

ANNEX IV- GENERAL CONDITIONS

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Preamble

- (1) The Interreg-IPA CBC Croatia - Bosnia and Herzegovina - Montenegro 2014-2020; CCI 2014TC16I5CB004 programme shall be implemented under shared management. Consequently, the Member State and the Commission shall be responsible for the implementation, the management and control of the Programme.
- (2) The authorities and bodies of the IPA II beneficiary shall support the Member State in its responsibilities and cooperate loyally with the single programme authorities, in particular where only the authorities and bodies of the IPA II beneficiary can carry out tasks on its territory.
- (3) The purpose of Part One is to lay out the rules for implementing the Interreg-IPA CBC Croatia - Bosnia and Herzegovina - Montenegro 2014-2020 programme as described in Annex I and to define rights and obligations of the IPA II beneficiary and the Commission respectively in carrying out these tasks.
- (4) Part One shall apply to the obligations of the IPA II beneficiary related to the Union contribution alone, or combined with the national co-financing of the IPA II beneficiary.
- (5) The IPA II beneficiary shall remain responsible for supporting the Programme authorities in the Member State in the fulfilment of its obligations stipulated in the basic acts, even if the IPA II beneficiary] sub-delegates to other entities identified in the Interreg-IPA CBC Croatia - Bosnia and Herzegovina - Montenegro 2014-2020 programme to carry out certain tasks. The Commission, in particular, reserves the right to interrupt payments, and to suspend and/or terminate this Financing Agreement on the basis of the acts, omissions and/or situations of any designated entity.



Part One: Applicable general provisions

Section I - Common provisions and principles

Article 1 - Definitions

For the purposes of this part the following definitions shall apply:

- (a) 'IPA II beneficiary' means one of the beneficiaries listed in Annex I to the IPA II Regulation;
- (b) 'participating countries' means the IPA II beneficiaries together with the Member State participating in a multi-annual programme for cross-border cooperation jointly drawn up by the participating countries;
- (c) 'programming' means the process of organisation, decision-making and allocation of financial resources in several stages, with the involvement of partners in accordance with Article 5, intended to implement, on a multi-annual basis, joint action by the Union and the Member States to achieve the objectives of the Union strategy for smart, sustainable and inclusive growth;
- (d) 'programme' means a multi-annual cooperation programme provided for in Articles 2(1) and 6(3) of Regulation (EU) No 236/2014 of the European Parliament and of the Council¹;
- (e) 'framework agreement' means an arrangement concluded between the Commission and an IPA II beneficiary applying to all IPA II policy areas and laying down the principles of the financial cooperation between the IPA II beneficiary and the Commission under this Regulation;
- (f) 'Partnership Agreement' means a document prepared by a Member State with the involvement of partners in line with the multi-level governance approach, which sets out that Member State's strategy, priorities and arrangements for using the European Structural and Investment Funds in an effective and efficient way so as to pursue the Union strategy for smart, sustainable and inclusive growth, and which is approved by the Commission following assessment and dialogue with the Member State concerned;
- (g) 'policy area(s)' means the main areas of cooperation addressed by actions funded by IPA II assistance, as provided for in Article 3(1) of the IPA II Regulation;
- (h) 'public expenditure' means any public contribution to the financing of operations the source of which is the budget of national, regional or local public authorities, the budget of the Union related to IPA II assistance, the budget of public law bodies or the budget of associations of public authorities or of public law bodies;
- (i) 'public law body' means in the Member State a body governed by public law within the meaning of point 4 of Article 2(1) of Directive 2014/24/EU of the European Parliament and of the Council² and any European grouping of territorial cooperation (EGTC) established in

¹ Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, OJ L 77, 15.3.2014, p. 95.

² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, OJ L 94, 28.3.2014, p. 65.



accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council³, regardless of whether the EGTC is considered to be a public law body or a private law body under the relevant national implementing provisions, and in the IPA II beneficiary, in accordance with national law, bodies equivalent to those in the Member State;

- (j) 'document' means a paper or an electronic medium bearing information of relevance in the context of this Regulation;
- (k) 'authorities' means public entities or bodies of an IPA II beneficiary or a Member State at national, regional or local level;
- (l) 'financing agreement' means an annual or multi-annual agreement concluded between the Commission and an IPA II beneficiary as well as the Member State hosting the managing authority, where the Member State has decided so, for implementing the Union's financial assistance through an action falling within the scope of the IPA II Regulation;
- (m) 'operation' means a project, contract, action or group of projects selected by the Joint monitoring committee or the contracting authority of the programme concerned, or under its responsibility, that contribute to the objectives;
- (n) 'beneficiary' means a public or private body, responsible for initiating or initiating and implementing operations;
- (o) 'accounting year', means the period from 1 July to 30 June, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2015; the final accounting year shall be from 1 July 2023 to 30 June 2024;
- (p) 'financial year', means the period from 1 January to 31 December;
- (q) 'irregularity' means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the IPA II contribution, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
- (r) 'economic operator' means any natural or legal person or other entity taking part in the implementation of assistance from IPA II, with the exception of a Member State or an IPA II beneficiary exercising its prerogatives as a public authority;
- (s) 'systemic irregularity' means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund-specific rules;
- (t) 'serious deficiency in the effective functioning of a management and control system' means a deficiency for which substantial improvements in the system are required, which exposes IPA II

³ Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, OJ L 347, 20.12.2013, p. 303.



assistance to a significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system;

- (u) 'Fund-specific rules' refer to the specific provisions of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013⁴ applicable to Regulation (EU) No 1299/2013 of the European Parliament and of the Council⁵ (the European Territorial Cooperation Regulation, 'the ETC Regulation') and Regulation (EU) No 1301/2013 of the European Parliament and of the Council⁶.

Article 2 - Calculation of time limits for Commission decisions

Where, pursuant to Article 6(4) and (6) of this Agreement or Article 107(2) and 108(3) of Regulation (EU) No 1303/2013, a time limit is set for the Commission to adopt or amend a decision, by means of an implementing act, that time limit shall not include the period which starts on the date following the date on which the Commission sends its observations to the Member State and lasts until the Member State responds to the observations.

Article 3 - General principles

1. The IPA II assistance shall support the IPA II beneficiary in adopting and implementing the political, institutional, legal, administrative, social and economic reforms required in order to comply with the Union's values and to progressively align to the Union's rules, standards, policies and practices, with a view to Union membership.

Through such support, IPA II assistance shall contribute to stability, security and prosperity in the IPA II beneficiary.

2. Specifically, the IPA II assistance shall
 - (a) support for political reforms, inter alia through regional cooperation and good neighbourly relations;
 - (b) support for economic, social and territorial development, with a view to smart, sustainable and inclusive growth; and
 - (c) strengthening regional integration and territorial cooperation involving the IPA II beneficiary and the Member State.
3. The Commission and the participating countries shall ensure, taking account of the specific context of each Member State and IPA II beneficiary, that IPA II assistance is consistent with

⁴ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320.

⁵ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, OJ L 347, 20.12.2013, p. 259.

⁶ Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006, OJ L 347, 20.12.2013, p. 289.



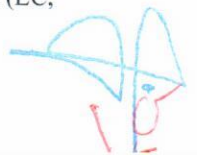
the relevant policies, horizontal principles referred to in Articles 4, 5 and 6 and priorities of the Union, and that it is complementary to other instruments of the Union.

4. IPA II assistance shall be implemented in close cooperation between the Commission, the Member State and the IPA II beneficiary in accordance with the principle of subsidiarity.
5. The participating countries at the appropriate territorial level, in accordance with their institutional, legal and financial framework, and the bodies designated by them for that purpose shall be responsible for preparing and implementing the Programme and carrying out their tasks, in partnership with the relevant partners referred to in Article 7, in compliance with this financing agreement.
6. Arrangements for the implementation and use of IPA II assistance, and in particular the financial and administrative resources required for the preparation and implementation of the Programme, in relation to monitoring, reporting, evaluation, management and control, shall respect the principle of proportionality having regard to the level of support allocated and shall take into account the overall aim of reducing the administrative burden on bodies involved in the management and control of the Programme.
7. In accordance with their respective responsibilities, the Commission, and the participating countries shall ensure coordination between this Programme and other IPA II programmes and between IPA II assistance and other relevant Union policies, strategies and instruments, including those in the framework of the Union's external action.
8. The part of the budget of the Union allocated to IPA II assistance shall be implemented within the framework of shared management between the Member State and the Commission, in accordance with Article 59 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁷ ('the Financial Regulation');
9. The Commission and the participating countries shall respect the principle of sound financial management in accordance with Article 30 of the Financial Regulation.
10. The Commission and the participating countries shall ensure the effectiveness of IPA II assistance during preparation and implementation, in relation to monitoring, reporting and evaluation.
11. The Commission and the participating countries shall carry out their respective roles in relation to IPA II assistance with the aim of reducing the administrative burden on beneficiaries.

Article 4 - Compliance with Union and national law

Operations supported by IPA II assistance shall comply with applicable Union law and the national law relating to its application ('applicable law').

⁷ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1.



Article 5 - Promotion of equality between men and women and non-discrimination

The Commission and the participating countries shall ensure that equality between men and women and the integration of gender perspective are taken into account and promoted throughout the preparation and implementation of the Programme, including in relation to monitoring, reporting and evaluation.

The Commission and the participating countries shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of the Programme. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of the Programme.

Article 6 - Sustainable development

The objectives of IPA II assistance shall be pursued in line with the principle of sustainable development and with the Union's promotion of the aim of preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) TFEU, taking into account the polluter pays principle.

The Commission and the participating countries shall ensure that environmental protection requirements, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience, and risk prevention and management are promoted in the preparation and implementation of the Programme.

Article 7 - Partnership principle

1. For the Programme, the participating countries shall in accordance with their institutional and legal framework organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners:
 - a) competent urban and other public authorities;
 - b) economic and social partners; and
 - c) relevant bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.

The participating countries may also involve European groupings of territorial cooperation operating in the programme area and authorities or bodies that are involved in the development or implementation of a macro-regional or sea-basin strategy in the programme area, including priority area coordinators for macro-regional strategies.

