

**DECISION FOR AN OPERATING GRANT**

**ANNEX I: GENERAL CONDITIONS**

**Submission of a grant application implies acceptance of these General Conditions. These General Conditions bind the beneficiary to whom the grant is awarded and shall constitute an annex to the Grant Decision.**

**General Condition n° 1 - Conflict of interests**

1. The beneficiary undertakes to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective implementation of the work programme. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.
2. Any situation constituting or likely to lead to a conflict of interests during the implementation of the work programme must be brought to the attention of the Agency, in writing, without delay. The beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once.
3. The Agency reserves the right to check that the measures taken are appropriate and may demand that the beneficiary take additional measures, if necessary, within a certain time.

**General Condition n° 2 - Confidentiality**

Unless otherwise stipulated in the Grant Decision, the Agency and the beneficiary undertake, even beyond the eligibility period covered by Union funding, to preserve the confidentiality of any document, information or other material directly related to the subject of the work programme that is duly classed as confidential, if disclosure could cause prejudice either to the Commission, the Agency or the beneficiary.

**General Condition n° 3 - Publicity**

1. Unless the Agency requests otherwise, any communication or publication by the beneficiary about the implementation of the work programme, including at a conference or seminar, shall indicate that it has received funding from the European Union.
2. Any communication or publication by the beneficiary, in any form and medium, shall indicate that sole responsibility lies with the author and that the Agency and the Commission are not responsible for any use that may be made of the information contained therein.
3. The beneficiary authorises the Agency and the Commission to publish the following information in any form and medium, including via the Internet:
  - the beneficiary's name and address,
  - the subject and purpose of the grant,
  - the amount granted and the proportion of the beneficiary's total operating budget covered by the funding.
4. Upon a reasoned and duly substantiated request by the beneficiary, the Agency and/or the Commission may agree to forego such publicity, if disclosure of the information indicated above would risk compromising the beneficiary's security or prejudicing his commercial interests.

**General Condition n° 4 - Evaluation**

Whenever the Agency and/or the Commission carries out an interim or final evaluation of the grant's impact measured against the objectives of the Union programme concerned, the beneficiary undertakes to make available to the Agency and the Commission, and/or persons authorized by them, all such documents or information, including information in electronic format, as will allow the evaluation to be successfully completed and to give them the rights of access specified in General Condition n° 14.

### **General Condition n° 5 - Award of contracts**

1. If the beneficiary has to conclude contracts in order to implement the work programme and they involve eligible costs for the operating budget, he shall award the contract to the bid offering best value for money;<sup>1</sup> in doing so, he shall take care to avoid any conflict of interests.
2. Contracts as referred to in paragraph 1 may be awarded only on the following basis:
  - (a) they may only cover the execution of a limited part of the work programme;
  - (b) recourse to the award of contracts must be justified having regard to the nature of the tasks covered by the work programme and what is necessary for its implementation;
  - (c) the tasks concerned and the corresponding estimated costs must be set out in detail in the annexes to the Grant Decision;
  - (d) if not provided for in the initial grant application, any recourse to procurement while the work programme is being implemented, shall be subject to prior written authorisation by the Agency;
  - (e) the beneficiary shall retain sole responsibility for implementing the work programme and for compliance with the provisions of the Grant Decision. The beneficiary must undertake to make the necessary arrangements to ensure that the contractor/s waive/s all rights in respect of the Agency;
  - (f) the beneficiary must undertake to ensure that the conditions applicable to him concerning conflict of interests, ownership/use of the results, confidentiality, publicity, evaluation, suspension, assignment, checks and audits are also applicable to the contractor.

### **General Condition n° 6 - Assignment**

1. Claims against the Agency may not be transferred.
2. In exceptional circumstances, where the situation warrants it, the Agency may authorize the assignment of the Decision and payments flowing from it, to a third party, following a written request to that effect, giving reasons, from the beneficiary. If the Agency agrees, it must make its agreement known in writing before the proposed assignment takes place. In the absence of the above authorization, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Agency.
3. In no circumstances shall such assignment release the beneficiary from his obligations to the Agency.

