

FRAMEWORK PARTNERSHIP AGREEMENT WITH MULTIPLE PARTNERS

AGREEMENT NUMBER – 2023/FPA/TRU/01

This Framework Partnership Agreement ('the Framework agreement') is concluded between the following parties:

On the one part,

European Border and Coast Guard Agency,

Plac Europejski 6, 00-844 Warsaw, Poland

(hereinafter referred to as "Frontex")

represented for the purposes of signature of the Agreement by [function, forename and surname],

and

on the other part,

1. 'the coordinator'

[full official name] [ACRONYM]

[official legal status or form]¹

¹ To be deleted or filled out in accordance with the 'Legal Entity' form.

[official registration No]²

[official address in full]

[VAT number],

represented for the purposes of signature of this Framework agreement by [function, forename and surname]

and the following other partners:

2. [full official name — established in [country]]

3. [full official name — established in [country]]

[idem for each partner]

duly represented for the signature of the Framework agreement by the coordinator by virtue of the mandate[s] included in Annex IV]

Unless otherwise specified, references to 'partner' and 'partners' include the coordinator.

The parties referred to above

HAVE AGREED

to the Special Conditions ('the Special Conditions') and the following Annexes:

- | | |
|------------|--|
| Annex I | Action plan |
| Annex II | General Conditions ('the General Conditions') |
| Annex III | Model specific grant agreement |
| Annex IV | Mandates provided to the coordinator by the other partners |
| Annex V | Model technical report |
| Annex VI | Model financial statement |
| Annex VII | Model terms of reference for the certificate on the financial statements: not applicable |
| Annex VIII | Model terms of reference for the certificate on the compliance of the cost accounting practices: not applicable |

² To be deleted or filled out in accordance with the 'Legal Entity' form.

which form an integral part of this Framework agreement.

The provisions in the Special Conditions of the Framework agreement, of which the Preamble forms an integral part, take precedence over its Annexes.

The provisions in Annex II 'General Conditions' take precedence over the other Annexes.

PREAMBLE

The European Border and Coast Guard Agency seeks to implement the obligations stipulated in article 62(7) of the Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard as regards additional training for officers of the competent services of Member States and, where appropriate, of third countries to contribute to the development of a common culture and common approach to European border security, in accordance with Frontex's mandate in the field of border guard training.

For the purposes of implementing the Union policy in the field of Migration and Home Affairs, Frontex has selected one or more partners engaged in this area, with which Frontex shares common general objectives and wishes to establish a relationship of lasting cooperation.

The general objectives which Frontex shares with [...] ³ in the above-mentioned area of activity and which justify the establishment of a partnership are the following:

- To ensure a harmonised and common approach to EU border and coast guard training in the MS by developing and delivering a variety of educational and training programmes;
- To support the development of Member States/Schengen Associated Countries and non-EU countries capabilities;
- To address the common professional development needs of the mid-level and high-level border guard officers of Member States/Schengen Associated Countries with a higher education programme focused on strategic

³ Mention the name of the partner signatory of the Framework agreement.

management of the EU border security and European cooperation for the integrated border management.

- To support the actions of the MS, Schengen Associated Countries at enabling the implementation of the European Joint Master's in Strategic Border Management.

MODEL

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ARTICLE I.1 — SUBJECT MATTER OF THE FRAMEWORK AGREEMENT – AWARD OF SPECIFIC GRANTS

I.1.1 Subject matter of the Framework agreement

I.1.1.1 The Framework agreement is concluded as part of a long-term cooperation between Frontex and the partners ("the partnership") with the aim to contribute to the objectives of the Union policy in the field of Home Affairs and Migration as referred to in the Preamble.

The Framework agreement defines the general rights and obligations of the parties in implementing their partnership.

I.1.1.2 The partnership must be implemented in compliance with the Action plan set out in Annex I.

I.1.1.3 For the purposes of implementing the partnership Frontex may award to the partners *specific grants for an action*.

The Framework agreement applies to any specific grant awarded for implementation of the partnership and to the respective specific grant agreements ("Specific agreements") concluded between the parties.

Signature of the Framework agreement does not give rise to any obligation of Frontex to award specific grants. It does not affect the partners' participation in other calls for proposals for the purposes of award of grants outside the scope of the Action plan set out in Annex I.

I.1.2 Procedure for award of specific grants

Frontex may consult its partners in order to obtain a proposal for an action in line with the Action plan set out in Annex I. Such consultation must take place on the basis of a call for proposals open to the partners having concluded jointly Framework partnership agreements for which this type of activity is included in the Action plan set out in Annex I. The call for proposals must define the award criteria to be applied. The partner is not obliged to submit a proposal in response to such a consultation.

I.1.3 Conclusion of Specific agreements

Where Frontex decides to award a specific grant, it proposes to the participating partners to sign a Specific agreement in accordance with the model set out in Annex

III. The Specific agreement must be signed by the authorized representatives of the parties.

By signing the Specific agreement, the participating partners accept the grant and agree to implement the action acting on their own responsibility and under the terms and conditions set out in the Framework agreement and the Specific agreement.

Specific agreements must be signed before the date when the Framework agreement expires. Where the actions are carried out after the above-mentioned date, the terms of the Framework agreement continue to apply to the implementation of the Specific agreements governed by the Framework agreement.

ARTICLE I.2 — ENTRY INTO FORCE AND IMPLEMENTATION PERIOD OF THE FRAMEWORK AGREEMENT

I.2.1 The Framework agreement enters into force on the date on which the last party signs it.

I.2.2 The Framework agreement is concluded for **4** years starting from the date of its entry into force. There is a possibility of two years extension in duly justified cases, and only by decision taken by the Authorising Officer (AO) in compliance with article 74(9) and 130.4. (c) of Regulation 2018/10464.

ARTICLE I.3 — DATA CONTROLLER

The entity acting as a data controller as provided for in Article II.7 is: Head of Training Unit, Capacity Building Division, Frontex.

ARTICLE I.4 — ENTITIES AFFILIATED TO THE PARTNERS

For the purposes of Specific agreements, the following entities are considered as affiliated entities to the partner(s):

- [name of the entity], affiliated to [name or acronym of the partner];
- [name of the entity], affiliated to [name or acronym of the partner];

[idem for further affiliated entities]

ARTICLE I.5 — ADDITIONAL PROVISIONS ON THE REIMBURSEMENT OF COSTS DECLARED ON THE BASIS OF THE PARTNER'S USUAL COST ACCOUNTING PRACTICES

In addition to the conditions set out in Article II.20.3.1, if, in accordance with Article 3.2.

b. of the Specific agreement, the specific grant takes the form of the reimbursement of unit costs, lump sum costs or flat-rate costs declared by a partner on the basis of its usual cost accounting practices, the partner must ensure that the cost accounting practices used are also in compliance with the following conditions:

- (a) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;
- (b) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
- (c) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant as provided for in Article 3.2 of the Specific agreement.

If, in accordance with Article 3.2.(b) or (c) or (d) of the Specific agreement, the specific grant takes the form of the reimbursement of unit costs, lump sum costs or flat-rate costs declared by a partner on the basis of its usual cost accounting practices, the partner may ask Frontex to assess whether the cost accounting practices used by the partner comply with the conditions referred to in Article II.20.3.1

In such case, the partner must submit a certificate on the compliance of the cost accounting practices ("certificate on the compliance of the cost accounting practices") in accordance with Article II.20.3.2.

ARTICLE I.6 — OBLIGATION TO CONCLUDE AN INTERNAL COOPERATION AGREEMENT

The partners must conclude an internal cooperation agreement including provisions on the management, operation and coordination of the partners and the implementation of the *action*.

