

# **FINANCING AGREEMENT**

## **SECTOR REFORM CONTRACT**

### **SPECIAL CONDITIONS**

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

of the one part, and

Government of Georgia, hereinafter referred to as "**the Beneficiary**",

of the other part,

have agreed as follows:

#### **Article 1 – Nature of the action**

- 1.1. The EU agrees to finance and the Beneficiary agrees to accept the financing of the following budget support action:

#### **Support to EU-Georgia DCFTA and SMEs ENI/2014/037-381**

This action is financed from the EU Budget under the following basic act: European Neighbourhood Instrument

- 1.2. The total estimated cost of this action is EUR 45 033 940 and the maximum EU contribution to this action is set at EUR 44 533 940.

This budget support action is composed of:

- (a) a budget support component with a maximum EU contribution of EUR 25 000 000;
- (b) a complementary support component with a total estimated cost of EUR 20 033 940 and a maximum EU contribution of EUR 19 533 940.

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

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Estimated co-financing by potential grant beneficiaries to the complementary support component: EUR 500 000.

## **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 84 months after this date.
- 2.2. The duration of the operational implementation phase is fixed at 60 months.
- 2.3. The duration of the closure phase 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 identified in Article 1.1 of these Special Conditions and shall be sent to the following addresses:

### **a) for the Commission**

Mr Janós Herman  
Head of the EU Delegation to Georgia  
38, Nino Chkheidze Street  
0102 Tbilisi – Georgia  
Email: Delegation-georgia@eeas.europa.eu

### **b) for the Beneficiary**

Mr David Bakradze  
State Minister for European and Euro-Atlantic Integration  
7, Ingorovka Street  
Tbilisi - Georgia  
Email: office@eu-nato.gov.ge

## **Article 4 – OLAF contact point**

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

Mr. Lasha Tordia  
Auditor General  
0144, Tbilisi: N96, Saint Queen Ketevan Avenue  
Tel: (+995 32) 243 84 38 (178)  
Fax: (+995 32) 243 81 60  
E-mail: sao@sao.ge

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## **Article 5 - Annexes**

5.1. This Financing Agreement 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;
- (d) Annex III: Reporting Template - not applicable to and not included in this Financing Agreement;
- (e) Annex IV: Management Declaration Template - not applicable to and not included in this Financing Agreement.

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)**

The foreign exchange transfers will be accounted for under the value date of the notification of credit to the Treasury account to the National Bank of Georgia. The exchange rate will be the standard National Bank of Georgia rate for incoming transfers on the value date of the notification of credit.

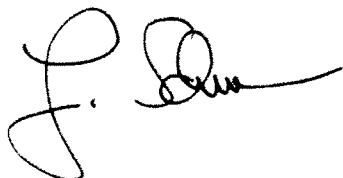
## **Article 7 – Entry into force**

This Financing Agreement shall enter into force on the date on which it is signed by the last party but not later than 31 December 2015.

Done in two original copies, one copy being handed to the Commission and one to the Beneficiary.

FOR THE COMMISSION

Gerhard Schumann-Hitzler  
Director Neighbourhood East  
Directorate-General for Neighbourhood  
and Enlargement Negotiations

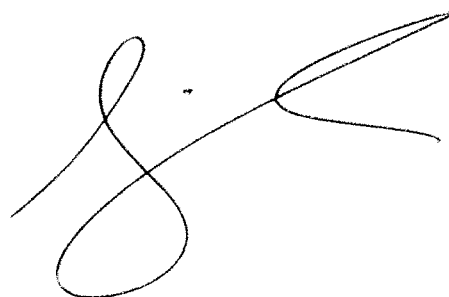


Date

13. 01. 2015

FOR THE BENEFICIARY

David Bakradze  
State Minister for European  
and Euro-Atlantic Integration  
National Co-ordinator of EU  
Assistance Programmes



Date

13. 01. 2015

# ANNEX I TO FINANCING AGREEMENT N° ENI/2014/037-381

## TECHNICAL AND ADMINISTRATIVE PROVISIONS

<b>PARTNER COUNTRY / REGION</b>	GEORGIA		
<b>BUDGET HEADING</b>	21.030202		
<b>TITLE/CRIS NR</b>	Support to EU-Georgia DCFTA and SMEs <b>CRIS number: ENI/2014/037-381</b>		
<b>TOTAL COST</b>	Total amount of EU budget contribution is <b>EUR 44 533 940</b> , of which  - <b>EUR 25 000 000 for budget support</b>  - <b>EUR 19 533 940 for complementary support</b>		
<b>BUDGET SUPPORT</b>			
<b>AID METHOD/MANAGEMENT MODE AND TYPE OF FINANCING</b>	Direct management implemented by the Commission as the Contracting Authority / Sector Reform Contract		
<b>DAC-CODE</b>	33110	<b>SECTOR</b>	Trade policy and administrative management
	32130		Small and medium-sized enterprises (SME) development
<b>COMPLEMENTARY SUPPORT</b>			
<b>AID METHOD/MANAGEMENT MODE AND TYPE OF FINANCING</b>	Direct management implemented by the Commission as the Contracting Authority (grants – calls for proposal, Twinning; procurement of services).  Indirect management with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH as the Contracting Authority  Indirect management with European Bank for Reconstruction and Development (EBRD) as the Contracting Authority		
<b>DAC-CODE</b>	33110	<b>SECTOR</b>	Trade policy and administrative management
	32130		Small and medium-sized enterprises (SME) development

### 1. DESCRIPTION

#### 1.1. Objectives

The **overall objective** of the proposed programme is to assist the Georgian Government in the implementation process of the Deep and Comprehensive Free Trade Area (DCFTA), facilitating Georgia's economic integration into the EU market. In order to reap the benefits of the agreement, institutional and regulatory reforms in trade and private sector development are instrumental, with a particular focus on strengthening the capacities of Georgian SMEs to adjust to a new regulatory environment.

The **specific objectives** are: (1) to further strengthen the DCFTA policy framework for trade and SME development; (2) to improve the overall functioning of priority trade and private-sector related institutions;

(3) to strengthen economic actors and SMEs along the DCFTA process; (4) to ensure economic integration of targeted groups, such as returned migrants, women in business and young entrepreneurs.

## **1.2. Expected results**

The programme is expected to reach the following results in relation to each specific objective.

### **R1: Strengthened DCFTA and SME policy frameworks**

- Trade-related policy areas implemented following an agreed timeframe and sequencing (such as Sanitary and Phyto-Sanitary (SPS) Legislative Approximation Programme, Market Surveillance Action Plan, competition, public procurement);
- Regulatory and institutional framework for Small and Medium-sized enterprises (SME) developed, aligned with DCFTA policy orientations and Small Business Act (SBA) policy recommendations;
- Cooperation mechanisms between state institutions and stakeholders involved in trade and SME policy-making ensured.

### **R2: Strengthened capacities of DCFTA-related priority institutions**

- Improved institutional capacities of line ministries and core trade institutions to design and implement specific measures related to DCFTA;
- Trade institutions capable to master legal, technical and administrative duties;
- Enhanced cooperation between line ministries, trade institutions and stakeholders (including consumers associations and businesses) involved in DCFTA-related aspects;
- Strengthened public-private policy dialogue: improved cooperation between relevant Georgian-EU bodies, leading to their future integration within the corresponding EU network, where possible;
- Improved awareness and communication of DCFTA long-term benefits.

### **R3: Strengthened capacities of SMEs-related institutions**

- Improved institutional capacities of central administrations to design and implement specific measures within the SMEs context;
- Strengthened capacities of SMEs bodies/agencies (Entrepreneurships Development Agency) to meet DCFTA requirements and to channel business support to SMEs;
- Strengthened public-private policy dialogue: improved cooperation between line ministries, SMEs bodies/agencies and stakeholders (including business and sectoral associations) involved in SMEs/DCFTA related areas;
- Facilitating the integration of Georgian SMEs bodies/agencies into EU, regional and/or international platforms;
- Awareness raising activities to promote DCFTA/business in accordance to market needs are improved.