### **General Condition n° 7 - Termination of the grant**

#### **7.1 By the beneficiary**

1. In duly justified cases, the beneficiary may renounce the grant at any time, by giving 60 days' written notice and stating the reasons of the impossibility to pursue the implementation of the work programme for which the grant has been awarded, without being required to provide any indemnity on this account.
2. If no reasons are given or if the Agency does not accept the reasons, the beneficiary shall be deemed to have terminated this grant improperly, with the consequences set out in the fourth subparagraph of paragraph 4 of this General Condition. .

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<sup>1</sup> Where the value of the contract exceeds EUR 60 000, departments may include provision, in the Decision, for specific rules of procedure to apply based on those contained in the Financial Regulation with due regard to the estimated value of the contract, the relative size of the Community contribution and the management risk.

## 7.2 By the Agency

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

- (a) in the event of a legal, financial, technical, organisational or ownership change in the beneficiary's situation that is liable to affect the Grant Decision substantially or to call into question the decision to award the grant;
- (b) if the beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the Grant Decision, including its annexes;
- (c) in the event of *force majeure*;<sup>2</sup>
- (d) if the beneficiary is declared bankrupt, is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of professional misconduct;
- (f) if the beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- (g) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests.
- (h) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- (i) if the beneficiary has made false declarations, is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the Grant Decision.

In the cases referred to in points (e), (g) and (h) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

## 7.3 Termination procedure

1. The termination procedure is initiated by registered letter with acknowledgement of receipt or equivalent.
2. In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the beneficiary shall have 30 days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the Grant Decision. If the Agency fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the termination procedure shall continue to run.
3. Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Agency's decision to terminate the grant is received.

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<sup>2</sup> *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the Commission's and/or the beneficiary's control which prevents either of them from fulfilling any of their obligations under this Grant Decision, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* neither by the Commission nor by the beneficiary.

4. If notice is not given in the cases referred to in points (c), (f) and (i) above, termination shall take effect from the day following the date on which notification of the Agency's decision to terminate the grant is received.

#### **7.4 Effects of termination**

1. In the event of termination, payments by the Agency shall be limited to the eligible costs actually incurred by the beneficiary up to the date when termination takes effect, in accordance with the Grant Decision. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.
2. The beneficiary shall have 60 days from the date when termination takes effect, as notified by the Agency, to produce a request for final payment in accordance with the Grant Decision and General Condition n° 10.4. If no request for final payment is received within this time limit, the Agency shall not reimburse the expenditure incurred by the beneficiary up to the date of termination and it shall recover any amount whose use is not substantiated by the activity reports and financial statements approved by the Agency.
3. By way of exception, at the end of the period of notice referred to above, when the Agency is terminating the grant on the grounds that the beneficiary has failed to produce the final activity report and financial statement within the deadline stipulated in the Grant Decision, and the beneficiary has still not complied with this obligation within two months following the written reminder sent by the Agency by registered letter with acknowledgment of receipt or equivalent, the Agency shall not reimburse the expenditure incurred by the beneficiary up to the end of the period of eligibility for Union funding and it shall recover any amount whose use is not substantiated by the activity reports and financial statements approved by Agency .
4. By way of exception, in the event of improper termination by the beneficiary or termination by the Agency on the grounds set out in points (a), (e), (g), (h) or (i) above, the Agency may require the partial or total repayment of sums already paid under the Grant Decision on the basis of the activity reports and financial statements approved by the Agency, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his observations.

#### **General Condition n° 8 - Financial penalties**

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

#### **General Condition n° 9 - Eligibility of costs**

1. Eligible costs of the work programme are costs actually incurred by the beneficiary, which meet the following criteria:
  - they are incurred during the duration of the work programme as specified in the Grant Decision, with the exception of costs relating to final reports and external audit reports on the beneficiary's financial statements and underlying accounts;
  - they are connected with the subject of the work programme and they are indicated in the estimated overall budget of the work programme;
  - they are necessary for the implementation of the work programme which is the subject of the grant;
  - they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;

- they comply with the requirements of applicable tax and social legislations;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

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

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

- the cost of staff, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration;

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;

- travel and subsistence allowances for staff, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind.