ARTICLE I.7 — SPECIAL PROVISIONS ON THE FINANCIAL RESPONSIBILITY FOR RECOVERIES

As an exception to point (c) of the third paragraph of Article II.26.3, the partners are jointly and severally liable for repaying any debt under any Specific agreement up to the *maximum amount of the grant*. The partners are also jointly and severally liable for interest on late payment, when applicable.

[ARTICLE I.8 — SPECIAL PROVISIONS ON BUDGET TRANSFERS INVOLVING USE OF PROVISIONS FOR CONTINGENCIES AND FOREIGN EXCHANGE LOSSES

As an exception to the first subparagraph of Article II.22, any use of the provisions for contingencies and foreign exchange losses included in the estimated budget in Annex II of the Specific agreement must be communicated by the coordinator and approved by Frontex.

SIGNATURES

For the coordinator

[*function/forename/surname*]

[*signature*]

Done at [*place*], [*date*]

For Frontex

[*forename/surname*]

[*signature*]

Done at [*place*], [*date*]

MODEL

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PART A — LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 — DEFINITIONS

The following definitions apply for the purpose of the Framework agreement and the Specific agreements:

'Action': the set of activities or the project for which the specific grant is awarded, to be implemented by the partners as described in Annex I of the Specific agreement.

'Confidential information or document': any information or document (in any format) received by either party from the other or accessed by either party in the context of the implementation of the Framework agreement or a Specific agreement that any of the parties has identified in writing as confidential. It does not include information that is publicly available.

'Conflict of interests': a situation where the impartial and objective implementation of the Framework agreement or a Specific agreement by a partner is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with Frontex or any third party related to the subject matter of the Framework agreement or a Specific agreement.

'Direct costs': those specific costs which are directly linked to the implementation of the action and can therefore be attributed directly to it. They may not include any indirect costs;

'Force majeure': any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Framework agreement or a Specific agreement, which is not attributable to error or negligence on their part or on the part of the subcontractors affiliated entities or third parties in receipt of financial support and which proves to be inevitable despite their exercising due diligence. The following cannot be invoked as *force majeure*: labour disputes, strikes, financial difficulties or any default of a service, defect in equipment or materials or delays in making them available, unless they stem directly from a relevant case of *force majeure*;

'Formal notification': form of communication between the parties made in writing by mail or electronic mail which provides the sender with compelling evidence that the message was delivered to the specified recipient;

'Fraud': any intentional act or omission affecting the Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents, to non-disclosure of information in violation of a specific obligation;

'Implementation period': the period of implementation of the Framework agreement as specified in Article I.2.2 or the period of implementation of the activities forming part of the action, as specified in Article 2.2 of the Specific agreement;

'Indirect costs': those costs which are not specific costs directly linked to the implementation of the action and which therefore cannot be attributed directly to it. They may not include any costs identifiable or declared as eligible direct costs;

'Irregularity': any infringement of a provision of Union law resulting from an act or omission by a partner, which has or would have the effect of prejudicing the Union's budget;

'Maximum amount of the grant': the maximum EU contribution to the action, as defined in Article 3.1 of the Specific agreement;

'Pre-existing material': any materials, document, technology or know-how which exists prior to a partner using it for the production of a result in the implementation of the action;

'Pre-existing right': any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or a right of use belonging to the partner or any other third parties;

'Related person': any person who has the power to represent the partner or to take decisions on its behalf;

'Starting date': the date on which the implementation of the action starts as provided for in Article 2.2 of the Specific agreement;

'Subcontract': a procurement contract within the meaning of Article II.10, which covers the implementation by a third party of tasks forming part of the action as described in Annex I of the Specific agreement;

'Substantial error': any infringement of a provision of the Framework agreement or a Specific agreement resulting from an act or omission, which causes or might cause a loss to the Union's budget.

ARTICLE II.2 — GENERAL OBLIGATIONS AND ROLES OF THE PARTNERS

II.2.1 General obligations and role of the partners

The partners:

- (a) are jointly and severally liable for carrying out the *actions*, for which specific grants were awarded, in accordance with the Framework agreement and the Specific agreements. If a partner fails to implement its part of the *action*, the other partners become responsible for implementing this part (but without increasing the *maximum amount of the grant*);
- (b) must comply jointly or individually with any legal obligations they are bound by under applicable EU, international and national law;
- (c) must make appropriate internal arrangements to implement properly any *action* for which a specific grant could be awarded. The arrangements must be consistent with the terms of the Framework agreement. If provided for in the Special Conditions, those arrangements must take the form of an internal cooperation agreement between the partners.

II.2.2 General obligations and role of each partner

Each partner must:

- (a) inform the coordinator immediately of any events or circumstances of which the partner is aware, that are likely to affect or delay the implementation of an *action*;
- (b) must inform the coordinator immediately:
 - (i) of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representative;
 - (ii) of any change in the legal, financial, technical, organisational or ownership situation of its affiliated entities and of any change in their name, address or legal representative;
- (c) submit in due time to the coordinator:
 - (i) the data needed to draw up the reports, financial statements and other documents provided for in the Framework agreement or the Specific agreement;

- (ii) all the necessary documents required for audits, checks or evaluations as provided for in Article II.27.
- (iii) any other information to be provided to Frontex under the Framework agreement or the Specific agreement, except if those agreements require such information to be submitted directly by the partner.

II.2.3 General obligations and role of the coordinator

The coordinator:

- (a) must monitor the implementation of any *action* for which a specific grant was awarded in order to make sure that the *action* is implemented in accordance with the terms of the Framework agreement and the Specific agreement concerned;
- (b) is the intermediary for all communications between the partners and Frontex, except if provided otherwise in the Framework agreement and the Specific agreement. In particular, the coordinator:
 - (i) must immediately inform Frontex:
 - of any change in the name, address, legal representative of any of the partners or of their affiliated entities;
 - of any change in the legal, financial, technical, organisational or ownership situation of any of the partners or of their affiliated entities;
 - of any events or circumstances of which the coordinator is aware, that are likely to affect or delay the implementation of an *action*, of which the coordinator is aware.
 - (ii) is responsible for supplying Frontex with all documents and information required under the Framework agreement and the Specific agreement, except if provided otherwise in those agreements. If information is required from the other partners, the coordinator is responsible for obtaining and verifying this information before passing it on to Frontex;
- (c) must make the appropriate arrangements for providing any financial guarantees required under the Framework agreement or the Specific agreement;
- (d) must draw up the requests for payment in accordance with the Framework agreement and the Specific agreement;

- (e) if it is designated as the sole recipient of payments on behalf of all of the partners, it must ensure that all the appropriate payments are made to the other partners without unjustified delay;
- (f) is responsible for providing all the necessary documents required for checks and audits initiated before the payment of the balance or documents required for evaluation as provided for in Article II.27.

The coordinator may not subcontract any part of its tasks to the other partners or to any other party.

ARTICLE II.3 — COMMUNICATION BETWEEN THE PARTIES

II.3.1 Form and means of communication

Any communication relating to the Framework agreement or a Specific agreement or to their implementation must:

- (a) be made in writing (in paper or electronic form);
- (b) bear the number of the agreement concerned; and
- (c) be made using the communication details identified in Article 7 of the Specific agreement.

If a party requests written confirmation of an electronic communication within a reasonable time, the sender must provide an original signed paper version of the communication as soon as possible.

II.3.2 Date of communications

Any communication is considered to have been made when the receiving party receives it, unless the Framework agreement or the Specific agreement states that communication is considered to have been made on the date when the communication was sent.