Where public authorities, economic and social partners, and bodies representing civil society have established an umbrella organisation, they may nominate a single representative to present the views of the umbrella organisation in the partnership.

2. In accordance with the multi-level governance approach, the partners referred to in paragraph 1 shall be involved by the participating countries in the preparation of progress reports and throughout the preparation and implementation of the Programme, including through participation in the Joint monitoring committee for the Programme in accordance with Article 15.



3. Commission Delegated Regulation (EU) No 240/2014⁸ shall apply *mutatis mutandis* on the different elements of programming referred to in paragraph 2.

Section II - Programming

Article 8 - Geographical coverage

The list of eligible regions shall be included in the Programme which shall be as follows:

- (a) in the Member State Nomenclature of Territorial Units for Statistics (NUTS) level 3 regions;
- (b) in the IPA II beneficiary country Nomenclature of Territorial Units for Statistics (NUTS) level 3 regions or, in the absence of NUTS classification, equivalent areas along land borders or along maritime borders separated by a maximum of 150 km, without prejudice to potential adjustments needed to ensure the coherence and continuity of cross-border programmes established for the 2007-2013 programming period.

Article 9 - Content of the Programme and thematic concentration

1. The Programme shall be drawn up in accordance with the partnership principle as set out in Article 9 and in accordance with Article 8(2) to (4), (7), (9) and (10) of the ETC Regulation.
2. The Programme shall consist of priority axes. Without prejudice to technical assistance in terms of Article 32 of the IPA II Implementing Regulation, a priority axis shall correspond to a thematic priority. Within a priority axis, where appropriate and in order to increase its impact and effectiveness through a coherent integrated approach, elements of other thematic priorities may be added.
3. The thematic priorities for the Programme shall be agreed between the participating countries for each border or group of borders based on the thematic priorities as defined in Annex III to the IPA II Regulation.
4. Thematic priorities of IPA II assistance shall be those defined in Annex III to the IPA II Regulation.
5. A maximum of 4 thematic priorities shall be selected for the Programme.

Article 10 - Approval and amendment of the Programme

1. The Programme shall be submitted electronically to the Commission by the Member State where the programme's managing authority shall be located.
2. The European Investment Bank (EIB) may, at the request of participating countries, participate in the preparation of, as well as in activities relating to the preparation of operations, in particular major projects.

The Commission may consult the EIB before the adoption of the Programme.



3. The Commission shall assess the consistency of cross-border cooperation programmes with this Regulation, their effective contribution to the selected thematic priorities in Annex III to the IPA II Regulation, and also, as far as participating Member States are concerned, the relevant Partnership Agreement.
4. The Commission shall make observations within three months of the date of submission of the cross-border cooperation programme. The Participating Countries shall provide to the Commission all necessary additional information and, where appropriate, revise the proposed cross-border cooperation programme.
5. When approving each cross-border cooperation programme following its formal submission, the Commission has to ensure that any of its observations have been adequately taken into account.
6. Requests for amendment of the Programme submitted by the participating countries shall be duly substantiated and shall in particular set out the expected impact of the changes to the Programme on achieving its objectives. These requests shall be accompanied by the revised programme. Paragraphs 3 and 4 shall apply to amendments of the Programme.

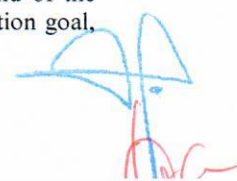
Article 11 - Community-led local development, joint action plans and integrated territorial investments

1. The Programme may carry out actions
 - a) of community-led local development in the meaning of Articles 32 to 35 of Regulation (EU) No 1303/2013,
 - b) of joint action plans in the meaning of Articles 104 to 109 of that Regulation, drafted in accordance with Article 4 and Annex IV of Commission Implementing Regulation (EU) No 2015/207⁹; and
 - c) of integrated territorial investments in the meaning of Article 36 of that Regulation, taking into account the underlying principles of these instruments and Articles 9 to 11 of the ETC Regulation.
2. The specific rules and conditions for actions listed in paragraph 1 shall be agreed between the Commission and the participating countries for the Programme in the Special Conditions of this Agreement.

Article 12 - Selection of operations

1. Operations under the Programme shall be selected by the Joint monitoring committee. The Joint monitoring committee may set up a steering committee acting under its responsibility for the selection of operations.

⁹ Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for the progress report, submission of the information on a major project, the joint action plan, the implementation reports for the Investment for growth and jobs goal, the management declaration, the audit strategy, the audit opinion and the annual control report and the methodology for carrying out the cost-benefit analysis and pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council as regards the model for the implementation reports for the European territorial cooperation goal, OJ L 38, 13.2.2015, p. 1.



2. Selected operations shall involve beneficiaries from at least two participating countries, at least one of which shall be from a Member State. An operation may be implemented in a single participating country, provided that cross-border impacts and benefits are identified.
3. Beneficiaries shall cooperate in the development and implementation of operations. In addition, they shall cooperate in either the staffing or the financing of operations.

Article 13 - Permits and authorization

Any type of permit and/or authorisation required for the implementation of the Programme shall be provided by the competent authorities of the IPA II beneficiary, in accordance with national law, before the grant document referred to in Article 14(6) is provided by the managing authority to the lead beneficiary.

Article 14 – Beneficiaries

1. Where there are two or more beneficiaries for an operation in the Programme, one of them shall be designated by all the beneficiaries as the lead beneficiary.
2. The lead beneficiary shall carry out the following tasks:
 - a) lay down the arrangements with other beneficiaries in an agreement comprising provisions that, inter alia, guarantee the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid;
 - b) assume responsibility for ensuring implementation of the entire operation;
 - c) ensure that expenditure presented by all beneficiaries has been incurred in implementing the operation and corresponds to the activities agreed between all the beneficiaries, and in accordance with the grant document provided by the managing authority as provided for in paragraph 6;
 - d) ensure that the expenditure presented by other beneficiaries has been verified by a controller(s)¹⁰ where this verification is not carried out by the managing authority in accordance with Article 23(1) of the ETC Regulation.
3. If not otherwise specified in the arrangements referred to in point (a) of paragraph (2), the lead beneficiary shall ensure that the other beneficiaries receive the total amount of the public support as quickly as possible and in full. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce those amounts for the other beneficiaries.
4. Lead or sole beneficiaries shall be located in a participating country.
5. Notwithstanding Article 12(2), an EGTC or another legal body established under the laws of one of the participating countries may apply as sole beneficiary for an operation provided that it is set up by public authorities and bodies from at least two participating countries.
6. The managing authority shall provide to the lead or sole beneficiary for each operation a document setting out the conditions for support of the operation, including the specific

¹⁰ As defined in Article 42(2).



requirements concerning the products or services to be delivered under the operation, the financing plan and the time-limit for execution (the 'grant document').

Section III - Monitoring

Article 15 - Joint monitoring committee (setting-up and composition)

1. Within three months of the date of notification to the Member State of the decision approving the Programme the participating countries shall set up a Joint Monitoring Committee ('JMC').
2. The JMC shall be composed of representatives of the Commission, the national IPA co-ordinator ('NIPAC') and other relevant national authorities and bodies of the IPA II beneficiary, the participating Member State(s) and, where relevant, international financial institutions and other stakeholders, including civil society and private sector organisations. The list of the members of the JMC shall be published.
3. The JMC shall be chaired by a representative of one of the Participating Countries or of the managing authority.
4. The Commission shall participate in the work of the JMC in an advisory capacity.
5. If the EIB contributes to the Programme, it may participate in the work of the JMC in an advisory capacity.
6. The JMC shall adopt its rules of procedure.
7. The JMC shall meet at least once a year. Additional meetings may also be convened at the initiative of one of the participating countries or of the Commission, in particular on a thematic basis.

Article 16 - Functions of the Joint monitoring committee

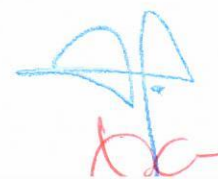
1. The JMC shall review the overall effectiveness, quality and coherence of the implementation of all actions towards meeting the objectives set out in the Programme, the financing agreements and the relevant strategy paper(s). It may make recommendations for corrective actions whenever needed.

The JMC shall examine all issues that affect the performance of the Programme, including the conclusions of the performance reviews.

It may make observations to the managing authority regarding implementation and evaluation of the Programme including actions related to the reduction of the administrative burden on beneficiaries.

It shall monitor actions taken as a result of its observations.

2. The JMC and the managing authority shall carry out monitoring by reference to indicators laid down in the Programme, in accordance with Article 16 of the ETC Regulation.
3. The JMC shall examine and approve:
 - a) the methodology and criteria used for selection of operations;



- b) the annual and final implementation reports;
 - c) the evaluation plan for the Programme and any amendment of the evaluation plan pursuant to Article 21(6);
 - d) the communication strategy for the Programme and any amendment of the strategy;
 - e) any proposal by the managing authority for any amendment to the Programme.
4. The JMC shall examine in particular:
- a) any issues that affect the performance of the operational programme;
 - b) progress made in implementation of the evaluation plan and the follow-up given to findings of evaluations;
 - c) implementation of the communication strategy;
 - d) implementation of joint action plans;
 - e) actions to promote equality between men and women, equal opportunities, and non-discrimination, including accessibility for persons with disabilities;
 - f) actions to promote sustainable development.

Article 17 – Reporting

1. By 31 May 2016 and by the same date of each subsequent year until and including 2023, the managing authority shall submit to the Commission an annual implementation report in accordance with Article 50(1) of Regulation (EU) No 1303/2013.

The implementation report submitted in 2016 shall cover the financial years 2014 and 2015.

2. For the reports submitted in 2017 and 2019, the deadline referred to in paragraph 1 shall be 30 June.
3. Annual implementation reports shall set out key information on implementation of the Programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, including changes in the value of result indicators where appropriate, and, beginning from the annual implementation report to be submitted in 2017, the milestones defined in the performance framework. The data transmitted shall relate to values for indicators for fully implemented operations and also, where possible, having regard to the stage of implementation, for selected operations. They shall also set out a synthesis of the findings of all evaluations of the programme that have become available during the previous financial year, any issues which affect the performance of the programme, and the measures taken.
4. Article 14(3) and (4) of the ETC Regulation concerning implementation reports shall apply.
5. The annual and final implementation reports shall be drawn up in accordance with Article 8 and Annex X of Commission Implementing Regulation (EU) No 2015/207.