Only the portion of the equipment's depreciation corresponding to the period of eligibility for Union funding covered by the grant decision may be taken into account by the Agency, except where the nature and/or the context of its use justifies different treatment by the Agency;

- costs of consumables and supplies;
- costs entailed by other contracts awarded by a beneficiary for the purposes of implementing the work programme, provided that the stipulations laid down in General Condition n° 5 are met;
- costs arising directly from requirements imposed by the Grant Decision (in particular, audits costs), including the costs of any financial services (especially the cost of financial guarantees);
- overheads.

3. The following costs shall not be considered eligible:

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

4. Contributions in kind shall not constitute eligible costs. However, the Agency can accept, if considered necessary and appropriate, that the cofinancing of the work programme should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs;

- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.
5. Contributions involving buildings shall not be covered by this possibility.
  6. In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount shall be included in the costs of the work programme as ineligible costs and in receipts from the work programme as co-financing in kind. The beneficiary shall undertake to obtain these contributions as provided for.

### **General Condition n° 10 - Request for payments**

Payments shall be made in accordance with the Grant Decision.

#### **10.1 Pre-financing**

1. Pre-financing is intended to provide the beneficiary with a float.
2. Where required by Article 4 of the Grant Decision, the beneficiary shall provide a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.
3. The guarantor shall stand as first call guarantor and shall not require the Agency to have recourse against the principal debtor (the beneficiary).
4. The financial guarantee shall remain in force until the final payments by the Agency match the proportion of the total grant accounted for by pre-financing. The Agency undertakes to release the guarantee within 30 days following that date.

#### **10.2 Further pre-financing payments**

1. Where pre-financing is divided into several instalments, the beneficiary may request a further pre-financing payment once he has used up the percentage of the previous payment specified in the provisions of the Grant Decision on further pre-financing. The request shall be accompanied by the following documents:
  - a detailed statement of the eligible costs actually incurred;
  - where required by the provisions of the Grant Decision, a financial guarantee;
  - where required by the provisions of the Grant Decision, an external audit report on the beneficiary's financial statements and underlying accounts, produced by an approved auditor or, in case of public bodies, by a competent and independent public officer;
  - any other documents in support of his request that may be required in support of the request for further pre-financing payments.
2. The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in the Grant Decision.

#### **10.3 Interim payments**

1. Interim payments are intended to reimburse the beneficiary for expenditure on the basis of a detailed statement of the costs incurred, once the work programme has reached a certain level of completion. It may clear all or part of any pre-financing.
2. By the appropriate deadline indicated in the Grant Decision, the beneficiary shall submit a request for interim payment accompanied by the following documents:
  - an interim report on implementation of the work programme;

- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
  - where required by the provisions of the Grant Decision on interim payment, an external audit report on the beneficiary's financial statements and underlying accounts. The external audit shall be carried out by an approved auditor, or in case of public bodies, by a competent and independent public officer. The report shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiary in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared in accordance with the Grant Decision.
3. The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the Grant Decision. The beneficiary shall certify that the information provided in his request for payment is full, reliable and true. He shall certify that the costs incurred can be considered eligible in accordance with the Grant Decision, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.
  4. On receipt of these documents, the Agency shall have the period specified in the Grant Decision in order to:
    - approve the interim report on implementation of the work programme and the interim financial statement;
    - ask the beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
    - reject the report(s) and ask for the submission of a new report.
  5. Failing a written reply from the Agency within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the reports accompanying the request for payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.
  6. If additional information or (a) new report(s) is (are) requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in the Grant Decision to submit the information or new documents requested.
  7. Extension of the delay for approval of the report may delay the payment by the equivalent time.
  8. Where a report is rejected, as not admissible within 30 days of receipt, and a new report requested, the approval procedure described in this article shall apply.
  9. In the event of renewed rejection, the Agency reserves the right to terminate the grant by invoking General Condition n° 7.2 (b).