### **R4: Strengthened economic actors and SMEs**

- SMEs understand DCFTA provisions and are able to adapt to new norms;
- Strengthened SMEs competitiveness (in terms of business activity, export, employment);
- Improved capacity of business and sector association, business services providers, Civil Society Organizations (CSOs) to provide effective services to SMEs and the population at large;
- Awareness raising activities, involving CSOs, businesses and citizens, are improved.

### **R5: Enhanced economic opportunities for all**

- Improved economic capacity of special target groups (returned migrants, women and young entrepreneurship) to benefit from DCFTA;
- New income-generating activities, including more and better paid jobs, available to target groups (including women and young entrepreneurs).

## **1.3. Main activities**

The main activities to implement the budget support package are budget support dialogue and policy dialogue, financial transfer, performance assessment, reporting and capacity development.

### **1.3.1. Budget Support**

This component covers engagement in dialogue around conditions and government reform priorities, the verification of conditions and the payment of budget support.

Budget support will be provided for achieving results R1 (strengthened DCFTA and SME policy frameworks), R2 (strengthened capacities of trade-related institutions), R3 (strengthened capacities of SME-related institutions).

### **1.3.2. Complementary support**

A considerable amount is foreseen for complementary support to cover a comprehensive range of issues relating to trade and private sector development. The main activities related to the complementary support include:

- Technical assistance to accompany the programme (high level policy advice and expertise in trade-related matters)
- Grants to strengthen the role of CSOs and business associations, building on previous support already provided at regional level
- Twinning to strengthen the capacities of the market surveillance agency (Technical and Construction Supervision Agency)
- Indirect Management with one international organization (EBRD) and with an EU Member State Agency (GIZ)
- External reviews, evaluation and audit missions, visibility and communication of the Sector Reform Contract (SRC).

Technical assistance will cover needs in relation with trade policy, trade reform, the DCFTA implementation process and/or other specific trade policy issues (Technical Barriers to Trade, Sanitary and Phyto-Sanitary, Intellectual Property Rights, etc), addressing results R1 and R2.

Implementing partners, in particular GIZ and EBRD will provide advice and capacity-building activities to core SMEs institutions and direct targeted assistance to private sector/SMEs. This addresses results R3, R4 and R5.

More specifically, GIZ will implement a project focused mainly on strengthening the policy and institutional framework for SME development, laying the ground for inclusive broad-based growth. The project is built on four components: 1) Improvement of the enterprise development framework and SME participation in the political dialogue; 2) Comprehensive capacity development for SME support institutions with a focus on improved service delivery; 3) Promotion of enterprise development via clustering and support to business networks on national, sector and local levels; 4) Integration of business clusters and networks in relevant existing EU networks for enterprise development, and investment and trade promotion, such as the Enterprise Europe Network.

EBRD will implement a project focused mainly on the provision of advisory services to SMEs and the local consultancy market, addressing result R4. Specific advice will be given to strengthen SME competitiveness in the face of increased competition from imports; prepare local SMEs to strengthen their export potential and access EU markets; become aware of the new regulatory environment and DCFTA requirements through tailored market and sector development activities; comply with new procedures, standards and certification as a result of the implementation of the DCFTA and be ready for inspection by the EU and local authorities. At the same time, the programme will lead to strengthened and sustainable infrastructures of local business advisory services.

## **2. IMPLEMENTATION**

### **2.1. Indicative operational implementation period**

The indicative operational implementation period of this action is as specified in Article 2 of the Special Conditions.

## **2.2. Amounts allocated for budget support**

The total amount allocated to the action "Support to EU-Georgia DCFTA and SMEs" is EUR 44 533 940, of which EUR 25 million is to be delivered as sector budget support.

## **2.3. Criteria and indicative schedule of disbursement of budget support**

### **2.3.1 Budget Support details**

Budget support is provided as direct untargeted budget support to the national Treasury of Georgia. The crediting of the euro transfers disbursed into Georgian Lari will be undertaken at the appropriate exchange rates in line with Article 6 of the Special Conditions.

Budget support will be disbursed in four instalments corresponding to the 2015, 2016, 2017 and 2018 Georgian fiscal years.

The first instalment will be a fixed tranche (EUR 6 million) which is planned to be disbursed in the first quarter of 2015 following the signature of the Financing Agreement and provided that the four General Conditions are fulfilled.

The subsequent three instalments will be composed of fixed and variable tranches and are planned for disbursement in Q2 of 2016, 2017 and 2018 Georgian fiscal years, subject to the continued compliance with the four General Conditions and the fulfilment of the 2015, 2016 and 2017 Special Conditions outlined in detail in Appendix 2 of these Technical and Administrative Provisions (TAPs).

### **2.3.2 Disbursement criteria**

The General Conditions for disbursement of all tranches are as follows: Satisfactory progress in the implementation of DCFTA and SME legal and regulatory framework and continued credibility and relevance thereof; implementation of a credible stability-oriented macroeconomic policy; satisfactory progress in the implementation of the Government's programme to improve PFM; satisfactory progress with regard to public availability of accessible, timely, comprehensive and sound budgetary information.

In case of a significant deterioration of fundamental values, budget support disbursements may be formally suspended in line with Article 26.1 of the General Conditions of the Financing Agreement, or temporarily suspended or reduced.

The disbursement arrangements and timetable are described in Appendix 2 of these TAPs.

The Specific Conditions for payment of variable tranches refer to activities related to: i) legal approximation on trade including progress in transposing European standards; ii) SME policy; iii) institutional capacities of trade and SME related institutions to support economic actors and SMEs along the DCFTA implementation to deliver relevant services and to raise awareness on DCFTA.

The performance indicators used for disbursements are described in Appendix 1 of these TAPs. The chosen performance targets and indicators specified in Appendix 1 will apply for the duration of the programme. However, in duly justified circumstances, the Government of Georgia may submit a request to the Commission for the targets and indicators to be changed. The changes agreed to the targets and indicators may be authorized by exchange of letters between the two parties.

## **2.4. Details on complementary support**

### **2.4.1. 1) Grants: call for proposals: Lot 1: "Strengthened role of CSOs in DCFTA and SME policy implementation"; Lot 2: "Strengthened role of business associations" (direct management implemented by the Commission as the Contracting Authority)**

*a) Objectives of the grants, fields of intervention, priorities of the year and expected results*



Lot 1: The objectives are linked with result R4. CSOs shall be involved in the following domains: DCFTA communication campaigns, DCFTA and SMEs legislative reform monitoring, policy formulation on DCFTA and SMEs areas, economic strategy monitoring, sectoral policy and trade dynamics analysis, more effective engagement into public-private policy dialogue.

Lot 2: The objectives are linked with result R4. The role of business and sectoral associations shall be strengthened in order to enable these to deliver better services to SMEs, more effectively engage into public-private dialogue, and expand their network with the EU business community.

*b) Eligibility conditions*

Lot 1: Eligible applicants will be national and international non-governmental organisations, legal entities, local authorities, public bodies, international organisations, active in fields related to the objectives of the call. Partnership with EU Member States organisations is envisaged.

Lot 2: Eligible applicants will be business membership associations registered in Georgia for at least one year and having at least 60% of their members being SMEs.

*c) Essential selection and award criteria*

The essential selection criteria are financial and operational capacity of the applicant.

The essential award criteria are relevance of the proposed action to the objectives of the call; design, effectiveness, feasibility, sustainability and cost-effectiveness of the action.

*d) Maximum rate of co-financing*

The maximum possible rate of co-financing for grants under this call is 80%.