Article 18 - Annual review meeting

1. An annual review meeting shall be organised every year from 2016 until and including 2023 between the Commission, the Member State and the IPA II beneficiary to examine the performance of the Programme, taking account of the annual implementation report and the Commission's observations where applicable. The annual review meeting may cover more than one programme.
2. By way of derogation from paragraph 1, the Member State and the Commission may agree not to organise an annual review meeting for the Programme in years other than 2017 and 2019. In that case, the annual review may be carried out in writing.
3. The annual review meeting shall be chaired by the Commission or, if the Member State so requests, co-chaired by the Member State and the Commission.
4. The Member State and the IPA II beneficiary shall ensure that appropriate follow-up is given to comments of the Commission following the annual review meeting concerning issues which significantly affect the implementation of the Programme and, where appropriate, inform the Commission, within three months, of the measures taken.

Article 19 - Transmission of data

1. By 31 January, 31 July and 31 October of each year, the managing authority shall transmit electronically to the Commission for monitoring purposes, for the Programme and by priority axis:
 - (a) the total and public eligible cost of the operations and the number of operations selected for support;
 - (b) the total eligible expenditure declared by beneficiaries to the managing authority.
2. In addition, the transmission made by 31 January shall contain the data referred to in points (a) and (b) of paragraph 1 broken down by category of intervention. This transmission shall be considered to fulfil the requirement for the submission of financial data referred to in Article 17(2).

Financial data shall be transmitted in accordance with Article 2 and Annex II of Commission Implementing Regulation (EU) No 1011/2014¹¹.

3. A forecast of the amount for which the managing authority expects to submit payment applications for the current financial year and the subsequent financial year shall accompany the transmissions to be made by 31 January and 31 July.
4. The cut-off date for the data submitted under this paragraph shall be the end of the month preceding the month of submission.

¹¹ Commission Implementing Regulation (EU) No 1011/2014 of 22 September 2014 laying down detailed rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for submission of certain information to the Commission and the detailed rules concerning the exchanges of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies, OJ L 286, 30.9.2014, p. 1



Article 20 - Information and communication

1. The managing authority shall coordinate the tasks linked to the requirements on information, publicity and transparency under paragraph 2 and 3.

By way of derogation from Article 25 of the IPA II IP, the managing authority shall be responsible for information and communication activities as set out in Articles 115 and 116 of Regulation (EU) No 1303/2013.

Articles 3 to 5 of Commission Implementing Regulation (EU) No 821/2014¹² concerning the technical characteristics of information and communication measures for operations and instructions for using the Union emblem and a definition of the standard colours shall apply.

2. Any actor implementing IPA II assistance as defined in points (a) to (c) of Article 58(1) of the Financial Regulation shall fulfil the requirements on information, publicity and transparency in accordance with Article 35(2) of that Regulation, and ensure appropriate visibility of the actions.
3. The country/multi-country strategy papers and any revision thereof as well as programmes, shall be public documents, where applicable, and shall be made available to the general public and civil society.

Section IV – Evaluation

Article 21 – Evaluation principles and specific evaluations

1. IPA II assistance shall be subject to evaluations, in accordance with Article 30(4) of the Financial Regulation with the aim of improving its relevance, coherence, quality, efficiency, effectiveness, Union added value, consistency and synergy with the relevant policy dialogue.
2. Evaluations may be carried out at policy, strategic, thematic, sectoral, programme and operational level as well as at country or regional level.
3. The results of evaluations shall be taken into account by the JMC.
4. Evaluations shall be carried out by internal or external experts that are functionally independent of the authority responsible for programme implementation. All evaluations shall be made public.
5. The participating countries shall jointly carry out an *ex ante* evaluation in accordance with Article 55 of Regulation (EU) No 1303/2013.
6. Article 56 of Regulation (EU) No 1303/2013 concerning evaluation during the programming period shall apply.

In particular, the managing authority shall draw up an evaluation plan which shall be submitted to the JMC no later than one year after the adoption of the Programme.

¹² Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, the technical characteristics of information and communication measures for operations and the system to collect and store data, OJ L 223, 29.7.2014, p. 7.

7. Article 57 of Regulation (EU) No 1303/2013 concerning evaluation *ex post* shall apply.

Section V - Technical assistance

Article 22 - Purpose and ceiling

1. The Programme shall include a specific budget allocation for technical assistance operations, including preparation, management, monitoring, evaluation, information, communication, networking, complaint resolution, control and audit activities related to the implementation of the Programme and activities to reinforce the administrative capacity for implementing the Programme.

IPA II assistance may also be used by the participating countries to support actions for the reduction of administrative burden for beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of, and exchange best practices between, authorities in the participating countries and of beneficiaries to administer and use the IPA II assistance.

These actions may concern preceding and subsequent programming periods.

2. The amount of IPA II assistance to be allocated to technical assistance shall be limited to 10 % of the total amount allocated to the Programme, but shall not be less than EUR 1 500 000.

Article 23 – Eligibility

The expenditure for technical assistance to support the preparation of the Programme and the setting-up of management and control systems shall be eligible before the date of adoption of the Commission decision for the approval of the Programme, but not earlier than 1 January 2014.

Section VI - Eligibility of expenditure and durability of operations

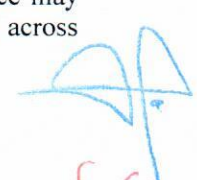
Article 24 – Eligibility principles

1. In accordance with Article 43(5) IPA II IP the hierarchy of eligibility rules for this Programme is established as follows:

Without prejudice to the eligibility rules laid down in this Section and in Article 33(2) or in the delegated acts referred to in Articles 27 and 28, the participating countries in the JMC shall establish additional rules on eligibility of expenditure for the Programme as a whole.

For matters not covered by eligibility rules laid down in this Section or in the delegated acts referred to in Articles 27 and 28, or in rules established jointly by the participating countries in accordance with the third subparagraph, the national rules of the Member State or the IPA II beneficiary in which the expenditure is incurred shall apply.

2. An operation may receive support under this Programme and from other Union instruments, provided that the expenditure item included in a payment application for reimbursement by the IPA II assistance does not receive support from another Union instrument or support from IPA II assistance under another programme.
3. In accordance with Article 3(2) of Regulation (EU) No 10301/2013 the IPA II assistance may support the sharing of facilities and human resources and all types of infrastructure across borders under this Programme.



4. With the exception of Article 30, this section shall not apply to Technical Assistance. Section V shall apply.

Article 25 - Eligibility in time

1. Expenditure shall be eligible for funding under IPA II cross-border cooperation assistance:
 - (a) if it has been incurred by a beneficiary from a Member State and paid between 1 January 2014 and 31 December 2023; or
 - (b) if it has been incurred by a beneficiary from an IPA II beneficiary and paid after the submission of the Programme, but on the 31 December 2023 at the latest.
2. In the case of costs reimbursed pursuant to points (b) and (c) of the first subparagraph of Article 26(2), the actions constituting the basis for reimbursement shall be carried out between 1 January 2014 and 31 December 2023.
3. Expenditure that becomes eligible as a result of an amendment to a programme shall only be eligible from the date of submission to the Commission of the request for amendment or, in the event of application of Article 10(6), from the date of entry into force of the decision amending the Programme.

Article 26 - Forms of support; forms of grants and repayable assistance

1. The IPA II assistance shall be used to provide support in the form of grants, prizes and repayable assistance, or a combination thereof.

In the case of repayable assistance, the support repaid to the body that provided it, or to another competent authority of the Member State or the IPA II beneficiary, shall be kept in a separate account or separated with accounting codes and reused for the same purpose or in accordance with the objectives of the Programme.

2. Grants and repayable assistance may take any of the following forms:
 - a) reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation;
 - b) standard scales of unit costs;
 - c) lump sums not exceeding EUR 100 000 of public contribution;
 - d) flat-rate financing, determined by the application of a percentage to one or more defined categories of costs.

The options referred to in the first subparagraph may be combined only where each option covers different categories of costs or where they are used for different projects forming a part of an operation or for successive phases of an operation.

3. With regard to the eligibility of contributions in kind in the form of provision of works, goods, services, land and real estate Article 69(1) of Regulation (EU) No 1303/2013 shall apply.



4. Depreciation costs may be considered as eligible in accordance with Article 69(2) of Regulation (EU) No 1303/2013.

Article 27 - Flat rates for indirect costs and staff costs

1. Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:
 - a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State or the IPA II beneficiary for a similar type of operation and beneficiary;
 - b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State or the IPA II beneficiary to perform a calculation to determine the applicable rate;
 - c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.

Articles 20 and 21 of Commission delegated Regulation (EU) No 480/2014¹³ concerning the definition of the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph shall apply.

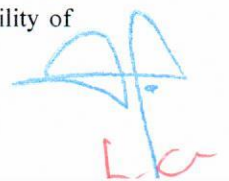
2. For the purposes of determining staff costs relating to the implementation of an operation, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours.
3. Staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation.

Article 28 - Specific rules on eligibility for certain expenditure categories

1. Commission Delegated Regulation (EU) No 481/2014¹⁴ shall apply.
2. However, by derogation to Article 5(5) to (8) of that Regulation, the following applies:
 - a) For operations concerning technical assistance or promotional activities and capacity-building, expenditure incurred outside the programme area shall be eligible, if incurred in accordance with the conditions set out in points (a) and (c) of Article 30(2).
 - b) With regard to other persons than those covered by points c) and d), the managing authority may accept the costs of accommodation and meals taken in establishments located outside the programme area as eligible, if incurred in accordance with Article 30(2). This shall also

¹³ As amended by Commission Delegated Regulation (EU) 2015/616 of 13 February 2015 amending Delegated Regulation (EU) No 480/2014 as regards references therein to Regulation (EU) No 508/2014 of the European Parliament and of the Council, OJ L 102, 21.4.2015, p. 33.