Email is considered to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in Article 7 of the Specific agreement. The sending party must be able to prove the date of dispatch. If the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to Frontex using the postal or courier services is considered to have been received by Frontex on the date on which it is registered by the department identified in Article 7.1 of the Specific agreement.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

ARTICLE II.4 — LIABILITY FOR DAMAGES

- II.4.1** Frontex may not be held liable for any damage caused or sustained by any of the partners, including any damage caused to third parties as a consequence of or during the implementation of an *action*.
- II.4.2** Except in cases of *force majeure*, the partners must compensate Frontex for any damage it sustains as a result of the implementation of an *action* or because an *action* was not implemented in full compliance with the Framework agreement or the Specific agreement.

ARTICLE II.5 — CONFLICT OF INTERESTS

- II.5.1** The partners must take all necessary measures to prevent any situation of *conflict of interests*.
- II.5.2** The partners must inform Frontex without delay of any situation constituting or likely to lead to a *conflict of interests*. They must take immediately all the necessary steps to rectify this situation.

Frontex may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

ARTICLE II.6 — CONFIDENTIALITY

- II.6.1** During implementation of the *action* and for five years after the payment of the balance, the parties must treat with confidentiality any *confidential information and documents*.
- II.6.2** The parties may only use *confidential information and documents* for a reason other than to fulfil their obligations under the Framework agreement and the Specific agreement if they have first obtained the prior written agreement of the other party.

II.6.3 The confidentiality obligations do not apply if:

- (a) the disclosing party agrees to release the other party from those obligations;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligations;
- (c) the disclosure of the *confidential information or documents* is required by law.

ARTICLE II.7 — PROCESSING OF PERSONAL DATA

II.7.1 Processing of personal data by Frontex

Any personal data included in the Framework agreement and the Specific agreements must be processed by Frontex in accordance with Regulation (EC) No 45/2001⁴.

Such data must be processed by the data controller identified in Article I.3 solely for implementing, managing and monitoring the Framework agreement and the Specific agreements or to protect the financial interests of the EU, including checks, audits and investigations in accordance with Article II.27.

The partners have the right to access and correct their own personal data. For this purpose, they must send any queries about the processing of their personal data to the data controller identified in Article I.3.

The partners may have recourse at any time to the European Data Protection Supervisor.

II.7.2 Processing of personal data by the partners

The partners must process personal data under the Framework agreement and the Specific agreements in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The partners may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the Framework agreement and the Specific agreements. This is in order to:

⁴ Regulation (EC) No. 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data processed on behalf of third parties can be processed only in the manner prescribed by the Commission;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design their organisational structure in such a way that it meets data protection requirements.

ARTICLE II.8 — VISIBILITY OF FRONTEX FUNDING

II.8.1 Information on Frontex funding and use of Frontex emblem

Unless Frontex requests or agrees otherwise, any communication or publication made by the partners jointly or individually that relates to an *action*, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must:

- (a) indicate that the *action* has received funding from Frontex; and
- (b) display Frontex emblem.

When displayed in association with another logo, Frontex emblem must have appropriate prominence.

The obligation to display Frontex emblem does not confer on the partners a right of exclusive use. The partners may not appropriate Frontex emblem or any similar trademark or logo, either by registration or by any other means.

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the partners may use Frontex emblem without first obtaining permission from Frontex.

II.8.2 Disclaimers excluding Frontex responsibility

Any communication or publication that relates to an *action*, made by the partners jointly or individually in any form and using any means, must indicate:

- (a) that it reflects only the author's view; and
- (b) that Frontex is not responsible for any use that may be made of the information it contains.

ARTICLE II.9 — PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

II.9.1 Ownership of the results by the partners

The partners retain ownership of the results of the *action*, including industrial and intellectual property rights, and of the reports and other documents relating to it, unless stipulated otherwise in a Specific agreement.

II.9.2 Pre-existing rights

If Frontex sends the partners a written request specifying which of the results it intends to use, the partners must:

- (a) establish a list specifying all *pre-existing rights* included in those results; and
- (b) provide this list to Frontex at the latest with the request for payment of the balance.

The partners must ensure that they or their affiliated entities have all the rights to use any *pre-existing rights* during the implementation of the Specific agreement.

II.9.3 Rights of use of the results and of pre-existing rights by Frontex

The partners grant the Union the following rights to use the results of an *action*:

- (a) for its own purposes and in particular to make available to persons working for Frontex, other Union institutions, agencies and bodies and to Member States' institutions, as well as to copy and reproduce in whole or in part and in an unlimited number of copies;

- (b) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;
- (d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;
- (e) adaptation: the right to modify the results;
- (f) translation;
- (g) the right to store and archive the results in line with the document management rules applicable to Frontex, including digitisation or converting the format for preservation or new use purposes;
- (h) where the results are documents, the right to authorise the reuse of the documents in conformity with Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents if that Decision is applicable and if the documents fall within its scope and are not excluded by any of its provisions. For the sake of this provision, the terms 'reuse' and 'document' have the meanings given to them by Decision 2011/833/EU.

The above rights of use may be further specified in the Specific agreement.

Additional rights of use for the Union may be provided for in the Specific agreement.

The partners must ensure that the Union has the right to use any *pre-existing rights* included in the results of an *action*. The *pre-existing rights* must be used for the same purposes and under the same conditions as applicable to the rights of use of the results of the *action*, unless specified otherwise in the Specific agreement.

Information about the copyright owner must be inserted in cases where the result is divulged by the Union. The copyright information must read: '© — year — name of the copyright owner. All rights reserved. Licenced to the European Union under conditions.'

If the partners grant rights of use to Frontex, this does not affect its confidentiality obligations under Article II.6 or the partners' obligations under Article II.2.

ARTICLE II.10 — AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION

II.10.1 If the implementation of an *action* requires the partners to procure goods, works or services, they must award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, they must avoid any *conflict of interests*.

The partners must ensure that Article II.27 is also applicable to the partners' contractors, in particular that Frontex and the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.27 towards the contractors.

II.10.2 Partners that are 'contracting authorities' within the meaning of Directive 2014/24/EU⁵ or 'contracting entities' within the meaning of Directive 2014/25/EU⁶ must comply with the applicable national public procurement rules.

The partners must ensure that the conditions applicable to them under Articles II.4, II.5, II.6 and II.9 are also applicable to the contractors.

II.10.3 The partners remain solely responsible for carrying out the *action* concerned and for compliance with the Framework agreement and the Specific agreement.

II.10.4 If the partners breach their obligations under Article II.10.1 the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (c), (d) and (e).

If the partners breach their obligations under Article II.10.2 the grant may be reduced in accordance with Article II.25.4.

⁵ 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

⁶ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

ARTICLE II.11 — SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION

II.11.1 Partners may subcontract tasks forming part of an *action*. If they do so, they must ensure that, in addition to the conditions specified in Article II.10, the following conditions are also complied with:

- (a) subcontracting does not cover core tasks of the *action*;
- (b) recourse to subcontracting is justified because of the nature of the *action* and what is necessary for its implementation;
- (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex II of the Specific agreement;
- (d) any recourse to subcontracting, if not provided for in Annex I of the Specific agreement, is communicated by the coordinator and approved by Frontex. Frontex may grant approval:
 - (i) before any recourse to subcontracting, if the partners request an amendment as provided for in Article II.13; or
 - (ii) after recourse to subcontracting if the subcontracting:
 - is specifically justified in the interim or final technical report referred to in Articles 4.3 and 4.4 of the Specific agreement; and
 - does not entail changes to the Framework agreement or the Specific agreement which would call into question the decision to establish the framework partnership or to award the specific grant or which would be contrary to the equal treatment of applicants;
- (e) the partners ensure that the conditions applicable to them under Article II.8 are also applicable to the subcontractors.