The maximum possible rate of co-financing may be up to 100 % in accordance with Article 192 of Regulation (EU, Euratom) No 966/2012 if full funding is essential for the action to be carried out. The essentiality of full funding will be justified by the Commission in the award decision, in respect of the principles of equal treatment and sound financial management.

*e) Indicative trimester to launch the call*

4th quarter of 2015

**2.4.2. Grants: call for proposal for Twinning projects (direct management implemented by the Commission as the Contracting Authority)**

Under the present programme, it is expected to conclude one Twinning grant contract.

*a) Objectives of the grants, fields of intervention, priorities of the year and expected results*

The Twinning call for proposals modality will be used for implementing the action under result R2 and will support the Georgian market surveillance agency (Technical and Construction Supervision Agency).

*b) Eligibility conditions*

In line with Article 5(10)(b) of Regulation (EU) No 236/2014, participation in Twinning call for proposals is limited to public administrations of the EU Member States, being understood as central or regional authorities of a Member State as well as their bodies and administrative structures and private law bodies entrusted with a public service mission under their control provided they act for the account and under the responsibility of that Member State.

*c) Essential selection and award criteria*

The essential selection criterion is the operational capacity of the applicant.

The essential award criteria are the technical expertise of the applicant, and the relevance, methodology and sustainability of the proposed action.

*d) Maximum rate of co-financing*

The rate of co-financing for Twinning grant contracts is 100%<sup>1</sup>.

*e) Indicative timing to launch the calls*

1<sup>st</sup> quarter of 2016.

*f) Use of lump sums/flat rates/unit costs*

Twinning contracts include a system of unit costs and flat rate financing, defined in the Twinning Manual, for the reimbursement of the public sector expertise provided by the selected Member States administrations. This system of unit costs and flat rate financing exceeds the amount of EUR 60 000 per beneficiary of a Twinning contract.

**2.4.3. Procurement (direct management implemented by the Commission as the Contracting Authority)**

Subject	Type	Indicative number of contracts	Indicative trimester of launch of the procedure
Technical assistance to accompany the Sector Reform Contract (high level policy advice and expertise in trade-related matters)	Services	2	Q3-2015 Q3-2016
Sector Reform Contract external review, evaluation and audit missions	Services	3	Q4-2015 Q1-2016 Q3-2018
Communication and visibility	Services	1	Q3-2015

**2.4.4. Indirect management with an EU Member State Agency as the Contracting Authority**

A part of this action with the objective of fostering capacity-building of SME institutions and the SME sector at large will be implemented in indirect management with **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH** in accordance with Article 58(1) of Regulation (EU, Euratom) No 966/2012.

The objective of the proposed project aims at strengthening the SME sector and entrepreneurship in Georgia, with a specific focus on economic integration of women in business, young entrepreneurs and returned migrants, thus laying the foundations for inclusive broad-based growth.

<sup>1</sup> As provided for in the Twinning Manual

This implementation is justified because the entrusted entity has the required capacities and expertise to implement part of the action. In particular, GIZ successfully implemented similar actions in support of private sector development in Georgia and in the Southern Caucasus region. GIZ is very familiar with the country and the central/local authorities and closely coordinates with the EU Delegation to Georgia. As part of its tasks, GIZ will conclude and manage contracts.

The entrusted entity is currently undergoing an ex ante assessment in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012. In anticipation of the results of this review, the responsible authorising officer deems that, based on a preliminary evaluation and on the long-standing and problem-free cooperation with this entity, it can be entrusted with budget-implementation tasks under indirect management.

The change of management mode from indirect to direct management, whether partially or entirely is not considered a substantial change.

#### **2.4.5. *Indirect management with an international organisation as the Contracting Authority***

A part of this action with the objective of directly supporting SMEs along the DCFTA implementation process will be implemented in indirect management with the **European Bank for Reconstruction and Development (EBRD)** in accordance with Article 58(1)(c)(i) of the Regulation (EU, Euratom) No 966/2012.

The objective of the proposed project is to directly assist Georgian SMEs and the local consultancy sector in adapting to the challenges brought by the DCFTA and to improve access to finance.

This implementation is justified because the entrusted entity has the required capacities and expertise to implement part of the action. The choice of EBRD is justified by its proven experience in mobilizing and channelling international consultants and working with local consultancy companies. EBRD is a reliable partner with a long standing experience in Georgia on SMEs, private sector development, and access to finance. SMEs development is also one of the pillars of their new strategy for Georgia, therefore synergies would be created. As part of its tasks, EBRD will conclude and manage contracts.

The entrusted entity is currently undergoing an ex ante assessment in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012. In anticipation of the results of this review, the responsible authorising officer deems that, based on a preliminary evaluation and on the long-standing and problem-free cooperation with this entity, it can be entrusted with budget-implementation tasks under indirect management.

The change of management mode from indirect to direct management, whether partially or entirely is not considered a substantial change.

#### **2.4.6. *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 shall apply.

The Commission may extend the geographical eligibility in accordance with Article 9(2)(b) of Regulation (EU) No 236/2014 (CIR) on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or other duly substantiated cases where the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

## 2.5. Indicative budget

<b>Module</b>	<b>Amount in EUR</b>	<b>Third party contribution in EUR (indicative, where known)</b>
2.2. – Budget support (Sector Reform Contract)	25 000 000	N.A.
2.4.1. Calls for proposals (CSOs and business associations) (direct management implemented by the Commission as the Contracting Authority)	2 000 000	500 000
2.4.2. Call for proposals Twinning (direct management implemented by the Commission as the Contracting Authority)	1 500 000	N.A.
2.4.3. Procurement (direct management implemented by the Commission as the Contracting Authority)	2 000 000	N.A.
2.4.4. Indirect Management with GIZ as the Contracting Authority	5 033 940	N.A.
2.4.5. Indirect management with EBRD as the Contracting Authority	6 000 000	N.A.
2.7. Evaluation and audit	300 000	N.A.
2.8. Communication and visibility	1 200 000	N.A.
Contingencies	1 500 000	N.A.
<b>Totals</b>	<b>44 533 940</b>	<b>500 000</b>

## 2.6. Performance monitoring and donor coordination

The Ministry of Economy and Sustainable Development (MoESD) shall establish a Programme Steering Committee and shall organise coordination meetings, involving the EU Delegation, relevant donors in private sector development and civil society representatives. The coordination meetings will be an opportunity to assess progresses in the implementation of the action and decide if any modifications are needed.

If relevant, the Programme Steering Committee may decide to invite as observers or experts members of other Ministries or institutions relevant for the reforms, representatives of Georgian civil society, experts from EU and/or international organizations or other relevant stakeholders.

The MoESD shall establish an internal monitoring system to the programme, responsible for preparing progress reports and other analysis.

Technical and financial monitoring of the activities is under the responsibility of the EU Delegation to Georgia, the MoESD and the action implementers (GIZ and EBRD).

Additionally this programme will be monitored through the Results-Oriented Monitoring (ROM) system for EU funded projects and programmes.

## 2.7. Evaluation and audit

Audits and evaluations will be carried out by the European Commission. A mid-term and a final evaluation are planned for the programme. The Beneficiary and the Commission shall analyse the conclusions and

recommendations of the mid-term evaluation and jointly decide on the follow-up action to be taken and any adjustments necessary, including, if indicated, the reorientation of the programme. The reports of the other evaluation and monitoring missions will be given to the Beneficiary, in order to take into account any recommendations that may result from such missions.

Additional evaluations, verifications and/or audits of the complementary support projects may be launched by the EU at any time.

The overall budget allocation foreseen for evaluation and audit is EUR 300 000, through two service contracts, whose procurement procedure will be launched indicatively in Q4 2015, and Q3 2018.

## **2.8. Communication and visibility**

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated before the start of implementation and supported with the budget indicated in section 2.5 above.