¹⁴ Commission Delegated Regulation (EU) No 481/2014 of 4 March 2014 supplementing Regulation (EU) No 1299/2013 of the European Parliament and of the Council with regard to specific rules on eligibility of expenditure for cooperation programmes, OJ L 138, 13.5.2014, p. 45.



apply to local travel costs at the location of an event or an action outside the programme area.

- c) For the staff of beneficiaries located outside the programme area, the managing authority may accept costs referred to in paragraph 1, including costs of travel to and from the location of an event or an action inside or outside the programme area, as eligible, if incurred in accordance with Article 30(2).
- d) For the staff of beneficiaries located inside the programme area the costs referred to in paragraph 1, including costs of travel to and from location of an event or an action inside or outside the programme area, shall be considered eligible in accordance with Article 30(1).

Article 29 – Ineligible expenditure

1. IPA II cross-border cooperation assistance shall not support:
 - a) interest on debt;
 - b) value added tax (VAT) except where it is non-recoverable under national VAT legislation;
 - c) the decommissioning and the construction of nuclear power stations;
 - d) investment to achieve the reduction of greenhouse gas emissions from activities falling under Annex I to Directive 2003/87/EC of the European Parliament and of the Council (11);
 - e) the manufacturing, processing and marketing of tobacco and tobacco products;
 - f) undertakings in difficulties as defined under Union State aid rules;
 - g) investment in airport infrastructure unless related to environmental protection or accompanied by investment necessary to mitigate or reduce its negative environmental impact.
2. The purchase of land not built on and land built on in the amount up to 10 % of the total eligible expenditure for the operation concerned shall be eligible for funding under IPA II cross-border cooperation assistance. For derelict sites and for those formerly in industrial use which comprise buildings, this limit shall be increased to 15 %. In exceptional and duly justified cases, this limit may be raised above the respective preceding percentages for operations concerning environmental conservation.
3. Operations shall not be selected for IPA II assistance where they have been physically completed or fully implemented before the application for funding under the Programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.
4. In accordance with point (l) of Article 4 of Commission Delegated Regulation (EU) No 481/2014, charges for financial transactions within a Member State or within an IPA Beneficiary are not eligible.



Article 30 - Eligibility depending on location

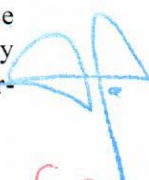
1. Operations, subject to the derogations referred to in paragraphs 2 and 3, shall be located in the programme area comprising the part of the territory of the participating countries as defined in the Programme (the 'programme area').
2. The managing authority may accept that all or part of an operation is implemented outside the programme area, provided that all the following conditions are satisfied:
 - (a) the operation is for the benefit of the programme area;
 - (b) the total amount allocated under the cross-border cooperation programme to operations located outside the programme area does not exceed 20 % of the support from the Union at programme level;
 - (c) the obligations of the managing and audit authorities in relation to management, control and audit concerning the operation are fulfilled by the cross-border cooperation programme authorities or they enter into agreements with authorities in the Member State or third country in which the operation is implemented.
3. For operations concerning technical assistance, promotional activities and capacity-building, expenditure may be incurred outside the programme area provided that the conditions in points (a) and (c) of paragraph 2 are fulfilled.

Article 31 - Operations generating net revenue after completion

1. This Article shall apply to operations which generate net revenue after their completion. For the purposes of this Article 'net revenue' means cash in-flows directly paid by users for the goods or services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period. Operating cost-savings generated by the operation shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies.

Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.

2. The eligible expenditure of the operation to be co-financed from the IPA II assistance shall be reduced in advance taking into account the potential of the operation to generate net revenue over a specific reference period that covers both implementation of the operation and the period after its completion.
3. The potential net revenue of the operation shall be determined in advance by one of the following methods chosen by the managing authority for a sector, subsector or type of operation:
 - (a) application of a flat rate net revenue percentage for the sector or subsector applicable to the operation as defined in Annex V to Regulation (EU) No 1303/2013 or in any of the delegated acts referred to in the second, third and fourth subparagraphs;
 - (b) calculation of the discounted net revenue of the operation, taking into account the reference period appropriate to the sector or subsector applicable to the operation, the profitability normally expected of the category of investment concerned, the application of the polluter-



pays principle and, if appropriate, considerations of equity linked to the relative prosperity of the Member State or region concerned.

In accordance with Articles 1 and 2 of Commission delegated Regulation (EU) No 2015/1516¹⁵ a flat rate of 20 % is established for operations in the sector of research, development and innovation as referred to in point (a) of the first subparagraph.

Where the method referred to in point (a) of the first subparagraph is applied, all the net revenue generated during implementation and after completion of the operation shall be considered to be taken into account by the application of the flat rate and shall therefore not be deducted subsequently from the eligible expenditure of the operation.

When a flat rate for a new sector or subsector has been established by the adoption of a delegated act in accordance with the third and fourth subparagraphs, a managing authority may choose to apply the method set out in point (a) of the first subparagraph for new operations in relation to the sector or subsector concerned.

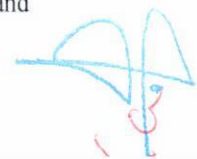
Articles 15 to 19 of Commission delegated Regulation (EU) No 480/2014¹⁶ concerning the method for calculating the discounted net revenue of operations generating net revenue shall apply.

4. The method by which the net revenue is deducted from the expenditure of the operation included in the request for payment submitted to the Commission shall be determined in accordance with national rules.
5. As an alternative to the application of the methods laid down in paragraph 3, the maximum co-financing rate referred to in Article 50 may, at the request of a Member State or the IPA II beneficiary be decreased at the moment of adoption of a programme for a priority or measure under which all operations supported under that priority or measure could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3. The decrease shall be not less than the amount calculated by multiplying the maximum Union co-financing rate applicable under the Fund-specific rules by the relevant flat rate referred to in point (a) of the first subparagraph of paragraph 3.

Where the method referred to in the first subparagraph is applied, all net revenue generated during implementation, and after completion, of the operation shall be considered to be taken into account by application of the decreased co-financing rate and shall therefore not be deducted subsequently from the eligible expenditure of the operations.

¹⁵ Commission Delegated Regulation (EU) 2015/1516 of 10 June 2015 establishing, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, a flat rate for operations funded by the European Structural and Investment Funds in the Research, Development and Innovation sector, OJ L 239, 15.9.2015, p. 65.

¹⁶ Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, OJ L 138, 13.5.2014, p. 5.



6. Where it is objectively not possible to determine the revenue in advance based on any of the methods set out in paragraphs 3 or 5, the net revenue generated within three years of the completion of an operation, or by the deadline for the submission of documents for programme closure fixed in the Fund-specific rules, whichever is the earlier, shall be deducted from the expenditure declared to the Commission.
7. Paragraphs 1 to 6 shall not apply to:
 - (a) operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000;
 - (b) repayable assistance subject to an obligation for full repayment and prizes;
 - (c) technical assistance;
 - (d) operations for which public support takes the form of lump sums or standard scale unit costs;
 - (e) operations implemented under a joint action plan.

Notwithstanding point (a) of the first subparagraph of this paragraph, where a Member State or the IPA II beneficiary applies paragraph 5, it may include in the relevant priority or measure operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000.

8. In addition, paragraphs 1 to 6 shall not apply to operations for which support under the Programme constitutes:
 - (a) *de minimis* aid;
 - (b) compatible State aid to SMEs, where an aid intensity or an aid amount limit is applied in relation to State aid;
 - (c) compatible State aid, where an individual verification of financing needs in accordance with the applicable State aid rules has been carried out.

Notwithstanding the first subparagraph, a managing authority may apply the paragraphs 1 to 6 to operations which fall under points (a) to (c) of the first subparagraph of this paragraph where this is provided for in national rules.

9. This paragraph shall apply to operations which generate net revenue during their implementation and to which paragraphs 1 to 6 do not apply.

The eligible expenditure of the operation to be co-financed from the IPA II assistance shall be reduced by the net revenue not taken into account at the time of approval of the operation directly generated only during its implementation, not later than at the final payment claim submitted by the beneficiary. Where not all the costs are eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the cost.

The third and fourth subparagraphs of Article 65(8) CPR shall also apply.



Article 32 - Durability of operations

1. An operation comprising investment in infrastructure or productive investment shall repay the contribution from the IPA II assistance if within five years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, it is subject to any of the following:
 - a) a cessation or relocation of a productive activity outside the programme area;
 - b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
 - c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Sums unduly paid in respect of the operation shall be recovered by the Member State or the IPA II beneficiary in proportion to the period for which the requirements have not been fulfilled.

The Member States or the IPA II beneficiary may reduce the time limit set out in the first subparagraph to three years in cases concerning the maintenance of investments or jobs created by SMEs.

2. An operation comprising investment in infrastructure or productive investment shall repay the contribution from the IPA II assistance if within 10 years of the final payment to the beneficiary the productive activity is subject to relocation outside the Union, except where the beneficiary is an SME. Where the contribution from the IPA II assistance takes the form of State aid, the period of 10 years shall be replaced by the deadline applicable under State aid rules.
3. Operations supported by the IPA II assistance that are not investments in infrastructure or productive investments shall repay the contribution from the IPA II assistance only where they are subject to an obligation for maintenance of investment under the applicable State aid rules and where they undergo a cessation or relocation of a productive activity within the period laid down in those rules.
4. Paragraphs 1, 2 and 3 shall not apply to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.
5. Paragraphs 1, 2 and 3 shall not apply to natural persons in the Member States who are beneficiaries of investment support and, after the completion of the investment operation, become eligible for and receive support under Regulation (EU) No 1309/2013 of the European Parliament and of the Council¹⁷ where the investment concerned is directly linked to the type of activity identified as eligible for support from the European Globalisation Adjustment Fund.

Section VI - Procurement

Article 33 - Procurement by beneficiaries

1. For the award of service, supply and work contracts, by beneficiaries the procurement procedures shall follow:

¹⁷ Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006, OJ L 347, 20.12.2013, p. 855.