II.11.2 If the partners breach their obligations under Article II.11.1 (a), (b), (c) or (d), the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (f).

If the partners breach their obligation under Article II.11.1 (e) the grant may be reduced in accordance with Article II.25.4.

ARTICLE II.12 — FINANCIAL SUPPORT TO THIRD PARTIES

II.12.1 If, while implementing an *action*, the partners have to give financial support to third parties, the partners must give such financial support in accordance with

the conditions specified in Annex I of the Specific agreement. Under those conditions, the following information must be stated at least:

- (a) the maximum amount of financial support. This amount may not exceed EUR 60.000 for each third party except if the financial support is the primary aim of the *action* as specified in Annex I of the Specific agreement;
- (b) the criteria for determining the exact amount of the financial support;
- (c) the different types of activity that may receive financial support, on the basis of a fixed list;
- (d) the persons or categories of persons which may receive financial support;
- (e) the criteria for giving the financial support.

II.12.2 As an exception to Article II.12.1, if the financial support takes the form of a prize, the partners must give such financial support in accordance with the conditions specified in Annex I of the Specific agreement. Under those conditions, the following information must at least be stated:

- (a) the conditions for participation;
- (b) the award criteria;
- (c) the amount of the prize;
- (d) the payment arrangements.

II.12.3 The partners must ensure that the conditions applicable to them under Articles II.4, II.5, II.6, II.8, II.9 and II.27 are also applicable to the third parties receiving financial support.

ARTICLE II.13 — AMENDMENTS TO THE FRAMEWORK AGREEMENT

II.13.1 Any amendment to the Framework agreement or a Specific agreement must be made in writing.

II.13.2 An amendment may not have the purpose or the effect of making changes to the Framework agreement or a Specific agreement which would call into question the decision to establish the framework partnership or to award the specific grant or which would be contrary to the equal treatment of applicants.

II.13.3 Any request for amendment must:

- (a) be duly justified;
- (b) be accompanied by appropriate supporting documents; and
- (c) be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the *implementation period* of the Framework agreement or the Specific agreement.

Point (c) does not apply in cases duly substantiated by the party requesting the amendment if the other party agrees.

II.13.4 A request for amendment on behalf of the partners must be submitted by the coordinator. If a change of coordinator is requested without its agreement, the request must be submitted by all other partners and must be accompanied by the opinion of the coordinator or proof that this opinion has been requested in writing.

II.13.5 Amendments enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

Amendments take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

ARTICLE II.14 — ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES

II.14.1 The partners may not assign any of their claims for payment against Frontex to any third party, except if approved by Frontex on the basis of a reasoned, written request by the coordinator made on behalf of the partners.

If Frontex does not accept the assignment or the terms of it are not complied with, the assignment has no effect on it.

II.14.2 In no circumstances may an assignment release the partners from their obligations towards Frontex.

ARTICLE II.15 — FORCE MAJEURE

II.15.1 A party faced with *force majeure* must send a *formal notification* to the other party without delay, stating the nature of the situation or of the event, its likely duration and foreseeable effects.

II.15.2 The parties must take the necessary measures to limit any damage due to *force majeure*. They must do their best to resume the implementation of the *action* as soon as possible.

II.15.3 The party faced with *force majeure* may not be considered in breach of its obligations under the Framework agreement or a Specific agreement if it has been prevented from fulfilling them by *force majeure*.

ARTICLE II.16 — SUSPENSION OF THE IMPLEMENTATION OF THE ACTION

II.16.1 Suspension of implementation by the partners

The coordinator, on behalf of the partners, may suspend the implementation of an *action* or any part of it, if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*.

The coordinator must immediately inform Frontex, stating:

- (a) the reasons for suspension, including details about the date or period when the exceptional circumstances occurred; and
- (b) the expected date of resumption.

Once the circumstances allow the partners to resume implementing the *action*, the coordinator must inform Frontex immediately and present a request for amendment of the Framework agreement or a Specific agreement as provided for in Article II.16.3. This obligation does not apply if the Framework agreement or a Specific agreement or the participation of a partner is terminated in accordance with Articles II.17.1, II.17.2.1 or points (c) or (d) of Article II.17.2.2.

II.16.2 Suspension of implementation by Frontex

II.16.2.1 Grounds for suspension

Frontex may suspend the implementation of an *action* or any part thereof or the implementation of the Framework agreement:

- (a) if Frontex has evidence that a partner has committed *substantial errors, irregularities* or *fraud* in the award procedure or while implementing the Framework agreement or the Specific agreement or if a partner fails to comply with its obligations under those agreements;
- (b) if Frontex has evidence that a partner has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other grants

funded by the Union or the European Atomic Energy Community ('Euratom') awarded to the partner under similar conditions and the errors, *irregularities*, *fraud* or breach have a material impact on one or more specific grants awarded under the Framework agreement; or

- (c) if Frontex suspects *substantial errors*, *irregularities*, *fraud* or breach of obligations committed by a partner in the award procedure or while implementing the Framework agreement or the Specific agreement and needs to verify whether they have actually occurred.

The implementation of each action for which a specific grant has been awarded is deemed automatically suspended from the date on which the suspension of the implementation of the Framework agreement takes effect.

II.16.2.2 Procedure for suspension

Step 1 — Before suspending implementation of an *action*, Frontex must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to suspend the implementation;
 - (ii) the reasons for suspension;
 - (iii) the necessary conditions for resuming the implementation of the Framework agreement or of the *action* in the cases referred to in points (a) and (b) of Article II.16.2.1; and
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

Step 2 — If Frontex does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinator informing it of:

- (a) the suspension of the implementation;
- (b) the reasons for suspension; and
- (c) the final conditions for resuming the implementation of the Framework agreement or of the *action* in the cases referred to in points (a) and (b) of Article II.16.2.1; or
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.16.2.1,.

The coordinator must immediately inform the other partners of the suspension. The suspension takes effect five calendar days after the *formal notification* is received by the coordinator or on a later date specified in the *formal notification*.

Otherwise, Frontex must send a *formal notification* to the coordinator informing it that it is not continuing the suspension procedure.

II.16.2.3 Resuming implementation

In order to resume the implementation, the partners must meet the notified conditions as soon as possible and must inform Frontex of any progress made.

If the conditions for resuming the implementation of the Framework agreement or the Specific agreements are met or the necessary verifications are carried out, Frontex must send a *formal notification* to the coordinator:

- (a) informing it that the conditions for lifting the suspension are met; and
- (b) requiring it to present a request for amendment of the agreement concerned as provided for in Article II.16.3. This obligation does not apply if the Framework agreement or the Specific agreement or the participation of a partner is terminated in accordance with Articles II.17.1, II.17.2.1 or points (c), (g) or (h) of Article II.17.2.2.

II.16.3 Effects of the suspension

II.16.3.1 If the Framework agreement is not terminated, it may be adapted to the new implementing conditions in accordance with Article II.13.

The suspension of the implementation of the Framework agreement and of all automatically suspended actions in accordance with the last subparagraph of Article II.16.2.1 is deemed lifted as from the date of the notification by Frontex referred to in point (a) of Article II.16.2.3. In this case Article II.16.3.2 does not apply.

