Partner to be justified in whole or in part. The financial consequences may be borne by the EU only where the Commission has given its prior authorisation. Such prior authorisation is also required for any use of funds committed under the present Financing Agreement to cover costs arising from disputes relating to contracts.

Article 10 - Cost overruns and ways of financing them

10.1 Individual overruns of the budget headings of the activities implemented by the Partner shall be dealt with by reallocating funds within the overall budget, in accordance with Article 25 of these General Conditions.

10.2 Wherever there is a risk of overrunning the amount foreseen for the activity implemented by the Partner, the Partner shall immediately inform the Commission and seek its prior authorisation for the corrective activities planned to cover the overrun, proposing either to scale down the activities or to draw on its own or other non-EU resources.

10.3 If the activities cannot be scaled down, or if the overrun cannot be covered either by the Partner's own resources or other resources, the Commission may, at the Partner's duly substantiated request, decide to grant additional EU financing. Should the Commission take such a decision, the excess costs shall be financed, without prejudice to the relevant EU rules and procedures, by the release of an additional financial contribution to be set by the Commission. This Financing Agreement shall be amended accordingly.

Part Two: Provisions Applicable to Budget Support

Article 11 - Policy dialogue

The Partner and the EU commit to engage in a regular constructive dialogue at the appropriate level on the implementation of this Financing Agreement.

Where the Partner is an ACP State and this action is financed under the EDF pursuant to Article 1.1 of the Special Conditions, this dialogue may form a part of the broader political dialogue provided for in Article 8 of the ACP-EC Partnership Agreement.

Article 12 - Verification of conditions and disbursement

12.1. The Commission shall verify the conditions for the payment of the tranches of the budget support component, as identified in Annex I (Technical and Administrative Provisions).

Where the Commission concludes that the conditions for payment are not fulfilled, it shall inform the Partner thereof without undue delay.

12.2. Disbursement requests submitted by the Partner shall be eligible for EU financing provided that they are in accordance with the provisions set out in Annex I (Technical and Administrative Provisions) and that they are submitted during the operational implementation period.

12.3. The Partner shall apply its national foreign exchange regulations in a nondiscriminatory manner to all disbursements of the budget support component.

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Article 13 - Transparency of budget support

The Partner hereby agrees to the publication by the Commission, of this Financing Agreement and any amendment thereof, including by electronic means, and of such basic information on the budget support which the Commission deems appropriate. Such publication shall not contain any data in violation of the EU laws applicable to the protection of personal data.

Article 14 - Recovery of budget support

All or part of the budget support disbursements may be recovered by the Commission, with due respect to the principle of proportionality, if the Commission establishes that payment has been vitiated by a serious irregularity attributable to the Partner, in particular if the Partner provided unreliable or incorrect information, or if corruption or fraud was involved.

Part Three: Provisions Applicable to this Action as a Whole, Irrespective of the Management Mode

Article 15 - Execution period and contracting deadline

15.1 The execution period of this Financing Agreement shall comprise two periods:

- an operational implementation period, in which the operational activities of the action are carried out. This period shall start on the entry into force of this Financing Agreement or on the date stipulated in the Special Conditions and end with the opening of the closure period.
- a closure period, during which final audit and evaluation are carried out and contracts and the programme estimate for the implementation of this Financing Agreement are technically and financially closed. The duration of this period is stipulated in Article 2.3 of the Special Conditions. It starts after the end of the operational implementation period.

These periods shall be reflected in the agreements to be concluded by the Partner and by the Commission in the implementation of this Financing Agreement, in particular in contribution agreements and procurement and grant contracts.

15.2 Costs related to the operational activities shall be eligible for EU financing only if they have been incurred during the operational implementation period; the costs incurred before the entry into force of this Financing Agreement shall not be eligible for EU financing unless provided otherwise in Article 6 of the Special Conditions. Costs related to final audits and evaluation, to closure activities and operating costs referred to in Article 5.1 shall be eligible until the end of the closure period.

15.3 Any balance remaining from the EU contribution shall be automatically decommitted no later than six months after the end of the execution period.