- a) the provisions in Articles 190 and 191 of Chapter 3 of Title IV of Part Two of the Financial Regulation;
- b) the provisions of Articles 260 to 276 of Chapter 3 of Title II of Part Two of Delegated Regulation (EU) No 1268/2012¹⁸;

which apply in the whole programme area, both on the Member State and on the IPA II beneficiary/ies' territory.

2. Public procurement procedures with regard to the expenditure linked to the preparatory stage of an operation and launched by beneficiaries before the grant document referred to in Article 14(6) had been provided to the beneficiary shall also follow the provisions referred to in paragraph 1.

However, expenditure linked to public procurement procedures which were launched by beneficiaries under national law of the IPA II beneficiary before the submission of the Programme is not eligible under the Programme, including where such expenditure was incurred and paid after the submission of the Programme,.

Article 34 - Rules on nationality and origin

1. Participation in the award of procurement contracts, grants and other award procedures for actions financed under the Programme shall be open to all natural persons who are nationals of, and legal persons which are effectively established in the participating countries, other Member States, other IPA II beneficiaries, contracting parties to the Agreement on the European Economic Area and partner countries covered by the European Neighbourhood Instrument (hereafter referred to as 'eligible countries'), and to International Organisations¹⁹.

Legal persons may include civil society organisations, such as non-governmental non-profit organisations and independent political foundations, community based organisations and private sector non-profit agencies, institutions and organisations and networks thereof at local, national, regional and international level as long as they are capable of having legal rights and duties in accordance with the respective national laws.

The managing authority may allow the participation in call for proposals of entities without legal personality.

2. All supplies purchased under a procurement contract, or in accordance with a grant agreement, financed under IPA II shall originate from an eligible country.

However, they may originate from any country when the amount of the supplies to be purchased is below the threshold for the use of the competitive negotiated procedure²⁰. For the purposes of this

¹⁸ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ L 362, 31.12.2012, p. 1.

¹⁹ International Organisations are international public-sector organisations set up by intergovernmental agreements, specialised agencies set up by such organisations and other non-profit organisations assimilated to international organisations by a Commission decision.

²⁰ See point (b)(ii) of Article 267(1) of Commission Implementing Regulation (EU, Euratom) No 1268/2012: contracts with a value of less than EUR 100 000.

Article, the term "origin" is defined in Article 23 and 24 of the Council Regulation (EEC) No°2913/92²¹.

3. The rules under this article do not apply to, and do not create nationality restrictions for natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.
4. In order to promote local capacities, markets and purchases, priority shall be given to local and regional contractors when the Financial Regulation provides for award on the basis of a single tender. In all other cases, participation of local and regional contractors shall be promoted in accordance with the relevant provisions of the Financial Regulation.
5. Eligibility as defined in this Article may be further restricted in the Special Conditions of this Financing Agreement with regard to the nationality, geographical location or nature of applicants, where such restrictions are required by the specific nature and the objectives of the action and where they are necessary for its effective implementation, in particular to participation in award procedures in case of cross-border cooperation actions.
6. Tenderers, applicants and candidates from non-eligible countries or, without prejudice to the second subparagraph of Article 34(2), goods from non-eligible origin may be accepted as eligible by the managing authority in case of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where application of the eligibility rules would make the realisation of a project, programme or action impossible or exceedingly difficult.
7. Natural and legal persons who have been awarded contracts shall comply with applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards²².

Article 35 - Intellectual property rights

1. Contracts concluded by beneficiaries located in the IPA II beneficiary financed under this Financing Agreement shall ensure that the IPA II beneficiary acquire all necessary intellectual property rights with regard to information technology, studies, drawings, plans, publicity and any other material made for planning, implementation, monitoring and evaluation purposes.
2. The IPA II beneficiary shall guarantee that the Commission, or any body or person authorised by the Commission, shall have access and the right to use such a material. The Commission will only use such material for its own purposes.

Article 36 - Procurement by the managing authority

For the award of service, supply and work contracts by the managing authority, including when contracting on behalf of the Joint Secretariat or intermediate bodies acting under its responsibility, under the specific budget allocation for technical assistance operations, the procurement procedures applied by the managing authority may either be those referred to in Article 33 or those of its national law.

²¹ Council Regulation (EEC) N°2913/92 of 12 October 1992 establishing the Community Customs Code and other Community legislation governing non-preferential origin, OJ L 302, 19 October 1992, p. 1.

²² The ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation and the abolition of child labour.



Section VIII - Programme authorities and their designation

Article 37 - Designation of authorities

1. The participating countries in the Programme shall designate, for the purposes of Article 123(1) of Regulation (EU) No 1303/2013, a single managing authority; for the purpose of Article 123(2) of that Regulation, a single certifying authority, and for the purpose of Article 123(4) of that Regulation, a single audit authority.
2. The procedure for the designation of the managing authority and, where appropriate, of the certifying authority, set out in Article 124 of Regulation (EU) No 1303/2013, shall be carried out by the Member State in which the authority is located.

The description of the functions and procedures in place for the managing authority and, where appropriate, the certifying authority shall be drawn up in accordance with Article 3 and Annex III of Commission Implementing Regulation (EU) No 1011/2014.

The audit report of the independent audit body referred to in Article 124(2) of Regulation (EU) No 1303/2013 shall be drafted in accordance with Article 4 and Annex IV of Commission Implementing Regulation (EU) No 1011/2014.

The opinion of the independent audit body referred to in Article 124(2) of Regulation (EU) No 1303/2013 shall be drafted in accordance with Article 5 and Annex V of Commission Implementing Regulation (EU) No 1011/2014.

3. Designations provided for in this Article shall be without prejudice to the apportionment of liabilities in relation to the application of financial corrections among the participating countries as provided for in the cross-border cooperation programme.
4. The managing authority and the audit authority shall be situated in the same Member State. The participating countries in the Programme may designate the single managing authority to carry out the functions of the certifying authority.

Article 38 - Functions of the managing authority

Article 125 of Regulation (EU) No 1303/2013 and Article 23(1), (4) and (5) of the ETC Regulation concerning the functions of the managing authority shall apply.

Article 24 of Commission Delegated Regulation (EU) No 480/2014 concerning the data to be recorded and stored in computerised form within the monitoring system established under point (d) of Article 125(2) of Regulation (EU) No 1303/2013 shall apply.

Articles 6 to 11 of Commission Implementing Regulation (EU) No 821/2014 concerning the system established under point (d) of Article 125(2) CPR to record and store data on operations shall apply.

Article 25 of Commission Delegated Regulation (EU) No 480/2014 concerning detailed minimum requirements for the audit trail referred to in point (d) of the first subparagraph of Article 125(4) of Regulation (EU) No 1303/2013 shall apply.



The management declaration referred to in point (e) of the first subparagraph of Article 125(4) of Regulation (EU) No 1303/2013 shall be drafted in accordance with Article 6 and Annex VI of Commission Implementing Regulation (EU) No 2015/207.

Article 39 - Joint Secretariat

The managing authority, after consultation with the Participating Countries, shall set up a joint secretariat.

The joint secretariat shall assist the managing authority and the monitoring committee and may also assist the national authority in carrying out their respective functions. The joint secretariat shall also provide information to potential beneficiaries about funding opportunities under cooperation programmes and shall assist beneficiaries in the implementation of operations.

Article 40 - Functions of the certifying authority

Article 126 of Regulation (EU) No 1303/2013 and Article 24 of the ETC Regulation concerning the functions of the certifying authority shall apply.

Article 41- Functions of the audit authority

Article 127 of Regulation (EU) No 1303/2013 and Article 25 of the ETC Regulation concerning the functions of the audit authority shall apply.

The audit strategy referred to in Article 127(4) of Regulation (EU) No 1303/2013, the audit opinion referred to in point (a) of the first subparagraph of Article 127(5) of Regulation (EU) No 1303/2013 and the annual control report referred to in point (b) of the first subparagraph of Article 127(5) of Regulation (EU) No 1303/2013 shall be established in accordance with Article 7 and Annexes VII (audit strategy), VIII (audit opinion) and IX (annual control report) of Commission Implementing Regulation (EU) No 2015/207.

Article 26 of Commission Delegated Regulation (EU) No 480/2014 concerning the use of the data collected during audits carried out by Commission officials or authorised Commission representatives shall apply.

Articles 27 to 29 Commission Delegated Regulation (EU) No 480/2014 concerning the scope and content of audits of operations and accounts and methodology for the selection of the sample of operations shall apply.

Article 42 - Functions of the authorities of the IPA II beneficiary

1. The authorities and bodies of the IPA II beneficiary shall support the Member State in its responsibilities and cooperate loyally with the single programme authorities.
2. Where the managing authority does not carry out verifications under point (a) of Article 125(4) of Regulation (EU) No 1303/2013 on the territory of the IPA II beneficiary, the IPA II beneficiary shall designate the body or person responsible for carrying out such verifications in relation to beneficiaries on its territory (the 'controller(s)').

In the Member State, the controllers referred to in the first subparagraph may be the same bodies responsible for carrying out such verifications for the operational programmes under the Investment for growth and jobs goal or, in the case of third countries, for carrying out comparable verifications under external policy instruments of the Union.



The IPA II beneficiary shall ensure that the expenditure of a beneficiary can be verified within a period of three months of the submission of the documents by the beneficiary concerned.

The IPA II beneficiary shall be responsible for verifications carried out on its territory.

Where the delivery of co-financed products or services can be verified only in respect of an entire operation, the verification shall be performed by the managing authority or by the controller of the Member State or IPA II beneficiary where the lead beneficiary is located.

3. In accordance with its national law, the IPA II beneficiary may authorise the audit authority to carry out directly the functions provided for in Article 127 of Regulation (EU) No 1303/2013 in the whole of the territory covered by a cooperation programme. That authorization shall specify when the audit authority is to be accompanied by an auditor of the IPA II beneficiary.

Where the audit authority does not have the authorisation referred to in the first subparagraph, it shall be assisted by a representative from the IPA II beneficiary in carrying out the functions provided for in Article 127 of Regulation (EU) No 1303/2013.