#### **10.4 Payment of the balance**

1. Payment of the balance, which may not be repeated, is made after the end of the period of eligibility of European Union funding on the basis of the costs actually incurred by the beneficiary in carrying out the work programme. It may take the form of a recovery order, where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with General Condition n° 12.
2. By the appropriate deadline indicated in the Grant Decision, the beneficiary shall submit a request for payment of the balance accompanied by the following documents:
  - a final report on the implementation of the work programme;
  - a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
  - a full summary statement of the receipts and expenditure in the beneficiary's accounts for the period of eligibility covered by the Grant Decision;

- where required by the Grant Decision provisions on payment of the balance, an external audit report on the beneficiary's financial statements and underlying accounts. The external audit shall be carried out by an approved auditor, or, in case of public bodies, by a competent and independent public officer. The external audit report shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiary in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared in accordance with the Grant Decision.
3. The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in the Grant Decision. The beneficiary shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the Grant Decision, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.
  4. On receipt of these documents, the Agency shall have the period specified in the Grant Decision in order to:
    - approve the final report on implementation of the work programme and the final financial statement;
    - ask the beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
    - reject the report(s) and ask for the submission of a new report.
  5. Failing a written reply from the Agency within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the reports accompanying the request for payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.
  6. If additional information or a new report(s) is (are) requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in Article 4 of the Grant Decision to submit the information or new documents requested.
  7. Extension of the delay for approval of the report may delay the payment by the equivalent time.
  8. Where a report is rejected, as not admissible within 30 days of receipt, and a new report requested, the approval procedure described above shall apply.
  9. In the event of renewed rejection, the Agency reserves the right to terminate the grant by invoking General Condition n° 7.2 (b).

#### **General Condition n° 11 - General Provisions on Payments**

1. Payments shall be made by the Agency in euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Agency, unless the Grant Decision lay down specific provisions.
2. Payments by the Agency shall be deemed to be effected on the date when they are debited to the Commission's account.
3. The Agency may suspend the period for payment laid down in the grant decision at any time for the purposes of additional checks by notifying the beneficiary that his request for payment cannot be met, either because it does not comply with the provisions of the Grant Decision, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the request for payment are not eligible.
4. The Agency may suspend its payments at any time if the beneficiary is found or presumed to have infringed the provisions of the Grant Decision, in particular in the wake of the audits or checks provided for in General Condition no 14.
5. The Agency may also suspend its payments:

- if there is a suspicion of irregularity committed by the beneficiary in the implementation of the Grant Decision;
  - if there is a suspected or established irregularity committed by the beneficiary in the implementation of another grant agreement or grant decision funded by the General Budget of the European Union or by any other budget managed by it. In such cases, suspension of the payments will only proceed where the suspected or established irregularity can affect the implementation of the current Grant Decision.
6. The Agency shall inform the beneficiary in writing as soon as possible of any such suspension, setting out the reasons for suspension.
  7. Suspension shall take effect on the date when notice is sent by the Agency. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Agency.
  8. On expiry of the period for payment specified in Article 4 of the Grant Decision and without prejudice to paragraphs 3, 4 and 5 above, the beneficiary is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union.

This provision shall not apply to recipients of a grant which are public authorities of the Member States of the European Union.

9. Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 2, inclusive. The interest shall not be treated as a receipt for the purposes of determining the final grant within the meaning of General Condition n° 12. The suspension of payment by the Agency may not be considered as late payment.
10. By way of exception, when the interest calculated in accordance with the provisions of paragraphs 8 and 9 above is lower than or equal to EUR 200, it shall be paid to the beneficiary only upon demand submitted within two months of receiving late payment.
11. The Agency shall deduct the interest yielded by pre-financing which exceeds EUR 50 000, as provided for in the Grant Decision, from the payment of the balance of the amount due to the beneficiary. The interest shall not be treated as a receipt within the meaning of General Condition n° 12.
12. Where the pre-financing payments exceed EUR 750 000 per grant decision at the end of each financial year, the interest shall be recovered for each reporting period. Taking into account the risks associated with the management environment and the nature of the work programme financed, the Agency may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.
13. Where the interest yielded exceeds the balance of the amount due to the beneficiary, as indicated in General Condition n° 10, or is generated by pre-financing referred to in the preceding paragraph, the Agency shall recover it in accordance with General Condition n° 13.
14. Interest yielded by pre-financing paid to Member States is not due to the Agency .
15. The beneficiary shall have two months from the date of notification by the Agency of the final amount of the grant determining the amount of the payment of the balance or the recovery order, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time, such requests will no longer be considered.

The Agency undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the beneficiary's right to appeal against the Agency's decision. Under the terms of Union legislation in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

#### **General Condition n° 12 - Determining the final grant**

1. Without prejudice to information obtained subsequently pursuant to General Condition no 14, the Agency shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in General Condition no 10 which it has approved. The amount paid to the beneficiary by the Agency may not in any circumstances exceed the maximum amount of the grant laid down in the Grant Decision, even if the total actual costs eligible exceed the estimated total eligible costs as specified in the Grant Decision.
2. If the total actual eligible costs at the end of the period of eligibility are lower than the estimated total eligible costs, the European Union's contribution shall be limited to the amount obtained by applying the European Union grant percentage specified in the grant decision to the actual eligible costs approved by the Agency.
3. The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the receipts and expenditure in the operating budget which allows the work programme to be implemented and that it may not in any circumstances produce a profit for him.
4. Profit shall mean any surplus of the beneficiary's total actual operating receipts over the total actual operating costs. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in the second and third paragraph. For the purposes of this article, only operating costs shown in the beneficiary's financial statements and falling within the categories set out in the estimated budget shall be taken into account; non-eligible costs shall always be covered by non- Union resources.
5. Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.
6. Without prejudice to the right for the beneficiary to terminate the grant, and without prejudice to the right of the Agency to apply the penalties referred, if the approved work programme is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for in line with the actual implementation of the work programme on the terms laid down in the Grant Decision.
7. On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the Grant Decision, the Agency shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Agency shall issue a recovery order for the surplus.

#### **General Condition n° 13 - Recovery**

1. If any amount is unduly paid to the beneficiary or if recovery is justified under the terms of the Grant Decision, the beneficiary undertakes to repay the Agency, on the bank account indicated by the latter, the sum in question on whatever terms and by whatever date it may specify.
2. If the beneficiary fails to pay by the date set by the Agency, the sum due shall bear interest at the rate indicated in General Condition n° 11. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.
3. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.
4. If payment has not been made by the due date, sums owed to the Agency may be recovered by offsetting them against any sums owed to the beneficiary by the Agency or the Commission, after informing him accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee if provided for.

In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Agency and/or the Commission may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.

5. Bank charges occasioned by the recovery of the sums owed to the Agency shall be borne solely by the beneficiary.
6. The beneficiary understands that, under Article 299 of the Treaty on the functioning of the European Union, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the General Court of the European Union.

#### **General Condition n° 14 - Checks and audits**

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

#### **General Condition n° 15 – Liability**

1. The beneficiary shall have sole responsibility for complying with any legal obligations incumbent on him.
2. The Agency shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the Grant Decision relating to any damage caused while the work programme is being carried out. Consequently, the Agency will not entertain any request for indemnity or reimbursement accompanying any such claim.
3. Except in cases of *force majeure*, the beneficiary shall make good any damage sustained by the Agency as a result of the implementation or faulty implementation of the work programme.
4. The beneficiary shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the work programme is being implemented.