II.16.3.2 If the implementation of the suspended *action* can be resumed and the Specific agreement has not been terminated, an amendment to the Specific agreement must be made in accordance with Article II.13 in order to:

- (a) set the date on which the *action* is to be resumed;
- (b) extend the duration of the *action*; and
- (c) make other changes necessary to adapt the *action* to the new situation.

The suspension is lifted with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

II.16.3.3 Costs incurred during the period of suspension that relate to the implementation of the suspended *action* or the suspended part of it may not be reimbursed or covered by the grant.

Suspending implementation of an *action* or implementation of the Framework agreement does not affect Frontex's right to terminate the concerned agreement or to terminate the participation of a partner in accordance with Article II.17.2, reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party may claim damages due to suspension by the other party.

ARTICLE II.17 — TERMINATION OF THE FRAMEWORK AGREEMENT OR THE SPECIFIC AGREEMENT. TERMINATION OF THE PARTICIPATION OF ONE OR MORE PARTNERS

II.17.1 Termination by the partners

II.17.1.1 Termination of the Framework agreement

The partners may terminate the Framework agreement without specifying the reasons for termination.

The coordinator must send a *formal notification* of termination to Frontex stating the date on which the termination takes effect. This date must be set after the *formal notification*.

II.17.1.2 Termination of a Specific agreement

The partners may terminate a Specific agreement.

The coordinator must send a *formal notification* of termination to Frontex, stating:

- (a) the reasons for termination; and
- (b) the date on which the termination takes effect. This date must be set after the *formal notification*.

If the coordinator does not state the reasons for the termination or if Frontex considers that the reasons do not justify termination, the Specific agreement is considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

II.17.1.3 Termination of the participation of one or more partners by the coordinator

The participation of one or more partners in the Framework agreement or in the Specific agreement may be terminated by the coordinator at the request of the partner concerned or on behalf of the other partners.

The coordinator must send a *formal notification* of termination to Frontex and inform the partner concerned by termination.

If the coordinator's participation is terminated without its agreement, the *formal notification* must be submitted by another partner (acting on behalf of the other partners).

The *formal notification* must include:

- (a) the reasons for termination;
- (b) the opinion of the partner concerned by termination (or proof that this opinion has been requested in writing);
- (c) the date on which the termination takes effect. This date must be set after the *formal notification*; and
- (d) a request for amendment as provided for in Article II.17.3.2(a).

If the coordinator or partner does not state the reasons for the termination or if Frontex considers that the reasons do not justify termination, the participation will be considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

II.17.2 Termination by Frontex

II.17.2.1 Termination of the Framework agreement

Frontex may terminate the Framework agreement without specifying the reasons for termination.

Frontex must send a *formal notification* of termination to the coordinator specifying the date on which the termination takes effect. The notification must be sent before the termination is due to take effect.

II.17.2.2 Termination of the Framework agreement or a Specific agreement or of the participation of one or more partners based on explicit grounds

Frontex may terminate the Framework agreement, a Specific agreement or the participation of one or more partners in these agreements, if:

- (a) a change to the partner's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Framework agreement or the Specific agreement substantially or calls into question the decision to establish the framework partnership or to award the specific grant;
- (b) following the termination of the participation of any one or several partners, the necessary modifications to the Framework agreement would call into question the decision to establish the framework partnership or award the specific grant or would result in unequal treatment of applicants;
- (c) the partners do not implement an *action* as described in Annex I of the Specific agreement or a partner fails to comply with another substantial obligation incumbent on it under the Framework agreement or the Specific agreement;
- (d) the implementation of an *action* is prevented or suspended due to *force majeure* or exceptional circumstances and either:
 - (i) resumption is impossible; or
 - (ii) the necessary changes to the Framework agreement or the Specific agreement would call into question the decision to establish the framework partnership or to award the specific grant or be contrary to the equal treatment of applicants;
- (e) a partner or any person that assumes unlimited liability for the debts of that partner comes under any of the situations provided for in points (a) or (b) of Article 106 (1) of the Financial Regulation⁷;
- (f) a partner or any *related person* comes under any of the situations provided for in points (c), (d), (e) or (f) of Article 106 (1) or comes under Article 106 (2) of the Financial Regulation;

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.

- (g) Frontex has evidence that a partner or any *related person* has committed *substantial errors, irregularities or fraud* in the award procedure or while implementing the Framework agreement or any Specific agreement, including if that partner or *related person* has submitted false information or failed to provide required information;
- (h) Frontex has evidence that a partner has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other Union or Euratom grants awarded to it under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on a specific grant awarded under the Framework agreement; or
- (i) Frontex has sent a partner, through the coordinator, a *formal notification* asking it to end the participation of its affiliated entity because that entity is in a situation provided for in points (f), (g) or (h) and that partner has failed to request an amendment ending the participation of the entity and reallocating its tasks.

II.17.2.3 Procedure for termination based on explicit grounds

Step 1- Before terminating the Framework agreement or a Specific agreement or the participation of one or more partners on one of the grounds specified in Article II.17.2.2, Frontex must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to terminate;
 - (ii) the reasons for termination; and
- (b) requiring it, within 45 calendar days of receiving the formal notification:
 - (i) to submit observations on behalf of all partners; and
 - (ii) in the case of point (c) of Article II.17.2.2, to inform Frontex of the measures to ensure compliance with the obligations under the Framework agreement or the Specific agreement concerned.

Step 2 — If Frontex does not receive observations or decides to pursue the procedure despite the observations it has received, it will send a *formal notification* to the coordinator informing it of the termination and the date on which it takes effect. The coordinator must immediately inform the other partners of the termination.

Otherwise, Frontex must send a *formal notification* to the coordinator informing it that the termination procedure is not continued.

The termination takes effect:

- (a) for terminations under points (a), (b), (c) and (e) of Article II.17.2.2: on the day specified in the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above);
- (b) for terminations under points (d), (f), (g), (h) and (i) of Article II.17.2.2: on the day after the coordinator receives the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above).

II.17.3 Effects of termination

II.17.3.1 Effects of terminating the Framework agreement or a Specific agreement

Where the Framework agreement is terminated by the partners in accordance with Article II.17.1.1 or by Frontex in accordance with Articles II.17.2.1 or II.17.2.2:

- a) the partners must complete the implementation of any Specific agreement, governed by the Framework agreement, which has entered into force before the date on which the termination of the Framework agreement takes effect;
- b) Frontex must honour its obligations arising from the implementation of any Specific agreement, governed by the Framework agreement, which has entered into force before the date on which the termination of the Framework agreement takes effect.

Within 60 calendar days from the day on which the termination of a Specific agreement takes effect, the coordinator must submit a request for payment of the balance as provided for in Article 4.4 of the Specific agreement.

If Frontex does not receive the request for payment of the balance by the above deadline, only costs which are included in an approved technical report and, where relevant, in an approved financial statement, are reimbursed or covered by the specific grant.

If the Specific agreement is terminated by Frontex because the coordinator has breached its obligation to submit the request for payment, the coordinator may not submit any request for payment after termination. In that case the third subparagraph applies.

Frontex calculates the final grant amount as referred to in Article II.25 and the balance as referred to in Article 5.4 of the Specific agreement on the basis of the reports submitted. Only costs incurred before termination takes effect are reimbursed or covered by a specific grant. Costs relating to contracts due for execution only after termination are not taken into account and are not reimbursed or covered by the specific grant.

Frontex may reduce a specific grant in accordance with Article II.25.4 in case of:

- (a) improper termination of a Specific agreement by the coordinator within the meaning of Article II.17.1.2; or
- (b) termination of a Specific agreement by Frontex on any of the grounds set out in points (c), (f), (g), (h) and (i) of Article II.17.2.2.