The representative from the IPA II beneficiary shall ensure that audit work takes account of internationally accepted audit standards.

In case described in second subparagraph, the IPA II beneficiary shall be responsible for audits carried out on its territory.

The representative from the IPA II beneficiary shall be responsible for providing the factual elements relating to expenditure on its territory that are required by the audit authority in order to perform its assessment.

The representative from the IPA II beneficiary shall be functionally independent of the controller/s who carry out verifications under Article 38.

Section IX - Management and control

Article 43 - General principles of management and control systems

1. The Member State shall ensure that the management and control systems for the Programme are set up in accordance with Articles 72, 73 and 74.
2. Management and control systems shall, in accordance with Article 3(9), provide for:
 - a) a description of the functions of each body involved in management and control, and the allocation of functions within each body;
 - b) compliance with the principle of separation of functions between and within such bodies;
 - c) procedures for ensuring the correctness and regularity of expenditure declared;
 - d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;



- e) systems for reporting and monitoring where the body responsible entrusts execution of tasks to another body;
 - f) arrangements for auditing the functioning of the management and control systems;
 - g) systems and procedures to ensure an adequate audit trail;
 - h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.
3. Member States shall ensure that no later than 31 December 2015, all exchanges of information between beneficiaries and a managing authority, a certifying authority, an audit authority and intermediate bodies can be carried out by means of electronic data exchange systems.

The systems referred to in the first subparagraph shall facilitate interoperability with national and Union frameworks and allow for the beneficiaries to submit all information referred to in the first subparagraph only once.

Articles 8 to 10 of Commission Implementing Regulation (EU) No 1011/2014 concerning the electronic exchange of information shall apply.

Article 44 - Shared management and responsibilities

In accordance with the principle of shared management, the Member State, the IPA II beneficiary and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities laid down in Regulation (EU) No 1303/2013, the Financial Regulation, the ETC Regulation and the IPA Implementing Regulation.

With regard to the responsibilities of the Member State, Article 74 of Regulation (EU) No 1303/2013 shall apply.

Article 45 - Responsibilities of the IPA II beneficiary

The NIPAC as designated in accordance with the Framework Agreement shall be responsible for coordinating the IPA II beneficiary's participation in the relevant cross-border programmes. The NIPAC may delegate this coordination task to a territorial cooperation coordinator or operating structure as appropriate.

The IPA II beneficiary shall set up a control system as described, in accordance with Article 47 of the IPA Implementing Regulation, in Section 5 of the Programme.

Article 46 - Commission powers and responsibilities

Article 75 of Regulation (EU) No 1303/2013 shall apply.

Article 47 - Cooperation between the Commission and the audit authority

1. The Commission shall cooperate with audit authorities to coordinate their audit plans and methods and shall immediately exchange with those authorities the results of audits carried out on management and control systems.
2. The Commission, the audit authorities and any coordination body shall meet on a regular basis and, as a general rule, at least once a year, unless otherwise agreed, to examine the annual control report,



the audit opinion and the audit strategy, and to exchange views on issues relating to improvement of the management and control systems.

Article 48 - Proportional control of cooperation programmes

Article 148 of Regulation (EU) No 1303/2013 shall apply.

Section X – Calculating basis and aid intensity

Article 49 - Basis for calculating the IPA II assistance

The Commission decision approving the Programme (see Annexes I, II and III) shall fix the co-financing rate and the maximum amount of IPA II assistance, based either on total eligible expenditure, including public and private expenditure or public eligible expenditure.

Article 50 - IPA II aid intensity

The Union co-financing rate at the level of each priority axis of the Programme shall not be less than 20% and not higher than 85% of the eligible expenditure.

The IPA II beneficiary shall respect the minimum rate of its contribution specified in Annexes I and III. In case of contributions from both the IPA II beneficiary and the Union, the IPA II beneficiary contribution shall be made available at the same time as the corresponding contribution from the Union.

Section XI - Financial management, decommitment, examination and acceptance of accounts, closure and financial corrections

Sub-section 1: Commitments and payments

Article 51 - Budget commitments

1. The budget commitments of the Union in respect of the Programme shall be made in annual instalments during the period between 1 January 2014 and 31 December 2020.
2. The decision of the Commission adopting the Programme shall constitute a financing decision within the meaning of Article 84 of the Financial Regulation and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.
3. For each programme, the budget commitments for the first instalment shall follow the adoption of the Programme by the Commission.
4. The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in the second paragraph of this Article, except where Article 16 of the Financial Regulation applies.

Article 52 - Common rules for payments

1. Payments by the Commission of the contribution from the IPA II assistance to this Programme shall be made in accordance with budget appropriations and subject to available funding. Each payment shall be posted to the earliest open budget commitment of IPA II assistance.
2. Payments shall take the form of pre-financing, interim payments and payment of the final balance.



3. For forms of support under points (b), (c) and (d) of the first subparagraph of Article 26(2) and under Articles 26(3) and (4) as well as Article 27(1) and (2), costs calculated on the applicable basis shall be regarded as eligible expenditure.
4. The IPA II assistance to the Programme shall be paid into a single account with no national subaccounts.

The certifying authority shall receive the payments made by the Commission.

5. The Member State shall ensure that by the closure of the Programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the IPA II assistance paid by the Commission to the Member State and to the IPA II beneficiary.

Article 53 - Common rules for calculating interim payments and payment of the final balance

1. The amount reimbursed as interim payments and of the final balance shall be a function of the specific co-financing rate applicable to the eligible expenditure.
2. The Commission shall reimburse as interim payments 90 % of the amount resulting from applying the co-financing rate for each priority, laid down in the decision adopting the Programme, to the eligible expenditure for the priority included in the payment application. The Commission shall determine the remaining amounts to be reimbursed as interim payments or to be recovered in accordance with Article 139 of Regulation (EU) No 1303/2013.
3. The contribution from the IPA II assistance to a priority through the interim payments and payment of the final balance shall not be higher than:
 - a) the eligible public expenditure indicated in the payment applications for the priority; or
 - b) the contribution from the IPA II assistance for the priority laid down in the decision of the Commission approving the Programme, whichever is the lower.

Article 54 - Payment applications

1. The payment application to be submitted to the Commission shall provide all the information necessary for the Commission to produce accounts in accordance with Article 68(3) of the Financial Regulation.
2. Article 131 of Regulation (EU) No 1303/2013 shall apply.
3. Payment applications shall be submitted in accordance with the model set out in Article 6 and Annex VI of Commission implementing Regulation (EU) No 1011/2014.

Article 55 - Deadlines for presentation of interim payment applications and for their payment

1. The certifying authority shall submit on a regular basis an application for interim payment in accordance with Article 54(3) covering amounts entered in its accounting system in the accounting year. However, the certifying authority, where it considers it to be necessary, may include such amounts in payment applications submitted in subsequent accounting years.



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2. The certifying authority shall submit the final application for an interim payment by 31 July following the end of the previous accounting year and, in any event, before the first application for interim payment for the next accounting year.
3. The first application for interim payment shall not be made before the notification to the Commission of the designation of the managing authorities and certifying authorities in accordance with Article 37.
4. Interim payments shall not be made for the Programme unless the annual implementation report has been sent to the Commission in accordance with Article 17(1) and (2).
5. Subject to available funding, the Commission shall make the interim payment no later than 60 days after the date on which a payment application is registered with the Commission.

Article 56 - Payment to beneficiaries

1. The certifying authority shall, as a general rule, make payments to the lead beneficiary in accordance with paragraphs 2 and 3.
2. Subject to the availability of funding from initial and annual pre-financing and interim payments, the managing authority shall ensure that a beneficiary receives the total amount of eligible public expenditure due in full and no later than 90 days from the date of submission of the payment claim by the beneficiary.

No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries.

3. The payment deadline referred to in paragraph 2 may be interrupted by the managing authority in either of the following duly justified cases:
 - a) the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of the first subparagraph of Article 125(4) of Regulation (EU) No 1303/2013, have not been provided;
 - b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.

The beneficiary concerned shall be informed in writing of the interruption and the reasons for it.

Article 57 - Use of the euro

1. Amounts set out in programmes submitted by Member States, forecasts of expenditure, statements of expenditure, payment applications, accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.
2. Member States which have not adopted the euro as their currency on the date of an application for payment shall convert the amounts of expenditure incurred in national currency into euro.

When the euro becomes the currency of a Member State, the conversion procedure set out in the first subparagraph shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.



3. Expenditure incurred in a currency other than the euro shall be converted into euro by the beneficiaries using the monthly accounting exchange rate of the Commission in the month during which that expenditure was either:
 - a) incurred;
 - b) submitted for verification to the managing authority or the controller in accordance with Article 42(3); or
 - c) reported to the lead beneficiary.

The method chosen for this Programme shall be set out in the Programme and shall be applicable to all beneficiaries.

The conversion shall be verified by the managing authority or by the controller in the Member State or in the IPA II beneficiary in which the beneficiary is located.

Article 58 - Pre-financing

Concerning pre-financing, following the Commission decision adopting the Programme, a single pre-financing amount shall be paid by the Commission.

The pre-financing shall amount to 50 % of the first three budgetary commitments to the Programme.

The pre-financing amount may be paid in two instalments, where necessary, according to budgetary needs.

The total amount paid as pre-financing shall be reimbursed to the Commission if no payments application under the Programme is sent within 24 months of the date on which the Commission pays the first instalment of the pre-financing amount.

The amount paid as initial pre-financing shall be totally cleared from the Commission accounts not later than when the programme is closed.

Article 59 - Interruption of the payment deadline and suspension of payments

1. Concerning the interruption of payments Article 83 of Regulation (EU) No 1303/2013 shall apply.
2. Concerning the suspension of payments Article 142 of Regulation (EU) No 1303/2013 shall apply.

Sub-section 2: Decommitment

Article 60 - Principles

1. The Programme shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by pre-financing or by a payment application within a defined period, including any payment application for which all or part is subject to an interruption of the payment deadline or a suspension of payments, shall be decommitted.