The measures shall be implemented either by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, financing agreements, procurement and grant contracts, and delegation agreements.

The Communication and Visibility Manual for European Union External Action shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

The overall budget allocation foreseen for communication and visibility is EUR 1 200 000, through one service contract, whose procurement procedure will be launched indicatively in Q3 2015.

## **APPENDICES**

- 1 - Performance criteria and indicators used for disbursement
- 2 - Disbursement arrangements and timetable

## **Appendix 1: Performance criteria and indicators used for disbursements (budget support)**

The Programme foresees four instalments corresponding to 2015, 2016, 2017 and 2018 Georgian fiscal years.

The **first instalment** is planned to be disbursed as **fixed tranche** in the first quarter of 2015 following the signature of the Financing Agreement and the fulfilment of the four General Conditions, outlined in Table B, Appendix 2 of these Technical and Administrative Provisions. The **subsequent three instalments** will be composed of **fixed** and **variable tranches** and are planned to be disbursed in the second quarter of 2016, 2017 and 2018 Georgian fiscal years, subject to the continued compliance with the four General Conditions and the fulfilment of the 2015, 2016 and 2017 Special Conditions outlined in detail in Appendix 2 of these Technical and Administrative Provisions (TAPs).

Compliance with all four General Conditions will result in the release of the fixed tranche of each instalment. Compliance with the General Conditions is also a pre-requisite for the assessment of compliance with the Specific Conditions, which shall result in the disbursement of the variable tranche of each instalment. Failure to fulfil the General Conditions will result in the irrevocable loss of the entire instalment, including its variable component.

The Variable Tranche allows for less than the full tranche being disbursed in case of only partial compliance, i.e. failure to fulfil certain Specific Conditions. Failure to fulfil, or partial fulfilment, of the Specific Conditions attached to the performance tranche will result in the irrevocable loss of the entire amount corresponding to not fulfilled or partially fulfilled Specific Condition. Specific Conditions are outlined in Table C, Appendix 2 of these Technical and Administrative Provisions.

The Specific Conditions set out in Appendix 2 are based on objectively verifiable indicators which reflect the commitments of the authorities of Georgia as well as the EU cooperation priorities in trade and SME related reforms.

## **Appendix 2: Disbursement arrangements and timetable**

### **1. Responsibilities**

On the basis of the conditions for disbursement set out in this Financing Agreement, the competent authorities of Georgia will send a formal request to the European Commission for the disbursement of each tranche in accordance with the timetable specified in Table A below. The request must include: (i) a full analysis and justification for payment of the funds, with the required supporting documents attached; (ii) a financial information form, duly signed, to facilitate the corresponding payment.

The request for disbursement shall occur one quarter before the disbursement of the tranche.

## 2. Indicative disbursement timetable

An indicative timetable is given below.

**Table A: Indicative disbursement timetable**

Country fiscal year	Year 2015	Year 2016				Year 2017				Year 2018				
Type of tranche	Q1	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Total
<b>Fixed tranche</b>	6.0		1.0				1.0				1.0			9.0
<b>Variable tranche</b>	0.0		6.0				5.0				5.0			16.0
<b>Total</b>	<b>6.0</b>		<b>7.0</b>				<b>6.0</b>				<b>6.0</b>			<b>25.0</b>

## 3. General conditions for the disbursement of each tranche

The general conditions set out below for the disbursement of each tranche shall apply to the disbursement of all tranches and all tranche release requests must be accompanied by all appropriate information and documents.

**Table B: General conditions for the release of tranches**

Area	Conditions	Verification source
<b>Public policy</b>	<p>Satisfactory progress in the implementation of the partner country sector policy and strategy and continued credibility and relevance of that or any other successor strategy, as evidenced by:</p> <p><u>For the first tranche:</u></p> <p>(1) Adoption of the DCFTA Action Plan for 2015.</p> <p>(2) Progress in the elaboration of the SME Development Strategy 2016-2020.</p> <p><u>For the subsequent tranches:</u></p> <p>(1) Adoption of subsequent DCFTA annual action plans.</p> <p>(2) Establishment and functioning of a DCFTA Advisory Group with the participation of the civil society, business community and other</p>	<p>1. DCFTA Annual Action Plan for 2015.</p> <p>2. Draft SME strategy and report on its elaboration.</p> <p>1. DCFTA Annual Action Plan for 2016 and 2017.</p> <p>2. Legal act on the establishment of the DCFTA Advisory Group.</p>

	relevant stakeholders.	<p>3. MoESD reports on the meetings of the DCFTA Advisory Group, including recommendations produced by the Group.</p> <p>4. Reports on progresses on the implementation of the DCFTA Action Plan.</p>
<b>Macroeconomic stability</b>	Implementation of a credible stability-oriented macroeconomic policy.	IMF, WB, EU reports
<b>Public Financial Management</b>	Satisfactory progress in the implementation of the Government's programme to improve public finance management (PFM).	<p>1. Government PFM annual reports</p> <p>2. IMF, WB, EU PFM-related reports</p>
<b>Budget transparency</b>	Satisfactory progress with regard to the public availability of accessible, timely, comprehensive, and sound budgetary information.	<p>1. Open Budget Index methodology.</p> <p>2. IMF, WB, EU reports</p>

#### 4. Specific Conditions for the disbursement of tranches

The specific conditions for the disbursement set out in Table C and D shall apply to the disbursement of a specific tranche. Tranche release requests must be accompanied by all appropriate information and documents on the specific conditions.



**Table C: Specific conditions for the release of tranches**

The Specific Conditions for the disbursement of tranches shall apply to the disbursement of each specific variable tranche. Tranche release requests must be accompanied by all appropriate information and documents of the Specific Conditions.

<b>Budget Support Programme "Support to EU-Georgia DCFTA and SMEs"</b>		
<b>Specific Conditions, Indicators (to be achieved by the end of the specified year) and Sources of Verification for disbursements</b>		
2015	2016	2017
<b>(1) Condition: Strengthened DCFTA Policy Framework</b>		
<p><b>1.1 Indicator/benchmark to be achieved:</b></p> <p>Government of Georgia submits to the SPS sub-committee an approximation list of EU sanitary and phytosanitary, animal welfare and other legislative measures, together with dates of approximation, that Georgia commits to adopt within the timeframe foreseen in the DCFTA annual Action Plan for 2015.</p> <p><b>Source of Verification:</b></p> <p>Minutes of the SPS sub-committee.</p>	<p><b>1.1 Indicator/benchmark to be achieved:</b></p> <p>National legislative acts are adopted in compliance with respective date of approximation, as foreseen in the approximation list agreed upon by Georgia and the EU, and within the timeframe foreseen in the DCFTA annual Action Plan for 2016.</p> <p><b>Source of Verification:</b></p> <p>Legislative acts agreed as per the list for 2016 adopted by the Government of Georgia.</p>	<p><b>1.1 Indicator/benchmark to be achieved:</b></p> <p>National legislative acts are adopted in compliance with respective date of approximation, as foreseen in the approximation list agreed upon by Georgia and the EU, and within the timeframe foreseen in the DCFTA annual Action Plan for 2017.</p> <p><b>Source of Verification:</b></p> <p>Legislative acts agreed as per the list for 2017 adopted by the Government of Georgia.</p>
<p><b>1.2 Indicator/benchmark to be achieved:</b></p> <p>Elaboration of a multiannual Action Plan according to the Market Surveillance Strategy, encompassing the pieces of legislation to be approximated with the EU</p>	<p><b>1.2 Indicator/benchmark to be achieved:</b></p> <p>Adoption of the multiannual Market Surveillance Action Plan and subsequent implementation of the actions foreseen in 2016.</p>	<p><b>1.2 Indicator/benchmark to be achieved:</b></p> <p>The Market Surveillance Action Plan is implemented according to the actions foreseen in 2017.</p>