Neither party may claim damages on the grounds that the other party terminated the Framework agreement or a Specific agreement.

After termination, the partners' obligations continue to apply, in particular those under Article 4 of the Specific agreement, Articles II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions or in the Specific agreement.

II.17.3.2 Effects of terminating the participation of one or more partners in the Framework agreement or in a Specific agreement

- a) The coordinator must submit a request for amendment including, where necessary,:
 - (i) a proposal to reallocate the tasks of the partner or partners concerned by the termination; and
 - (ii) the addition of one or more new partners to succeed the partner or partners concerned in all their rights and obligations under the Framework agreement and the concerned Specific agreements.

If Frontex terminates the participation of a partner, the coordinator must submit the request for amendment within 60 calendar days from the day on which the termination takes effect.

If the coordinator terminates the participation of a partner, the request for amendment must be included in the *formal notification* of termination referred to in Article II.17.1.3.

If termination takes effect after the end of the *implementation period* of the Framework agreement and all the Specific agreements, no request for amendment must be provided unless the partner concerned is the coordinator. In this case, the request for amendment must propose a new coordinator.

If the request for amendment is rejected by Frontex, the Framework agreement and the Specific agreements may be terminated in accordance with Article II.17.2.2(b). The request for amendment may be rejected if it calls into question the decision to establish the framework partnership or to award a specific grant or is contrary to the equal treatment of applicants.

- b) The partner whose participation in a Specific agreement is terminated must submit to the coordinator:
 - (i) a technical report; and
 - (ii) a financial statement covering the period from the end of the last reporting period to the date when termination takes effect.

The coordinator must include this information in the payment request for the next reporting period.

Only costs incurred by the partner concerned before termination takes effect are reimbursed or covered by the specific grant. Costs relating to contracts due for execution only after termination are not reimbursed or covered by the specific grant.

Frontex may reduce a specific grant in accordance with Article II.25.4. in case of:

- (a) improper termination of the participation of a partner by the coordinator within the meaning of Article II.17.1.3 or
- (b) termination of the participation of a partner by Frontex on any of the grounds set out in points (c), (f), (g), (h) or (i) of Article II.17.2.2.

Neither party may claim damages on the grounds that the other party terminated the participation of a partner.

After termination, the concerned partner's obligations continue to apply, in particular those under Article 4 of the Specific agreement, Articles II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions or the Specific agreement concerned.

Where the participation of one or more partners in the Framework agreement is terminated by the coordinator in accordance with Article II.17.1.3 or by Frontex in accordance with Article II.17.2.2 this partner or these partners shall complete the implementation of any other Specific agreement, governed by the Framework agreement, which have entered into force before the date on which the termination of the participation in the Framework agreement takes effect.

ARTICLE II.18 — APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISIONS

- II.18.1** The Framework agreement and any Specific agreement are governed by the applicable Union law complemented, where necessary, by the law of Belgium.
- II.18.2** In accordance with Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, has sole jurisdiction to hear any dispute between the Union and any partner concerning the interpretation, application or validity of the Framework agreement or any Specific agreement, if such dispute cannot be settled amicably.
- II.18.3** In accordance with Article 299 TFEU, for the purposes of recovery within the meaning of Article II.26, Frontex may adopt an enforceable decision to impose pecuniary obligations on persons other than States.

An *action* may be brought against such decision before the General Court of the European Union in accordance with Article 263 TFEU.

PART B — FINANCIAL PROVISIONS

ARTICLE II.19 — ELIGIBLE COSTS

II.19.1 Conditions for the eligibility of costs

Eligible costs of the *action* are costs actually incurred by the partner and which meet the following criteria:

- (a) they are incurred within the *implementation period* of the Specific agreement, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article 4.4 of the Specific agreement;
- (b) they are indicated in the estimated budget of an *action*. The estimated budget is set out in Annex II of the Specific agreement;
- (c) they are incurred in connection with the *action* as described in Annex I of the Specific agreement and are necessary for its implementation;
- (d) they are identifiable and verifiable, in particular they are recorded in the partner's accounting records and determined according to the applicable accounting standards of the country where the partner is established and according to the partner's usual cost accounting practices;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified and comply with the principle of sound financial management, in particular regarding economy and efficiency.

II.19.2 Eligible direct costs

To be eligible, the *direct cost* of an *action* must comply with the eligibility conditions set out in Article II.19.1.

In particular, the following categories of costs are eligible *direct costs*, provided that they satisfy the eligibility conditions set out in Article II.19.1 as well as the following conditions:

- (a) the costs of personnel working under an employment contract with the partner or an equivalent appointing act and assigned to the *action*, provided that these costs are in line with the partner's usual policy on remuneration.

Those costs include actual salaries plus social security contributions and other statutory costs included in the remuneration. They may also comprise additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used;

The costs of natural persons working under a contract with the partner other than an employment contract or who are seconded to the partner by a third party against payment may also be included under such personnel costs, provided that the following conditions are fulfilled:

- (i) the person works under conditions similar to those of an employee (in particular regarding the way the work is organised, the tasks that are performed and the premises where they are performed);
 - (ii) the result of the work belongs to the partner (unless exceptionally agreed otherwise); and
 - (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the partner;
- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the partner's usual practices on travel;
- (c) the depreciation costs of equipment or other assets (new or second-hand) as recorded in the partner's accounting statements, provided that the asset:
- (i) is written off in accordance with the international accounting standards and the partner's usual accounting practices; and
 - (ii) has been purchased in accordance with Article II.10.1 if the purchase occurred within the *implementation period*;

The costs of renting or leasing equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the *implementation period* set out in Article 2.2 of the Specific agreement concerned and the rate of actual use for the purposes of the *action* may be taken into account when determining the eligible costs. By way of exception, the Special Conditions or the Specific agreement may provide for the eligibility of the full cost of purchase of equipment, if this is justified by the nature of the *action* and the context of the use of the equipment or assets;

- (d) costs of consumables and supplies, provided that they:
 - (i) are purchased in accordance with Article II.10.1; and
 - (ii) are directly assigned to the *action*;
- (e) costs arising directly from requirements imposed by the Framework agreement or the Specific agreement (dissemination of information, specific evaluation of the *action*, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.10.1;
- (f) costs entailed by *subcontracts* within the meaning of Article II.11, provided that the conditions laid down in Article II.11.1 (a), (b), (c) and (d) are met;
- (g) costs of financial support to third parties within the meaning of Article II.12, provided that the conditions laid down in that Article are met;
- (h) duties, taxes and charges paid by the partner, notably value added tax (VAT), provided that they are included in eligible *direct costs*, and unless specified otherwise in the Special Conditions or in the Specific agreement.

II.19.3 Eligible indirect costs

To be eligible, *indirect costs* of the *action* must represent a fair apportionment of the overall overheads of the partner and must comply with the conditions of eligibility set out in Article II.19.1.

Eligible *indirect costs* must be declared on the basis of a flat rate of 7 % of the total eligible *direct costs* unless otherwise specified in Article 3.2.d. of the Specific agreement.

II.19.4 Ineligible costs

In addition to any other costs which do not fulfil the conditions set out in Article II.19.1, the following costs may not be considered eligible:

- (a) return on capital and dividends paid by a partner;
- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) doubtful debts;
- (f) exchange losses;

- (g) costs of transfers from Frontex charged by the bank of a partner;
- (h) costs declared by a partner under another action receiving a grant financed from the Union budget. Such grants include grants awarded by a Member State and financed from the Union budget and grants awarded by bodies other than Frontex for the purpose of implementing the Union budget. In particular, if a partner receives an operating grant financed by the EU or Euratom budget, it may not declare indirect costs for the period(s) covered by the operating grant, unless it can demonstrate that the operating grant does not cover any costs of the action;
- (i) contributions in kind from third parties;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.