15.4 In exceptional and duly substantiated cases, a request may be made for the extension of the operational implementation period or the closure period, as well as correlatively of the execution period. If agreed upon, the Financing Agreement shall be amended accordingly.

15.5 Article 2 of these General Conditions shall apply to procurement contracts, grant contracts and contribution agreements awarded by the Commission as contracting authority with the exception of the last subparagraph of Article 2.1.

Article 16 - Verifications and checks by the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors

16.1 The Partner shall assist and support the verifications and checks carried out by the Commission, OLAF and the European Court of Auditors at their request.

The Partner agrees to the Commission, OLAF and the European Court of Auditors conducting documentary and on-the-spot controls on the use made of EU financing under the activities under this Financing Agreement and carrying out a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the activities, throughout the duration of this Financing Agreement and for five years from the end of the execution period.

16.2 The Partner also agrees that OLAF may carry out on-the-spot checks and verifications in accordance with the procedures laid down by EU law for the protection of the EU's financial interests against fraud and other irregularities.

To that end, the Partner shall grant officials of the Commission, OLAF and the European Court of Auditors and their authorised agents access to sites and premises at which operations financed under this Financing Agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access by authorised agents of the Commission, OLAF and the European Court of Auditors shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the Partner being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.

16.3 The checks and audits described above shall also apply to contractors, grant beneficiaries, organisations having signed contribution agreements and subcontractors who have received EU financing.

16.4 The Partner shall be notified of on the spot missions by agents appointed by the Commission, OLAF or the European Court of Auditors.

Article 17 - Tasks of the Partner in fighting irregularities, fraud and corruption

17.1 The Partner shall immediately inform the Commission of any element brought to its attention which arouses suspicions of irregularities, fraud or corruption and of any measure taken or planned to deal with them.

17.2 The Partner shall ensure and check regularly that the actions financed from the budget are

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effectively carried out and implemented correctly. It shall take appropriate measures to prevent, detect and correct irregularities and fraud and where necessary, bring prosecutions and recover funds unduly paid.

"Irregularity" shall mean any infringement of this Financing Agreement, implementing contracts and programme estimate or of EU law resulting from an act or omission by anyone who has, or would have, the effect of prejudicing the funds of the EU, either by reducing or losing revenue owed to the EU, or by an unjustified item of expenditure.

"Fraud" shall mean any intentional act or omission concerning:

- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of funds from the general budget of the EU or the EDF;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they are originally granted.

17.3 The Partner undertakes to take every appropriate measure to prevent, detect and punish any practices of active or passive corruption during the implementation of the Financing Agreement.

"Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the EU's financial interests.

"Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the EU's financial interests.

17.4 If the Partner does not take appropriate measures to prevent fraud, irregularities and corruption, the Commission may adopt precautionary measures including the suspension of this Financing Agreement.

Article 18 - Suspension of payments

18.1 Without prejudice to the suspension or termination of this Financing Agreement according to Articles 26 and 27, respectively, the Commission may suspend payments partially or fully, if:

a) the Commission has established or has serious concerns that, on the basis of information it received, and needs to verify, the Partner has committed substantial errors, irregularities or fraud in the procurement and grant award procedure or in the implementation of the action, or the Partner has failed to comply with its obligations under this Financing Agreement, including obligations regarding the implementation of the Communication and Visibility plan;

b) the Commission has established or has serious concerns that, on the basis of information it received, and needs to verify, the Partner has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under this or other Financing Agreements, provided that those errors, irregularities, fraud or breach of obligations have a material impact on the implementation on this Financing Agreement or call into question the reliability of the Partner's internal control system or the legality and regularity of the underlying expenditure;

c) the Commission suspects that the Partner committed substantial errors, irregularities, fraud or breach of obligations in the procurement and grant award procedure or in the implementation of the action and needs to verify whether they have occurred.

d) it is necessary to prevent significant damage to the financial interests of the EU.

18.2 The Commission shall immediately inform the Partner about the suspension of payments and of the reasons for this suspension.