<p>'acquis' and the implementing actions.</p> <p><b>Source of Verification:</b></p> <p>Draft multiannual Market Surveillance Action Plan.</p>	<p><b>Source of Verification:</b></p> <p>Multiannual Market Surveillance Action Plan adopted by the Government of Georgia.</p> <p>Report by the MoESD on the progress of the implementation of the Market Surveillance Action Plan.</p>	<p><b>Source of Verification:</b></p> <p>Report by the MoESD on the progress of the implementation of the Market Surveillance Action Plan.</p>
<p><b>1.3 Indicator/benchmark to be achieved:</b></p> <p>Adoption of a comprehensive roadmap for the legislative approximation in the Public Procurement area, as stipulated in the AA.</p> <p><b>Source of Verification:</b></p> <p>Roadmap adopted.</p>	<p><b>1.3 Indicator/benchmark to be achieved:</b></p> <p>The legislative approximation to the basic standards regulating the award of contracts as defined by the Article 144 of the AA is finalized.</p> <p><b>Source of Verification:</b></p> <p>Amendments to the relevant Georgian legislation related to the basic standards regulating the award of contracts.</p>	<p><b>1.3 Indicator/benchmark to be achieved:</b></p> <p>Implementation of actions envisaged in the roadmap for 2017.</p> <p><b>Source of Verification:</b></p> <p>Report by the State Procurement Agency on the progress of the roadmap implementation.</p>
<p>(2) Condition: Strengthened SME Policy Framework</p>		
<p><b>2.1 Indicator/benchmark to be achieved:</b></p> <p>Adoption of the 2016-2020 SME Strategy and Action Plan, in line with the principles of the EU Small Business Act (SBA).</p> <p><b>Source of Verification:</b></p> <p>The SME Strategy and Action Plan are approved by the Government of Georgia and published.</p>	<p><b>2.1 Indicator/benchmark to be achieved:</b></p> <p>Implementation of the SME Strategy according to the Action Plan for 2016.</p> <p><b>Source of Verification:</b></p> <p>Report by the MoESD on the progress in the implementation of the SME Strategy and Action Plan for 2016.</p>	<p><b>2.1 Indicator/benchmark to be achieved:</b></p> <p>Implementation of the SME Strategy according to the Action Plan for 2017.</p> <p><b>Source of Verification:</b></p> <p>Report by the MoESD on the progress in the implementation of the SME Strategy and Action Plan for 2017.</p>

<p><b>2.2 Indicator/benchmark to be achieved:</b></p> <p>Establishment and subsequent meetings of a formal Public/Private platform where relevant stakeholders are represented.</p> <p><b>Source of Verification:</b></p> <p>Decision on the establishment of the format of the Public/Private platform structure.</p> <p>Publicly available information on the meetings of the Public/Private platform, including policy recommendations.</p>	<p><b>2.2 Indicator/benchmark to be achieved:</b></p> <p>Regular meetings of the Public/Private platform and policy recommendations developed by the platform to support SME development.</p> <p><b>Source of Verification:</b></p> <p>Number of meetings of the Public/Private platform.</p> <p>Publicly available information on the meetings of the Public/Private platform, including policy recommendations.</p>	<p><b>2.2 Indicator/benchmark to be achieved:</b></p> <p>Regular meetings of the Public/Private platform and policy recommendations developed by the platform to support SME development.</p> <p><b>Source of Verification:</b></p> <p>Number of meetings of the Public/Private platform.</p> <p>Publicly available information on the meetings of the Public/Private platform, including policy recommendations.</p>
<p><b>3) Condition: Strengthened Trade Institutions</b></p>		
<p><b>3.1 Indicator/benchmark to be achieved:</b></p> <p>Adoption of an Institutional Reform Plan (IRP), which shall include a results-oriented Training Plan for the Technical and Construction Supervision Agency (TCSA) agency staff.</p> <p><b>Source of Verification:</b></p> <p>TCSA IRP adopted.</p>	<p><b>3.1 Indicator/benchmark to be achieved:</b></p> <p>Implementation of actions for 2016, as foreseen in the IRP.</p> <p>TCSA staff is trained to undertake the market surveillance.</p> <p><b>Source of Verification:</b></p> <p>Publicly available TCSA annual report.</p>	<p><b>3.1 Indicator/benchmark to be achieved:</b></p> <p>Implementation of actions for 2017, as foreseen in the IRP.</p> <p>TCSA staff is undertaking the market surveillance.</p> <p><b>Source of Verification:</b></p> <p>Publicly available TCSA annual report.</p>
<p><b>3.2 Indicator/benchmark to be achieved:</b></p> <p>Improved technical and enforcement capacities in the Competition Agency (CA), through the adoption of a results-oriented Training Plan for the agency staff.</p>	<p><b>3.2 Indicator/benchmark to be achieved:</b></p> <p>Implementation of capacity building actions for 2016, as foreseen in the Training Plan.</p>	<p><b>3.2 Indicator/benchmark to be achieved:</b></p> <p>Implementation of capacity building actions for 2017, as foreseen in the Training Plan.</p>

<b>Source of Verification:</b> CA Training Plan adopted.	<b>Source of Verification:</b> Publicly available CA annual report.	<b>Source of Verification:</b> Publicly available CA annual report.
<b>4) Condition: Improved service delivery of SME Institutions</b>		
<b>4.1 Indicator/benchmark to be achieved:</b> At least 150 SMEs, including export-oriented SMEs, are supported in Tbilisi and regions with DCFTA-related business advisory services, information and trainings provided by Entrepreneurship Development Agency (EDA).	<b>4.1 Indicator/benchmark to be achieved:</b> The number of SMEs, including export-oriented SMEs, provided with DCFTA-related EDA advisory services and trainings in Tbilisi and regions increased by 30% comparing with the previous year.	<b>4.1 Indicator/benchmark to be achieved:</b> The number of SMEs, including export-oriented SMEs, provided with DCFTA-related EDA advisory services and trainings in Tbilisi and regions increased by 30% comparing with the previous year.
<b>Source of Verification:</b> Publicly available EDA annual report.	<b>Source of Verification:</b> Publicly available EDA annual report.	<b>Source of Verification:</b> Publicly available EDA annual report.
<b>4.2 Indicator/benchmark to be achieved:</b> Increased cooperation between EDA Analytical Unit and Georgian National Statistics Office (GEOSTAT), through the signature of MoU and at least 1 SME sectoral value-chain study is developed by EDA Analytical Unit.	<b>4.2 Indicator/benchmark to be achieved:</b> At least 2 SME sectoral value-chain studies are developed by EDA Analytical Unit.	<b>4.2 Indicator/benchmark to be achieved:</b> At least 2 SME sectoral value-chain studies are developed by EDA Analytical Unit.
<b>Source of Verification:</b> MoU between EDA and GEOSTAT. Publicly available EDA sectoral study.	<b>Source of Verification:</b> Publicly available EDA sectoral studies.	<b>Source of Verification:</b> Publicly available EDA sectoral studies.

## 5. Variable tranche calculation

The programme foresees the payment of four annual instalments. For each instalment, a fixed tranche can be paid upon compliance with the General Conditions (as detailed in section above). Once compliance with the General Conditions has been positively assessed by the Commission, the variable tranche will be assessed and paid according to the level of compliance with each of the Specific Conditions.

There are three possible levels of compliance:

- i) Full compliance, which will result in a disbursement decision of the Commission amounting to the full corresponding quota;
- ii) Partial but significant compliance, which will result in a disbursement decision of the Commission amounting to half of the corresponding quota;
- iii) Insufficient or no compliance, which will result in a no disbursement decision of the Commission.

In the event that more indicators are grouped under the same Specific Condition:

- Full compliance corresponds to all indicators under such Specific Condition being fully met;
- Partial but significant compliance corresponds to more than half of all the indicators under such Specific Condition being fully met;
- Insufficient or no compliance corresponds to half or less than half of all the indicators under such Specific Condition being fully met.