ARTICLE II.20 — IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED

II.20.1 Declaring costs and contributions

Each partner must declare as eligible costs or as a requested contribution:

- (a) for actual costs: the costs it actually incurred for the *action*;
- (b) for unit costs or unit contributions: the amount obtained by multiplying the amount per unit specified in Article 3.2.(b). of the Specific agreement by the actual number of units used or produced;
- (c) for lump sum costs or lump sum contributions specified in Article 3.2.(c) the global amount specified in of the Specific agreement, if the corresponding tasks or part of the *action* as described in Annex I of the Specific agreement have been implemented properly;
- (d) for flat-rate costs or flat-rate contributions: the amount obtained by applying the flat rate specified in Article 3.2.(d) of the Specific agreement;
- (e) for unit costs declared on the basis of the partner's usual cost accounting practices: the amount obtained by multiplying the amount per unit calculated in accordance with the partner's usual cost accounting practices by the actual number of units used or produced;
- (f) for lump sum costs declared on the basis of the partner's usual cost accounting practices: the global amount calculated in accordance with its usual cost

accounting practices, if the corresponding tasks or part of the *action* have been implemented properly;

- (g) for flat-rate costs declared on the basis of the partner's usual cost accounting practices: the amount obtained by applying the flat rate calculated in accordance with the partner's usual cost accounting practices.

II.20.2 Records and other documentation to support the costs and contributions declared

Each partner must provide the following if requested to do so in the context of the checks or audits described in Article II.27:

- (a) for actual costs: adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records.

In addition, the partner's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements and with the amounts indicated in the supporting documents;

- (b) for unit costs or unit contributions: adequate supporting documents to prove the number of units declared.

The partner does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared per unit;

- (c) for lump sum costs or lump sum contributions: adequate supporting documents to prove that the *action* has been properly implemented.

The partner does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared as a lump sum;

- (d) for flat-rate costs or flat-rate contributions: adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies.

The partner does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, for the flat rate applied;

- (e) for unit costs declared on the basis of the partner's usual cost accounting practices: adequate supporting documents to prove the number of units declared;

- (f) for lump sum costs declared on the basis of the partner's usual cost accounting practices: adequate supporting documents to prove that the *action* has been properly implemented;
- (g) for flat-rate costs declared on the basis of the partner's usual cost accounting practices: adequate supporting documents to prove the eligible costs to which the flat rate applies.

II.20.3 Conditions to determine the compliance of cost accounting practices

II.20.3.1 In the case of points (e), (f) and (g) of Article II.20.2, the partner does not need to identify the actual eligible costs covered, but it must ensure that the cost accounting practices used for the purpose of declaring eligible costs are in compliance with the following conditions:

- (d) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;
- (e) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
- (f) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant as provided for in Article 3.2 of the Specific agreement.

II.20.3.2 If the Special Conditions or the Specific agreement so provide, the partner may submit to Frontex a request asking it to assess the compliance of its usual cost accounting practices. If required by the Special Conditions or by the Specific agreement, the request must be accompanied by a certificate on the compliance of the cost accounting practices ('certificate on the compliance of the cost accounting practices').

The certificate on the compliance of the cost accounting practices must be:

- (a) produced by an approved auditor or, if the partner is a public body, by a competent and independent public officer; and
- (b) drawn up in accordance with Annex VIII.

The certificate must certify that the partner's cost accounting practices used for the purpose of declaring eligible costs comply with the conditions laid down in Article II.20.3.1 and with the additional conditions that may be laid down in the Special Conditions or in the Specific agreement.

II.20.3.3 If Frontex has confirmed that the partner's usual cost accounting practices are in compliance, costs declared in application of these practices may not be challenged *ex post*, if:

- (a) the practices actually used comply with those approved by Frontex; and
- (b) the partner did not conceal any information for the purpose of the approval of its cost accounting practices.

ARTICLE II.21 — ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE PARTNERS

If the Special Conditions or the Specific agreement contain a provision on entities affiliated to the partners, costs incurred by such an entity are eligible, if:

- (a) they satisfy the same conditions under Articles II.19 and II.20 as apply to the partner; and
- (b) the partner to which the entity is affiliated ensures that the conditions applicable to the partner under Articles II.4, II.5, II.6, II.8, II.10, II.11 and II.27 are also applicable to the entity.

ARTICLE II.22 — BUDGET TRANSFERS

Partners are allowed to adjust the estimated budget set out in Annex II of the Specific agreement by transfers between themselves and between the different budget categories, if the *action* is implemented as described in Annex I of the Specific agreement. This adjustment does not require an amendment of the Specific agreement as provided for in Article II.13.

However, the partners may not add costs relating to *subcontracts* not provided for in Annex I of the Specific agreement, unless such additional *subcontracts* are approved by Frontex in accordance with Article II.11.1(d).

As an exception to the first subparagraph, if partners want to change the value of the contribution to which each of them is entitled, as referred to in point (c) of the third subparagraph of II.26.3, the coordinator must request an amendment as provided for in Article II.13.

The first three subparagraphs do not apply to amounts which, as provided for in Article 3.2(c) of the Specific agreement, take the form of lump sums.

ARTICLE II.23 — NON-COMPLIANCE WITH REPORTING OBLIGATIONS

Frontex may terminate the Framework agreement or the Specific agreement as provided for in Article II.17.2.2(c) and may reduce the specific grant as provided for in Article II.25.4 if the coordinator:

- (a) did not submit a request for interim payment or payment of the balance accompanied by the documents referred to in Articles 4.3 or 4.4 of the Specific agreement within 60 calendar days following the end of the corresponding reporting period; and
- (b) still fails to submit such a request within further 60 calendar days following a written reminder sent by Frontex.

ARTICLE II.24 — SUSPENSION OF PAYMENTS AND TIME LIMIT FOR PAYMENT

II.24.1 Suspension of payments

II.24.1.1 Grounds for suspension

Frontex may at any time during the implementation of the Specific agreement suspend, in whole or in part, the pre-financing payments and interim payments for one or more partners or the payment of the balance for all partners:

- (a) if Frontex has evidence that a partner has committed *substantial errors, irregularities or fraud* in the award procedure or while implementing the Framework agreement or a Specific agreement or if a partner fails to comply with its obligations under the Framework agreement or a Specific agreement;
- (b) if Frontex has evidence that a partner has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other grants funded by the Union or the European Atomic Energy Community ('Euratom') awarded to the partner under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on a specific grant awarded under the Framework agreement; or
- (c) if Frontex suspects *substantial errors, irregularities, fraud* or breach of obligations committed by a partner in the award procedure or while implementing the Framework agreement or the Specific agreement and needs to verify whether they have actually occurred.

II.24.1.2 Procedure for suspension

Step 1 — Before suspending payments, Frontex must send a *formal notification* to the coordinator:

(a) informing it of:

- (i) its intention to suspend payments;
- (ii) the reasons for suspension;
- (iii) in the cases referred to in points (a) and (b) of Article II.24.1.1, the conditions that need to be met for payments to resume; and

(b) inviting it to submit observations within 30 calendar days of receiving the *formal notification*.

Step 2 — If Frontex does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinator informing it of:

- (a) the suspension of payments;
- (b) the reasons for suspension;
- (c) the final conditions under which payments may resume in the cases referred to in points (a) and (b) of Article II.24.1.1;
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.24.1.1.