18.3 The suspension of payments shall have the effect of suspending payment time-limits for any payment request pending.

18.4 In order to resume payments the Partner shall endeavour to remedy the situation leading to the suspension as soon as possible and shall inform the Commission of any progress made in this respect. The Commission shall, as soon as it considers that the conditions for resuming payments have been met, inform the Partner thereof.

Article 19 - Allocation of funds recovered by the Commission to the action

Where the action is financed under the EDF, amounts unduly paid and recovered by the Commission, amounts from financial guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed, as well as damages awarded to the Commission shall be allocated to this action.

Article 20 - Right of establishment and residence

20.1 Where justified by the nature of the procurement contract, grant contract or contribution agreement, the Partner shall entitle natural and legal persons participating in invitations to tender for works, supply or service contracts or calls for proposals and organisations expected to sign contribution agreements with a provisional right of establishment and residence in the Partner's territory(ies). This right shall remain valid for one month after the contract is awarded.

20.2 The Partner shall also entitle procurement contractors, grant beneficiaries, organisations having signed contribution agreements and natural persons whose services are required for the performance of this action and members of their families with similar rights during the implementation of the action.

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Article 21 - Tax and customs provisions and foreign exchange arrangements

21.1 The Partner shall apply to procurement contracts, grants contracts and contribution agreements financed by the EU the most favoured tax and customs arrangements applied to States or international development organisations with which it has relations.

Where the Partner is an ACP State, account shall not be taken of arrangements applied by it to the other ACP States or to other developing countries for the purpose of determining the most-favoured-State treatment.

21.2 Where a Framework Agreement is applicable, which includes more detailed provisions on this subject, these provisions shall apply as well.

Article 22 - Confidentiality

22.1 The Partner agrees that documents and information related to the Action and held by any entity may be forwarded to the Commission, by that entity, for the sole purpose of implementing this or another Financing Agreement.

22.2 Without prejudice to Article 16 of these General Conditions, the Partner and the Commission shall preserve the confidentiality of any document, information or other material directly related to the implementation of this Financing Agreement that is classified as confidential.

22.3 The Parties shall obtain each other's prior written consent before publicly disclosing such information.

22.4 The Parties shall remain bound by the confidentiality until five years after the end of the execution period.

22.5 The Partner shall also comply with the obligations under Article 1.7 where the Commission provides personal data to the Partner, for example in the context of procedures and contracts managed by the Commission.

Article 23 - Use of studies

The contract related to any study financed under this Financing Agreement shall include the right for the Partner and for the Commission to use the study, to publish it and to disclose it to third parties.

Article 24 - Consultation between the Partner and the Commission

24.1 The Partner and the Commission shall consult each other before taking any dispute relating to the implementation or interpretation of this Financing Agreement further pursuant to Article 28 of these General Conditions.

24.2 Where the Commission becomes aware of problems in carrying out procedures relating to management of this Financing Agreement, it shall establish all necessary contacts with the

Partner to remedy the situation and take any steps that are necessary.

24.3 The consultation may lead to the amendment, suspension or termination of this Financing Agreement.

24.4 The Commission shall regularly inform the Partner of the implementation of activities described in Annex I which do not fall under Parts One and Two of these General Conditions.

Article 25 - Amendment of this Financing Agreement

25.1 Any amendment of this Financing Agreement shall be made in writing, including an exchange of letters.

25.2 If the request for an amendment comes from the Partner, the latter shall submit that request to the Commission at least three months before the amendment is intended to enter into force, except in cases which are duly substantiated by the Partner and accepted by the Commission. In the exceptional cases of an adjustment of the objectives of the action and/or an increase in the EU contribution, such request shall be submitted at least six months before the amendment is intended to enter into force.

25.3 If the adjustment both does not significantly affect the objectives of the activity implemented pursuant to Part One of these General Conditions, and if it concerns matters of detail which do not affect the technical solution adopted, and if it does not include the reallocation of funds, or if it concerns reallocations of funds for an amount equivalent to the amount of the contingency reserve, the Partner shall inform the Commission of the adjustment and its justification in writing as soon as possible and may apply that adjustment.