In duly justified cases and following a duly-substantiated request submitted by the competent authorities to the European Commission, compliance might be re-assessed during the review of the immediately subsequent annual tranche, possibly allowing for the payment of the corresponding unpaid amount(s). Funds withheld for lack of compliance will be lost at the end of the Programme.

In any case, the final decision on the degree of compliance and on any type of tranche disbursement rests with the European Commission.

**Table D: Variable Tranche**

Percentage and amount (in EUR million); maximum values (assuming full and timely compliance)	1st Instalment		2nd Instalment		3rd Instalment		4th Instalment		Total amount
	% of total instalment	maximum amount (EUR mln)	% of total instalment	maximum amount (EUR mln)	% of total instalment	maximum amount (EUR mln)	% of total instalment	maximum amount (EUR mln)	Total amount (EUR mln)
<b>TOTAL</b>	<b>100.0</b>	<b>6.0</b>	<b>100.0</b>	<b>7.0</b>	<b>100.0</b>	<b>6.0</b>	<b>100.0</b>	<b>6.0</b>	<b>25.0</b>
Fixed tranches	100.0	6.0	14.3	1.0	16.7	1.0	16.7	1.0	9.0
Variable tranches			85.7	6.0	83.3	5.0	83.3	5.0	16.0
<b>(1) Strengthened DCFTA Policy Framework</b>				<b>3.0</b>		<b>2.5</b>		<b>2.5</b>	<b>8.0</b>
(1.1) SPS legal approximation				1.0		1.0		1.0	
(1.2) Market Surveillance multiannual Action Plan and subsequent implementation				1.0		1.0		1.0	
(1.3) Public Procurement approximation				1.0		0.5		0.5	
<b>(2) Strengthened SME Policy Framework</b>				<b>1.0</b>		<b>1.0</b>		<b>1.0</b>	<b>3.0</b>
(2.1) 2016-2020 SME Strategy and Action Plan and subsequent implementation				0.8		0.8		0.8	
(2.2) Public-Private platform and policy recommendations on SME development				0.2		0.2		0.2	
<b>(3) Strengthened Trade Institutions</b>				<b>1.0</b>		<b>0.5</b>		<b>0.5</b>	<b>2.0</b>
(3.1) TCSA IRP and subsequent implementation				0.5		0.25		0.25	
(3.2) CA Training Plan and subsequent implementation				0.5		0.25		0.25	
<b>(4) Improved service delivery of SME Institutions</b>				<b>1.0</b>		<b>1.0</b>		<b>1.0</b>	<b>3.0</b>
(4.1) SME supported with DCFTA-related business advisory services, information and trainings provided by EDA				0.5		0.5		0.5	
(4.2) Increased cooperation between EDA and GEOSTAT and SME sectoral studies produced				0.5		0.5		0.5	

## ANNEX II - GENERAL CONDITIONS

### Contents

<b>Part One: Provisions Applicable to Activities for which the Beneficiary is the Contracting Authority</b> .....	2
Article 1 - General principles .....	2
Article 2 - Deadline for the signature of the procurement and grant contracts by the Beneficiary .....	6
Article 3 - Visibility .....	7
Article 4 - Provisions on payments made by the Commission to contractors and grant beneficiaries on behalf of the Beneficiary .....	7
Article 5 - Programme estimate .....	9
Article 6 - Payments to the Beneficiary implementing the imprest component of a programme estimate .....	10
Article 7 - Publication of information on procurement and grant contracts by the Beneficiary .....	12
Article 8 - Recovery of funds .....	12
Article 9 - Financial claims under procurement and grant contracts .....	13
Article 10 - Cost overruns and ways of financing them .....	13
<b>Part Two: Provisions Applicable to Budget Support</b> .....	14
Article 11 - Policy dialogue .....	14
Article 12 - Verification of conditions and disbursement .....	14
Article 13 - Transparency of budget support .....	14
Article 14 - Recovery of budget support .....	14
<b>Part Three: Provisions Applicable to This Action as a Whole, Irrespective of the Management Mode</b> .....	15
Article 15 - Execution period and contracting deadline in direct management .....	15
Article 16 - Verifications and checks by the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors .....	16
Article 17 - Tasks of the Beneficiary in fighting irregularities, fraud and corruption .....	16
Article 18 - Suspension of payments .....	17
Article 19 - Allocation of funds recovered by the Commission to the action .....	18
Article 20 - Right of establishment and residence .....	18
Article 21 - Tax and customs provisions .....	19
Article 22 - Confidentiality .....	19
Article 23 - Use of studies .....	19
Article 24 - Consultation between the Beneficiary and the Commission .....	19
Article 25 - Amendment of this Financing Agreement .....	20
Article 26 - Suspension of this Financing Agreement .....	20
Article 27 - Termination of this Financing Agreement .....	21
Article 28 - Dispute settlement arrangements .....	22

## **Part One: Provisions Applicable to Activities for which the Beneficiary is the Contracting Authority**

### **Article 1 - General principles**

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

Part One shall apply to the budget-implementation tasks related to the EU contribution alone or in combination with the funds of the Beneficiary 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 Beneficiary as contracting authority of procurement and grant award procedures, and the awarding, signing and enforcing the resulting procurement and grant contracts.

As a rule, the Commission shall carry out related payments to contractors and grant beneficiaries. However, the Beneficiary shall carry out certain payments including to its own staff on the basis of a programme estimate as defined in Article 5 of these General Conditions.

Where the Beneficiary 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 Beneficiary is an OCT and the action is financed by the EDF pursuant to Article 1.1 of the Special Conditions, the exercise 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 Beneficiary 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 budget-implementation tasks in the context of the implementation of a programme estimate referred to in Article 5 of these General Conditions. 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 tasks identified in Article 1.1 of these General Conditions shall be carried out by the Beneficiary in accordance with the procedures and standard documents laid down and published by the Commission for the award of procurement and grant contracts, in force at the time of the launch of the procedure in question.
- 1.4 The Beneficiary shall set up and ensure the functioning of an effective and efficient internal control system. The Beneficiary shall respect the principles of sound financial management, transparency and non-discrimination 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 shared interest with a tenderer or applicant, or contractor or grant beneficiary.

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 Beneficiary carries out payments pursuant to a programme estimate, the functions of the authorising and accounting officers shall be segregated and mutually incompatible and the Beneficiary shall operate an accounting system that provides accurate, complete, reliable and timely information. The Beneficiary shall also reasonably protect data enabling the identification of a natural person (personal data).

- 1.5 Where made a part of this Financing Agreement pursuant to Article 5 of the Special Conditions, the report on the implementation of the tasks entrusted to the Beneficiary shall follow the template provided in Annex III. However, where programme estimates are used pursuant to Article 5 of these General Conditions, the report shall follow the requirements stipulated in the standard documents referred to in Article 5.3 of these General Conditions. Where made a part of this Financing Agreement pursuant to Article 5 of the Special Conditions, the management declaration shall follow the template provided in Annex IV.
- 1.6 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.
- 1.7 The Beneficiary shall conduct the procurement and grant award procedures and conclude the resulting contracts in the language of this Financing Agreement.

- 1.8 The Beneficiary shall inform the Commission when a candidate, tenderer or applicant is in a situation of exclusion from participating in procurement and grant award procedures referred to in Article 1.3 and when a contractor or grant beneficiary has been guilty of making false declarations or has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations.

In such cases, without prejudice to the power of the Commission to take measures against such entity according to the applicable Financial Regulation, financial penalties mentioned in the provisions on administrative and financial penalties of the General Conditions of procurement and grant contracts concluded by the Beneficiary pursuant to standard documents referred to in Article 1.3 may be imposed on the contractors and grant beneficiaries by the Beneficiary if this is allowed by its national law. Such financial penalties shall be imposed following an adversarial procedure ensuring the right of defence of the contractor or grant beneficiary.