2. The commitment related to the last year of the period shall be decommitted in accordance with the rules to be followed for the closure of the programmes.
3. The part of commitments still open shall be decommitted if any of the documents required for the closure have not been submitted to the Commission by the deadlines established in Article 61.

Article 61 - Deadline for decommitment

1. The Commission shall decommit any part of the amount in the Programme
 - (a) that has not been used for payment of the initial and annual pre-financing and interim payments by 31 December of the third financial year following the year of budget commitment under the operational programme; or
 - (b) for which a payment application drawn up in accordance with Article 54 has not been submitted in accordance with Article 55.
2. That part of commitments still open on 31 December 2023 shall be decommitted if any of the documents required under Article 69 has not been submitted to the Commission by 15 February 2025.

Article 62 - Exceptions to decommitment

1. The amount concerned by decommitment shall be reduced by the amounts equivalent to that part of the budget commitment for which:
 - (a) the operations are suspended by a legal proceeding or by an administrative appeal having suspensory effect; or
 - (b) it has not been possible to make a request for payment for reasons of force majeure seriously affecting implementation of all or part of the programme.

The national authorities claiming force majeure under point (b) of the first subparagraph shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the Programme.

For the purpose of points (a) and (b) of the first subparagraph, the reduction may be requested once, if the suspension or force majeure lasted no longer than one year, or a number of times that corresponds to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

2. By 31 January, the Member State shall send to the Commission information on the exceptions referred to in points (a) and (b) of the first subparagraph of paragraph 1 for the amount to be declared by the end of the preceding year.

Article 63 – Procedure

1. The Commission shall inform the Member State, the IPA II beneficiary and the managing authority in good time whenever there is a risk of application of the decommitment rule under Article 60.
2. On the basis of the information it has received as of 31 January, the Commission shall inform the Member State, the IPA II beneficiary and the managing authority of the amount of the decommitment resulting from that information.
3. The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.



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4. By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting, for the financial year concerned, the reduced amount of support over one or more priorities of the programme. Failing such submission, the Commission shall revise the financing plan by reducing the IPA II assistance for the financial year concerned. That reduction shall be allocated to each priority proportionately.
5. The Commission shall amend the decision adopting the programme, by means of implementing acts, not later than 30 September.

Sub-section 3: Examination and acceptance of accounts

Article 64 - Preparation of the accounts

1. The accounts referred to in point (a) of Article 59(5) of the Financial Regulation shall be submitted to the Commission for each cooperation programme. The accounts shall cover the accounting year and shall include at the level of each priority:
 - (a) the total amount of eligible expenditure entered into the accounting systems of the certifying authority which has been included in payment applications submitted to the Commission in accordance with Article 54 and Article 55(2) by 31 July following the end of the accounting year, the total amount of the corresponding public expenditure incurred in implementing operations, and the total amount of corresponding payments made to beneficiaries under Article 56(2);
 - (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries effected pursuant to Article 32, and the irrecoverable amounts;
 - (c) the amounts of programme contributions and advances of State aid under Article 131(4) of Regulation (EU) No 1303/2013;
 - (d) for each priority, a reconciliation between the expenditure stated pursuant to point (a) and the expenditure declared in respect of the same accounting year in payment applications, accompanied by an explanation of any differences.
2. Where expenditure previously included in an application for interim payment for the accounting year is excluded by a Member State from its accounts due to an ongoing assessment of that expenditure's legality and regularity, any or all of that expenditure subsequently found to be legal and regular may be included in an application for interim payment relating to subsequent accounting years.
3. The accounts shall be drafted in accordance with Article 7 and Annex VII of Commission Implementing Regulation (EU) No 1011/2014.

Article 65 - Submission of information

For each year from 2016 until and including 2025, Member States shall submit, by the deadline set out in Article 59(5) of the Financial Regulation, the documents referred to in that Article namely:

- (a) the accounts, referred to in Article 64(1), for the preceding accounting year;
- (b) the management declaration and the annual summary referred to in point (e) of the first subparagraph of Article 125(4) of Regulation (EU) No 1303/2013, for the preceding accounting year;
- (c) the audit opinion and the control report referred to in points (a) and (b) of the first subparagraph of Article 127(5) of Regulation (EU) No 1303/2013, for the preceding accounting year.

Article 66 - Examination and acceptance of accounts

1. The provisions of Article 139(1) to (9) of Regulation (EU) No 1303/2013 shall apply.



2. The Member State or the IPA II beneficiary may replace irregular amounts which are detected after the submission of the accounts by making the corresponding adjustments in the accounts for the accounting year in which the irregularity is detected, without prejudice to Articles 74 and 75.

Article 67 – Deadline

By 31 May of the year following the end of the accounting period, the Commission shall, in accordance with Article 59(6) of the Financial Regulation, apply procedures for the examination and acceptance of the accounts and inform the managing authority as to whether it accepts that the accounts are complete, accurate and true in accordance with Article 139 of Regulation (EU) No 1303/2013.

Article 68 - Availability of documents

Concerning the obligations of the managing authority to make documents available, the provisions of Article 140 of Regulation (EU) No 1303/2013 shall apply.

Article 69 - Submission of closure documents

In addition to the documents referred to in Article 65, for the final accounting year from 1 July 2023 to 30 June 2024, the managing authority shall submit a final implementation report for the Programme.

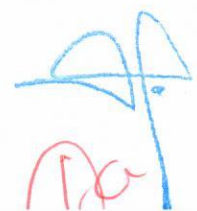
Article 70- Payment of the final balance

The final balance shall be paid no later than three months after the date of acceptance of accounts of the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later.

Sub-section 4: Financial corrections and recoveries by the participating countries

Article 71 - Responsibilities of the participating countries

1. The participating countries shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments.
2. The participating countries shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the participating country shall extend its investigation to cover all operations potentially affected.
3. The participating countries shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or cooperation programme. The participating countries shall take into account the nature and gravity of the irregularities and the financial loss to the IPA II assistance and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts for the accounting year in which the cancellation is decided.
4. The contribution from the IPA II assistance cancelled in accordance with paragraph 3 may be reused by the participating countries within the Programme concerned, subject to paragraph 5.
5. The contribution cancelled in accordance with paragraph 3 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.



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Article 72 - Notification of irregularities

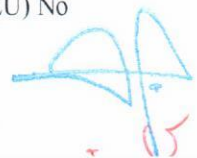
1. On behalf of the participating countries the managing authority shall notify to the Commission irregularities that exceed EUR 10 000 in contribution from the IPA II assistance and shall keep it informed of significant progress in related administrative and legal proceedings.
2. The managing authority shall not notify to the Commission irregularities which occurred in the participating countries in relation to the following:
 - (a) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed cooperation programme owing to the bankruptcy of the beneficiary;
 - (b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
 - (c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a payment application submitted to the Commission.
3. In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.
4. Commission delegated Regulation (EU) No 2015/1970²³ laying down additional detailed rules on the criteria for determining the cases of irregularity to be reported and the data to be provided shall apply.
5. Commission implementing Regulation (EU) No 2015/1974²⁴ setting out the frequency and the format of the reporting of irregularities shall apply.

Article 73 – Recoveries

1. The managing authority shall ensure that any amount paid as a result of an irregularity is recovered from the lead or sole beneficiary. Beneficiaries shall repay to the lead beneficiary any amounts unduly paid.
2. If the lead beneficiary does not succeed in securing repayment from other beneficiaries or if the managing authority does not succeed in securing repayment from the lead or sole beneficiary, the participating country on whose territory the beneficiary concerned is located or, in the case of an EGTC, is registered shall reimburse the managing authority any amounts unduly paid to that beneficiary. The managing authority shall be responsible for reimbursing the amounts concerned to the general budget of the Union, in accordance with the apportionment of liabilities among the participating countries as laid down in the Programme.

²³ Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund, OJ L 293, 10.11.2015, p. 1.

²⁴ Commission Implementing Regulation (EU) 2015/1974 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, under Regulation (EU) No 1303/2013 of the European Parliament and of the Council, OJ L 293, 10.11.2015, p. 20.



3. The participating countries may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the IPA II assistance.
4. Commission delegated Regulation (EU) No 2015/568²⁵ laying down additional detailed rules on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed shall apply.

Sub-section 5: Financial corrections by the Commission

Article 74 - Breach of applicable law and criteria

1. The Commission shall make financial corrections by cancelling all or part of the IPA assistance to the Programme and effecting recovery from the Member State and the IPA II beneficiary in order to exclude from Union financing expenditure which is in breach of applicable law.
2. A breach of applicable law shall lead to a financial correction only in relation to expenditure which has been declared to the Commission and where one of the following conditions is met:
 - (a) the breach has affected the selection of an operation by the body responsible for support from the IPA II assistance or in cases where, due to the nature of the breach, it is not possible to establish that impact but there is a substantiated risk that the breach has had such an effect;
 - (b) the breach has affected the amount of expenditure declared for reimbursement by the budget of the Union or in cases where, due to the nature of the breach, it is not possible to quantify its financial impact but there is a substantiated risk that the breach has had such an effect.
3. Concerning the criteria for financial corrections the provisions of Article 144(1) to (5) of Regulation (EU) No 1303/2013 shall apply.
4. Articles 30 and 31 of Commission Delegated Regulation (EU) No 480/2014 concerning financial corrections by the Commission in relation to systems deficiencies shall apply.

Article 75 – Procedure

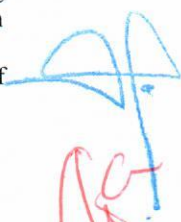
1. When deciding on a financial correction under Article 74(1), the Commission shall respect the principle of proportionality by taking account of the nature and gravity of the breach of applicable law and its financial implications for the budget of the Union. The Commission shall keep the European Parliament informed of decisions taken to apply financial corrections.
2. The criteria and the procedures for applying financial corrections shall be laid down in the Fund-specific rules.
3. Concerning the procedure the provisions of Article 145(1) to (7) of Regulation (EU) No 1303/2013 shall apply.