25.4 The use of the contingency reserve provided for an action shall be subject to the Commission's prior written approval.

25.5 Where the Commission considers that the Partner ceases to perform satisfactorily the tasks entrusted pursuant to Article 1.1 of these General Conditions and without prejudice to Articles 26 and 27 of these General Conditions, the Commission may decide to retake the tasks entrusted from the Partner in order to continue the implementation of the activities on behalf of the Partner after informing the latter in writing.

Article 26 - Suspension of this Financing Agreement

26.1 The Financing Agreement may be suspended in the following cases:

- The Commission may suspend the implementation of this Financing Agreement if the Partner breaches an obligation under this Financing Agreement.
- The Commission may suspend the implementation of this Financing Agreement if the Partner breaches any obligation set under the procedures and standard documents referred to in Articles 1, 4, 5 and 6 of these General Conditions.
- The Commission may suspend this Financing Agreement if the Partner fails to observe the principles of democracy, the rule of law or good governance, or respect for human rights and

fundamental freedoms or for internationally recognised nuclear safety standards, in serious cases of corruption or if the Partner is guilty of grave professional misconduct proven by any justified means. Grave professional misconduct is to be understood as any of the following:

- a violation of applicable laws or regulations or ethical standards of the profession to which a person or entity belongs, or
- any wrongful conduct of a person or entity which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

- This Financing Agreement may be suspended in cases of force majeure, as defined below. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by a case of force majeure of which the other party is duly informed. A party faced with force majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage. Neither of the Parties shall be held liable for breach of its obligations under this Financing Agreement if it is prevented from fulfilling them by force majeure, provided it takes measures to minimise any possible damage.
- In cases such as crisis or change of position at national level (e.g. on its policy priorities).

26.2 The Commission may suspend this Financing Agreement without prior notice.

26.3 The Commission may take any appropriate precautionary measure before suspension takes place.

26.4 When the suspension is notified, the consequences for the on-going procurement and grant contracts, contribution agreements and programme estimate shall be indicated.

26.5 A suspension of this Financing Agreement is without prejudice to the suspension of payments and termination of this Financing Agreement by the Commission in accordance with Article 18 and 27 of the General Conditions.

26.6 The parties shall resume the implementation of the Financing Agreement once the conditions allow with the prior written approval of the Commission. This is without prejudice to any amendments of this Financing Agreement which may be necessary to adapt the action to the new implementing conditions, including, if possible, the extension of the operational implementation period, or the termination of this Financing Agreement in accordance with Article 27.

Article 27 - Termination of this Financing Agreement

27.1. If the issues which led to the suspension of this Financing Agreement have not been resolved

within a maximum period of 180 days, either party may terminate this Financing Agreement at 30 days' notice.

27.2. Without prejudice to Article 27.1 above, if at any time, the Commission believes that the purpose of this Financing Agreement can no longer effectively or appropriately performed, this Financing Agreement may be terminated by serving (30) thirty days written motivated notice.

27.3. This Financing Agreement shall be automatically terminated, if no implementing contract has been signed within the deadlines of Article 2.

27.4 The consequences of such terminations on the ongoing activities may be analysed, where relevant, and determined on a case by case basis.

Article 28 - Dispute settlement arrangements

28.1 Any dispute concerning this Financing Agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 24 of these General Conditions may be settled by arbitration at one of the parties' request.

Where the Partner is an ACP State or an ACP regional body or organisation and this action is financed under the EDF, the dispute shall be submitted, prior to arbitration and after the consultations provided for in Article 24 of these General Conditions, to the ACP-EC Council of Ministers, or, between its meetings, to the ACP-EC Committee of Ambassadors, pursuant to Article 98 of the ACP-EC Partnership Agreement. If the Council or Committee does not succeed in settling the dispute, either party may request settlement of the dispute by arbitration in accordance with Articles 28.2, 28.3 and 28.4.

28.2 Each party shall designate an arbitrator within 30 days of the request for arbitration. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration (The Hague) to designate a second arbitrator. The two arbitrators shall in their turn designate a third arbitrator within 30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.

28.3 The procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.

28.4 Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.