The Beneficiary may take into account, as appropriate and on its own responsibility the information contained in the Central Exclusion Database, when awarding procurement and grant contracts. Access to the information can be provided through the liaison point(s) or via consultation to the Commission<sup>1</sup> (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.

- 1.9 The Beneficiary 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

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<sup>1</sup> The Beneficiary shall be allowed to have direct access to the Central exclusion database through a liaison point when the Beneficiary certifies to the Commission service responsible that it applies the adequate data protection measures as provided in the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- 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<sup>2</sup>
- 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<sup>3</sup>
- c. Letters to successful and unsuccessful applicants following concept note evaluation
- d. Concept note evaluation report
- 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
- l. Award/cancellation notice with proof of publication
- j. Signed contracts, amendments, riders and relevant correspondence

In case of programme estimates: In addition to the above, all relevant documentation relating to payments, recoveries and operating costs.

- 1.10 The Beneficiary shall ensure an appropriate protection of personal data. Personal data means any information relating to an identified or identifiable natural person. Any involving the processing of personal data, such as collection, recording, organisation, storage, adaption or

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<sup>2</sup> Elimination of unsuccessful bids five years after the closure of the procurement procedure

<sup>3</sup> Elimination of unsuccessful applications three years after the closure of the grant procedure.

alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on rules and procedures of the Beneficiary and shall only be done as far as it is necessary for the implementation of this Financing Agreement.

In particular, the Beneficiary 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 the procurement and grant contracts by the Beneficiary**

- 2.1 The procurement and grant contracts shall be duly signed by both parties during the operational implementation phase of this Financing Agreement and at the latest within three years of the entry into force of this Financing Agreement. Additional procurement and grant contracts resulting from an amendment of this Financing Agreement that adds new activities and increases the EU contribution shall be duly signed by both parties during the operational implementation phase of this Financing Agreement and at the latest within three years of the entry into force of that amendment of this Financing Agreement.

Where this action is financed from the EDF, programme estimates referred to in Article 5 of these General Conditions shall also be endorsed by the Commission within that three-year deadline.

That three-year deadline may not be extended, except when the action is financed by the EDF. 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 phase.
- a. procurement and grant contracts implementing the imprest component of a programme estimate financed under the EDF;
  - b. amendments to procurement and grant contracts already signed;
  - c. individual procurement contracts to be concluded after early termination of an existing procurement contract;
  - d. amendment of this Financing Agreement resulting from the change of the entity charged with the entrusted tasks, referred to in Article 1.2 of these General Conditions; the amendment shall also stipulate a new period within which procurement and grant contracts shall be concluded by this new entity in accordance

with Article 2.1:

- e. Contracts relating to audit and evaluation, which may also be signed during the closure phase.
- 2.3 After expiry of the three years of the entry into force of this Financing Agreement, any financial balance for activities entrusted to the Beneficiary for which contracts have not been duly signed shall be decommitted by the Commission.
- 2.4 Article 2.3 shall not apply to any financial balance of the contingency reserve or to funds available again after early termination of a contract. This balance or funds may be used to finance contracts referred to in Article 2.2.
- 2.5 A procurement or grant contract which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding shall be decommitted.

### **Article 3 - Visibility**

The Beneficiary 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 Beneficiary and the Commission.

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

### **Article 4 - Provisions on payments made by the Commission to contractors and grant beneficiaries on behalf of the Beneficiary**

- 4.1 The Beneficiary 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 or 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 4.6 and 4.7 within the period amounting to the time-limit for payment provided for in the procurement and grant contracts minus the above deadlines.

- 4.2 Upon receipt of a payment request from a contractor or grant beneficiary, the Beneficiary 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 concerned, the amount, the currency and the date. If the Beneficiary 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 Beneficiary shall also

inform the Commission of this rejection and its reasons.

- 4.3 Upon receipt of an admissible payment request, the Beneficiary 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 Beneficiary 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 Beneficiary shall examine this reply or action pursuant to this paragraph.
- 4.4 If the Commission disagrees with the Beneficiary's conclusion that a payment is not due, it shall inform the Beneficiary thereof. The Beneficiary 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 Beneficiary shall also inform the Commission. The Beneficiary shall further proceed as provided for in Article 4.5.

If disagreement between the Beneficiary 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 Beneficiary and the contractor or grant beneficiary of this partial payment.

- 4.5 Where the Beneficiary 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.
- 4.6 After transfer of the payment request pursuant to Article 4.5, if the Commission concludes that the payment is not due, it shall inform the Beneficiary 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 Beneficiary in accordance with Article 4.3.
- 4.7 Where the Beneficiary and the Commission concludes that the payment is due, the Commission shall execute the payment.
- 4.8 Where late-payment interest is due to the contractor or grant beneficiary, it shall be allocated between the Beneficiary and the Commission pro rata to the days of delay in excess of the time limits stipulated in Article 4.1, subject to the following:
- (a) the number of days used by the Beneficiary is calculated from the date of the registration of an admissible payment request referred to in Article 4.3 to the date of the transfer of the request to the Commission referred to in Article 4.5 and from the date of information by the Commission referred to Article 4.6 to the following transfer

of the request to the Commission referred to in Article 4.5. 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 Beneficiary referred to in Article 4.5 to the date of payment and from the date of transfer to the date of informing the Beneficiary pursuant to Article 4.6.

- 4.9 Any circumstances unforeseen by the above procedure shall be solved in a spirit of cooperation between the Beneficiary and the Commission by analogy to the above provisions while respecting the contractual relations of the Beneficiary 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.

#### **Article 5 - Programme estimate**

- 5.1 When the Beneficiary is additionally entrusted with making payments to contractors, grant beneficiaries and/or in the context of direct labour, it shall do so on the basis of a programme estimate agreed by the Beneficiary and the Commission beforehand.
- 5.2 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 activities over a specified period by means of procurement, grants and/or direct labour.

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

Under the imprest component of a programme estimate, the Beneficiary shall be entrusted with implementing the procurement and grant award procedures and carry out the related payments and the payments for direct labour.

Under the component for specific commitments, the Beneficiary shall carry out tasks as referred to in the second subparagraph of Article 1.1 of these General Conditions; the Commission shall carry out related payment to contractors and grant beneficiaries. Certain identified activities, including audits, evaluations and recourse to the framework contract, shall be implemented directly by the Commission.

Where the action is financed under the EDF, the tasks described in Annex I may be implemented by a body governed by private law on the basis of a service contract, awarded by the Beneficiary in accordance with the procedures and standard documents referred to in Article 1.3.

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

Ordinary operating costs incurred by the entity in charge of the tasks entrusted to the Beneficiary referred to in Articles 1.1 and 5.1 of these General Conditions shall be eligible for EU financing under the imprest component of a programme estimate 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. These costs are incurred in carrying out budget-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 purchase of vehicles or of any other equipment, or any operational activity. Article 1.3 and 2.1 of these General Conditions shall not apply to these ordinary operating costs.

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

**Article 6 - Payments to the Beneficiary implementing the imprest component of a programme estimate**

- 6.1 The Commission shall transfer funds no later than 30 calendar days after the date on which it registers an admissible payment request for pre-financing from the Beneficiary which contains the date, the amount and the currency; the time-limit shall be 90 calendar days for a payment request for replenishment or closure. 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 Beneficiary, at any time during the period referred to above, that the payment request cannot be met, either because 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 Beneficiary 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.
- 6.2 The Commission shall make payments to a bank account opened at a financial institution accepted by the Commission.
- 6.3 The Beneficiary shall guarantee that funds paid by the Commission can be identified in this bank account.
- 6.4 Transfers in euro shall, if necessary, be converted into the Beneficiary's national currency as and when payments have to be made by the Beneficiary, at the bank rate in force on the day of payment by the Beneficiary.
- 6.5 The imprest component of a programme estimate which has not given rise to any payment to the Beneficiary within three years of the conclusion of the programme estimate shall be



automatically terminated, and the corresponding committed amount shall be decommitted.