Article 76 - Obligations of the participating countries

A financial correction by the Commission shall not prejudice the participating countries' obligation to pursue recoveries under Article 71(3) and the Member State to recover State aid within the meaning of Article 107(1) TFEU and under Article 14 of Council Regulation (EC) No 659/1999²⁶.

²⁵ Commission Delegated Regulation (EU) No 2016/568 of 29 January 2016 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund, OJ L 97, 13 April 2016, p. 1.

²⁶ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p. 1.



Article 77 - Repayment

1. Any repayment due to be made to the budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 73 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

Section XII - Discontinuation of the Programme

Article 78 - Failure to sign the Financing agreement

1. Where the IPA II beneficiary has not concluded the financing agreement by the end of the year following the year of the adoption of the Programme, the Commission shall discontinue the Programme.
2. European Regional Development Fund annual instalments already committed shall remain available for their normal lifetime but may be used only for activities which take place exclusively in the Member States concerned and contracted before the Commission discontinuation decision. The managing authority shall transmit the final report within three months of the closure of the contracts to the Commission which shall proceed in conformity with Articles 79 and 80.

Article 79 – Implementation problems

1. Where the Programme cannot be implemented owing to problems arising in relations between participating countries and in other duly justified cases, the Commission may decide to discontinue the Programme before the expiry date of the period of execution, at the request of the JMC or on its own initiative after having consulted the JMC.
2. Where the Programme is discontinued, the managing authority shall transmit the final report within six months following the Commission's decision. After clearing the previous pre-financing payments, the Commission shall pay the final balance or, where appropriate, issue the recovery order. The Commission shall also decommit the balance of commitments.
3. As an alternative, it may be decided to reduce the Programme's allocation to the Programme scope in accordance with the procedure set out in Article 10(6).

Article 80 - Re-allocation

1. In the cases referred to in Articles 78 and 79, non-committed support from European Regional Development Fund corresponding to annual instalments not yet committed or annual instalments committed and decommitted totally or partially during the same budgetary year, which have not been re-allocated to another Programme of the same category of external cooperation programmes shall be allocated to the internal cross-border cooperation programmes in accordance with Article 4 of the ETC Regulation.
2. The IPA II assistance corresponding to annual instalments not yet committed or annual instalments committed and decommitted totally or partially during the same budgetary year shall be used to finance other programmes or projects eligible for IPA II assistance.



Part Two: Final Provisions

Article 81 - Consultation between the participating countries and the Commission

- (1) The IPA II beneficiary and the Commission shall consult each other before taking any dispute relating to the implementation of this Financing Agreement further pursuant to Article 85 of these General Conditions or any dispute relating to the interpretation of this Financing Agreement which cannot be solved in accordance with Article 3 of the Special Conditions.
- (2) Where the Commission becomes aware of problems in carrying out procedures relating to the implementation of this Financing Agreement with regard to the IPA II beneficiary, it shall establish all necessary contacts with the IPA II beneficiary to remedy the situation and take any steps that are necessary.
- (3) The consultation may lead to an amendment, suspension or termination of this Financing Agreement.
- (4) The Commission and the IPA II beneficiary shall keep the Member State informed about any consultations or contacts under paragraphs 1 and 2.
- (5) The Commission shall consult the Member State before a measure listed in paragraph 3 is taken.

Article 82 - Amendment of this Financing Agreement

- (1) Any amendment of this Financing Agreement shall be made in writing.
- (2) If one of the participating countries requests an amendment, the request shall be submitted to the Commission at least six months before the amendment is intended to enter into force.
- (3) In case the Commission becomes aware of a conflict between, on the one hand, the provisions of this Financing Agreement and, on the other hand, the basic acts listed in Article 1 of the Special Conditions, the Commission shall propose the necessary alignment of this Financing Agreement with the provisions of the basic acts.

In case of an amendment to a basic act, the Commission shall propose the necessary alignment of this Financing Agreement with the amended provisions of the basic acts within two months of the entry into force thereof.

- (4) The Commission can amend its Implementing Regulation (EU) No 2015/207 as regards different models without this necessitating an amendment to this Financing Agreement. The IPA II beneficiary shall be informed in writing about any such amendment and its entry into force.

Article 83 - Suspension of this Financing Agreement

- (1) The Financing Agreement may be suspended in the following cases:
 - (a) if the IPA II beneficiary breaches an obligation under this Financing Agreement;
 - (b) if the IPA II beneficiary breaches any obligation set under the procedures and standard documents referred to in Article 18(2) of the Framework Agreement;
 - (c) if the IPA II beneficiary does not meet requirements for entrusting budget implementation tasks;
 - (d) if the IPA II beneficiary decides to suspend or cease the EU Membership accession process;
 - (e) if the IPA II beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.



- (2) 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/parties without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage. If *force majeure* impacts only part of the Programme, the suspension of the Financing Agreement can be partial.

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.

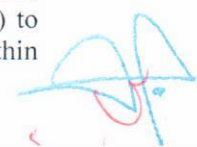
- (3) The Commission may suspend this Financing Agreement without prior notice.
- (4) The Commission may take any appropriate precautionary measure before suspension takes place.
- (5) When the suspension is notified, the consequences for the on-going or to be signed procurement and grant contracts, and delegation agreements shall be indicated.
- (6) A suspension of this Financing Agreement is without prejudice to the interruption of payments in accordance with Article 59 and to the termination of this Financing Agreement by the Commission in accordance with Article 84.
- (7) 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 Programme to the new implementing conditions, including, if possible, the extension of the eligibility period, or the termination of this Financing Agreement in accordance with Article 84.

Article 84 - Termination of this Financing Agreement

- (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 the Financing Agreement at 30 days' notice.
- (2) This Financing Agreement shall be automatically terminated, if within the period of two years of its signature:
- (a) it has not given rise to any payment;
 - (b) no implementing contract or delegation agreement has been signed.
- (3) When the termination is notified, the consequences for the on-going procurement and grant contracts, delegation agreements and such contracts or grants, and delegation agreements to be signed shall be indicated.
- (4) The termination of this Financing Agreement shall not preclude the possibility of the Commission to make financial corrections in accordance with Articles 74 to 77.

Article 85 - Dispute settlement arrangements

- (1) Any dispute concerning the Financing Agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 81 may be settled by arbitration at one of the parties' request.
- (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

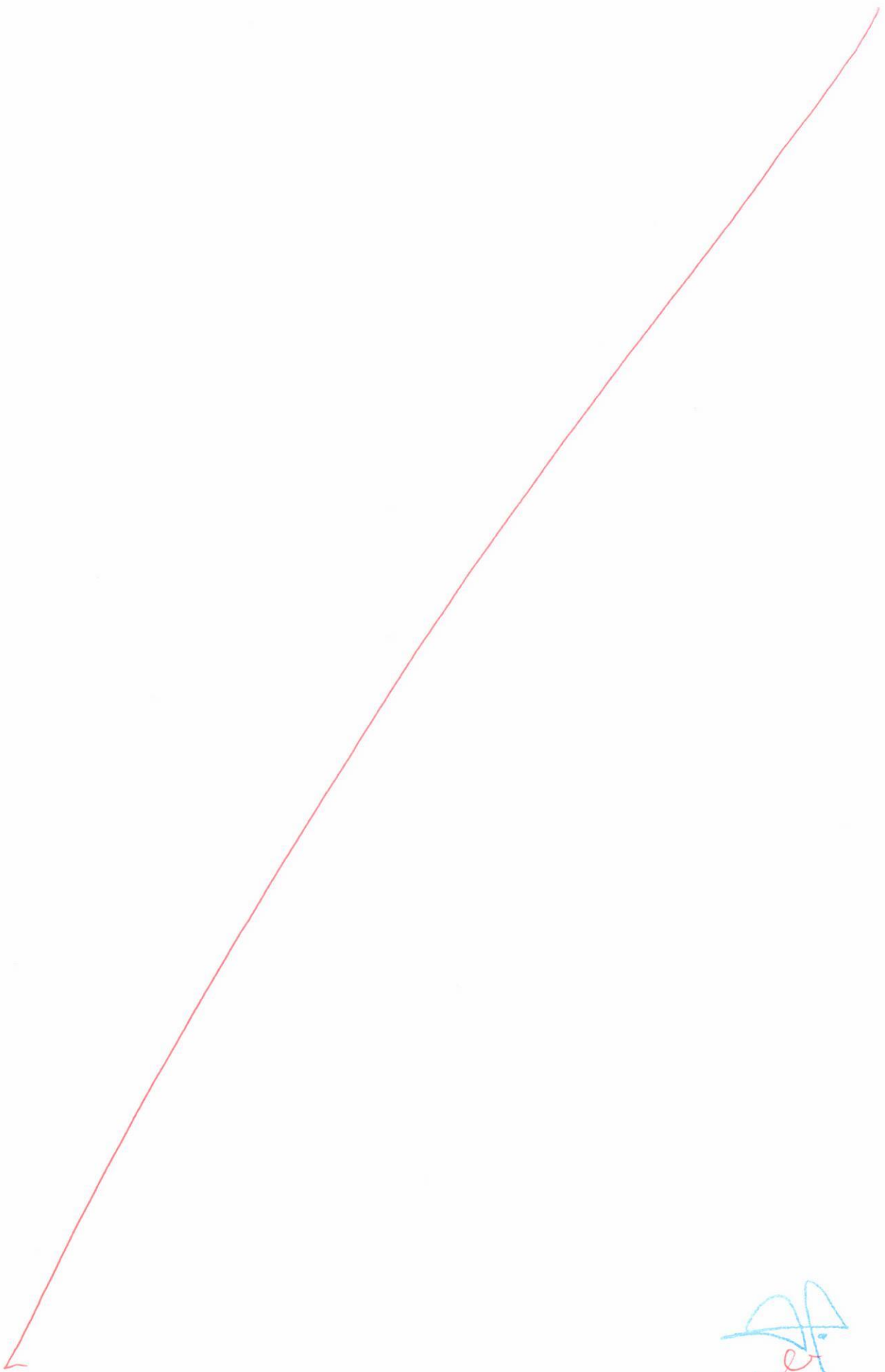


30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.

- (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.
- (4) Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.



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