#### **Article 7 - Publication of information on procurement and grant contracts by the Beneficiary**

- 7.1 The Beneficiary 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 programme estimates referred to in Article 5, 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 Beneficiary.

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

Otherwise, 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 Beneficiary 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 approval 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 Beneficiary 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 Beneficiary shall present a list with such justifications to the Commission which must grant prior approval to such publication waiver.
- 7.5 Where the Commission carries out payments to contractors and grant beneficiaries, it shall ensure the publication of information on procurement and grant contracts according to its rules..

#### **Article 8 - Recovery of funds**

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

Amounts unduly paid and recovered by the Beneficiary, amounts from financial guarantees

lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed by the Beneficiary on candidates, tenderers, applicants, contractors or grant beneficiaries, as well as damages awarded to the Beneficiary shall be returned to the Commission.

- 8.2 Without prejudice to the above responsibility of the Beneficiary to recover funds unduly paid, the Beneficiary 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 and grant contracts financed under Part One and proceed to its recovery by any means on behalf of the Beneficiary, including by offsetting the amount owed by the contractor or grant beneficiary against any of his claims against the EU and by forced recovery before the competent courts.
- 8.3 To this end, the Beneficiary shall provide to the Commission all the documentation and information necessary. The Beneficiary 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 Beneficiary is the contracting authority or by offsetting the funds to be recovered against any amounts owed to the contractor or grant beneficiary by the Beneficiary 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 Beneficiary that the recovery proceedings have been initiated (including where necessary before a national court).
- 8.5 Where the Beneficiary is a sub-delegatee of an entity with which the Commission concluded a delegation agreement, the Commission may recover funds from the Beneficiary 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 Beneficiary 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 Beneficiary 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 approval. Such prior approval 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 Beneficiary 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 Beneficiary, the Beneficiary shall immediately inform the Commission and seek its prior approval 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 Beneficiary's own resources or other resources, the Commission may, at the Beneficiary'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 Beneficiary and the EU commit to engage in a regular constructive dialogue at the appropriate level on the implementation of this Financing Agreement.

Where the Beneficiary 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 Beneficiary thereof without undue delay.

- 12.2. Disbursement requests submitted by the Beneficiary 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 phase.

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

### **Article 13 - Transparency of budget support**

The Beneficiary 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 Beneficiary, in particular if the Beneficiary 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 in direct management**

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

- an operational implementation phase, in which the principal operational activities of the action are carried out. This phase shall start on the entry into force of this Financing Agreement and end with the opening of the closure phase;
- a closure phase, during which final audits and evaluation are carried out and contracts and programme estimates for the implementation of this Financing Agreement are technically and financially closed. The duration of this phase is stipulated in Article 2.3 of the Special Conditions. It starts after the end of the operational implementation phase. Only expenditure necessary for the closure shall be eligible.

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

- 15.2 Costs related to the principal operational activities shall be eligible for EU financing only if they have been incurred during the operational implementation phase; the costs incurred by the Beneficiary 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, and to closure activities shall be eligible until the end of the closure phase.
- 15.3 Any balance remaining from the EU contribution will 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 phase and correlatively of the execution period. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the operational implementation phase and approved by the Commission before that end. This Financing Agreement shall be amended accordingly.
- 15.5 In exceptional and duly substantiated cases, and after the end of the operational implementation phase, a request may be made for the extension of the closure phase and correlatively of the execution period. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the closure phase and approved by the Commission before that end. This Financing Agreement shall be amended accordingly.
- 15.6 Article 2 of these General Conditions shall apply to activities implemented by the Commission as contracting authority (direct management) with the exception of the second

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

The Beneficiary 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 Beneficiary 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, pursuant to Regulation (EC, Euratom) No 2185/96 and to Regulation (EC, Euratom) No 883/2013, the Beneficiary 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 Beneficiary 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 and grant beneficiaries, and subcontractors who have received EU financing.
- 16.4 The Beneficiary 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 Beneficiary in fighting irregularities, fraud and corruption**

- 17.1 The Beneficiary 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 Beneficiary shall ensure and check regularly that the actions financed from the budget are 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 estimates 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 Beneficiary 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 The Beneficiary shall immediately inform the Commission (contacts pursuant to the third subparagraph of the Article 1.8 of the General Conditions) of the name of the entity that has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity detrimental to the EU's financial interests.

17.5 If the Beneficiary 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 that or has serious concerns, on the basis of information it received, and needs to verify, whether the Beneficiary has committed substantial errors, irregularities or fraud in the procurement and grant award procedure or in the implementation of the action, or the Beneficiary has failed to comply with its

obligations under this Financing Agreement, including obligations regarding the implementation of the Communications and Visibility plan;

- b) the Commission has established that or has serious concerns, on the basis of information it received, and needs to verify, whether the Beneficiary 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 Beneficiary's internal control system or the legality and regularity of the underlying expenditure;
  - c) the Commission suspects that the Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary 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 on candidates, tenderers, applicants, contractors or grant beneficiaries, 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 or grant contract, the Beneficiary shall entitle natural and legal persons participating in invitations to tender for works, supply or service contracts or calls for proposals and entities expected to be entrusted with budget-implementation tasks identified in Annex I with a provisional right of establishment and residence in the Beneficiary's territory(ies). This right shall remain valid for one month after the contract is awarded.
- 20.2 The Beneficiary shall also entitle procurement contractors and grant beneficiaries, entities entrusted with budget-implementation tasks identified in Annex I (Technical and



Administrative Provisions), 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.

#### **Article 21 - Tax and customs provisions**

21.1 The Beneficiary shall apply to procurement contracts and grants 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 Beneficiary 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 Beneficiary agrees that its documents and data held by an entity with which the Beneficiary is in a contractual relationship regarding them may be forwarded to the Commission by that entity for the sole purpose of implementing this or another Financing Agreement. The Commission shall respect all confidentiality arrangements agreed between the Beneficiary and that entity.

22.2 Without prejudice to Article 16 of these General Conditions, the Beneficiary 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.

#### **Article 23 - Use of studies**

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

#### **Article 24 - Consultation between the Beneficiary and the Commission**

24.1 The Beneficiary 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 29 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 Beneficiary 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 Beneficiary of the implementation of activities described in Annex I which do not fall under Part One 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 Beneficiary, 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 Beneficiary 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 within the limit of the contingency reserve, the Beneficiary 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 contingency reserve provided for an action shall be subject to the Commission's prior written approval.
- 25.5 Where the Commission considers that the Beneficiary 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 Beneficiary in order to continue the implementation of the activities on behalf of the Beneficiary 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 Beneficiary breaches an obligation under this Financing Agreement.
  - The Commission may suspend the implementation of this Financing Agreement if the Beneficiary breaches any obligation set under the procedures and standard documents referred to in Article 1.3 and 5.3 of these General Conditions.

- The Commission may suspend this Financing Agreement if the Beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.
  - 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.
- 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, delegation agreements and programme estimates and for such contracts, delegation agreements and programme estimates to be signed 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 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. This Financing Agreement shall be automatically terminated, if within the period of three years of its signature:

- a) it has not given rise to any payment;
- b) no implementing contract or delegation agreement has been signed;
- c) and where this action is financed under the EDF, no programme estimate has been signed;

27.3 When the termination is notified, the consequences for the on-going procurement and grant contracts, delegation agreements and programme estimates and for such contracts, delegation agreements and programme estimates to be signed shall be indicated.

#### **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 Beneficiary 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 Unless the arbitrators decide otherwise, 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.