The coordinator must immediately inform the other partners of the suspension. The suspension takes effect on the day Frontex sends *formal notification* of suspension (Step 2).

Otherwise, Frontex must send a *formal notification* to the coordinator informing it that it is not continuing with the suspension procedure.

II.24.1.3 Effects of suspension

During the period of suspension of payments the coordinator is not entitled to submit:

- (a) any requests for payments and supporting documents referred to in Articles 4.2, 4.3 and 4.4 of the Specific agreement; or
- (b) where the suspension concerns the pre-financing payments or interim payments for one or several partners only, any requests for payments and supporting documents relating to the participation of the concerned partner or partners in the *action*.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the

first request for payment due following resumption of payments in accordance with the schedule laid down in Article 4.1 of the Specific agreement.

The suspension of payments does not affect the right of the coordinator to suspend the implementation of the *action* as provided for in Article II.16.1 or to terminate the Framework agreement or the Specific agreement or the participation of a partner as provided for in Article II.17.1.

II.24.1.4 Resuming payments

In order for Frontex to resume payments, the partners must meet the notified conditions as soon as possible and must inform Frontex of any progress made.

If the conditions for resuming payments are met, the suspension will be lifted. Frontex will send a *formal notification* to the coordinator informing it of this.

II.24.2 Suspension of the time limit for payments

II.24.2.1 Frontex may at any moment suspend the time limit for payment specified in Articles 5.2, 5.3 and 5.4 of the Specific agreement if a request for payment cannot be approved because:

- (a) it does not comply with the Specific agreement or the Framework agreement;
- (b) the appropriate supporting documents have not been produced; or
- (c) there is a doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

II.24.2.2 Frontex must send a *formal notification* to the coordinator informing it of:

- (a) the suspension; and
- (b) the reasons for the suspension.

The suspension takes effect on the day Frontex sends the *formal notification*.

II.24.2.3 If the conditions for suspending the payment deadline are no longer met, the suspension will be lifted and the remaining period will resume.

If the suspension exceeds two months, the coordinator may request Frontex if the suspension will continue.

If the payment deadline has been suspended because the technical reports or financial statements do not comply with the Specific agreement or the Framework agreement and the revised report or statement is not submitted or was submitted but is also rejected, Frontex may terminate the Specific agreement or the Framework agreement or the participation of the partner as provided for in Article II.17.2.2(c) and reduce the grant as provided for in Article II.25.4.

ARTICLE II.25 — CALCULATION OF THE FINAL AMOUNT OF THE GRANT

The final amount of the specific grant depends on the extent to which the *action* has been implemented in accordance with the terms of the Specific agreement and the Framework agreement.

The final amount of the grant is calculated by Frontex at the time of the payment of the balance. The calculation involves the following steps:

Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions

Step 2 — Limit to the *maximum amount of the grant*

Step 3 — Reduction due to the no-profit rule

Step 4 — Reduction due to improper implementation or breach of other obligations.

II.25.1 Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions

The amount under step 1 is obtained by:

- a) If, as provided for in Article 3.2(a) of the Specific agreement, the grant takes the form of the reimbursement of eligible costs, the reimbursement rate specified in that Article is applied to the eligible costs of the *action* approved by the Commission for the corresponding categories of costs, partners and affiliated entities;
- b) If, as provided for in Article 3.2(b) of the Specific agreement, the grant takes the form of a unit contribution, the unit contribution specified in that Article is multiplied by the actual number of units approved by the Commission for the corresponding partners and affiliated entities;

- c) If, as provided for in Article 3.2(c) of the Specific agreement, the grant takes the form of a lump sum contribution, the Commission applies the lump sum specified in that Article for the corresponding partners and affiliated entities if it finds that the corresponding tasks or part of the *action* were implemented properly in accordance with Annex I of the Specific agreement;
- d) If, as provided for in Article 3.2(d) of the Specific agreement, the grant takes the form of a flat-rate contribution, the flat rate referred to in that Article is applied to the eligible costs or to the contribution approved by the Commission for the corresponding partners and affiliated entities.

If Article 3.2 of the Specific agreement provides for a combination of different forms of grant, the amounts obtained must be added together.

II.25.2 Step 2 — Limit to *maximum amount of the grant*

The total amount paid to the partners by Frontex may in no circumstances exceed the *maximum amount of the grant*.

If the amount obtained following Step 1 is higher than this maximum amount, the final amount of the grant is limited to the latter.

II.25.3 Step 3 — Reduction due to the no-profit rule

The grant may not produce a profit for the partners, unless specified otherwise in the Special Conditions or in the Specific agreement.

'Profit' means the surplus of the amount obtained following Steps 1 and 2 plus the total receipts of the *action*, over the total eligible costs of the *action*.

The total eligible costs of the *action* are the consolidated total eligible costs approved by Frontex for the categories of costs reimbursed in accordance with Article 3.2(a) of the Specific agreement.

The total receipts of the *action* are the consolidated total receipts established, generated or confirmed on the date on which the request for payment is drawn up by the coordinator.

The following are considered receipts:

- (a) income generated by the action;

- (b) financial contributions given by third parties to a partner or to an affiliated entity, if they are specifically assigned by the third parties to the financing of the eligible costs of the action reimbursed by Frontex in accordance with Article 3.2(a)(i) of the Specific agreement.

The following are not considered receipts:

- (a) financial contributions by third parties, if they may be used to cover costs other than the eligible costs under the Specific agreement;
- (b) financial contributions by third parties with no obligation to repay any amount unused at the end of the *implementation period*.

If there is a profit, it will be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the *action* approved by Frontex for the categories of costs referred to in Article 3.2(a)(i) of the Specific agreement. This deduction will be applied on the amount calculated following Steps 1 and 2.

II.25.4 Step 4 — Reduction due to improper implementation or breach of other obligations

Frontex may reduce the *maximum amount of the grant* if the *action* has not been implemented properly as described in Annex I of the Specific agreement (i.e. if it has not been implemented or has been implemented poorly, partially or late), or if another obligation under the Framework agreement or the Specific agreement has been breached.

The amount of the reduction will be proportionate to the degree to which the *action* has been implemented improperly or to the seriousness of the breach.

Before Frontex reduces the grant, it must send a *formal notification* to the coordinator:

- (a) informing it of:
 - (i) its intention to reduce the *maximum amount of the grant*;
 - (ii) the amount by which it intends to reduce the grant;
 - (iii) the reasons for reduction; and
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

If Frontex does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a *formal notification* informing the coordinator of its decision.

If the grant is reduced, Frontex must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the *action* or to the seriousness of the breach of obligations) from the *maximum amount of the grant*.

The final amount of the grant will be the lower of the following two:

- (a) the amount obtained following Steps 1 to 3; or
- (b) the reduced grant amount following Step 4.

ARTICLE II.26 — RECOVERY

II.26.1 Recovery at the time of payment of the balance

Where the payment of the balance takes the form of a recovery, the coordinator must repay Frontex the amount in question, even if it was not the final recipient of the amount due.

II.26.2 Recovery after payment of the balance

Where an amount is to be recovered as provided for in Articles II.27.6, II.27.7 and II.27.8, the partner concerned by the audit or OLAF findings must repay Frontex the amount in question. Where the audit findings do not concern a specific partner (or its affiliated entities), the coordinator must repay Frontex the amount in question, even if it was not the final recipient of the amount due.

Each partner is responsible for the repayment of any amount unduly paid by Frontex as a contribution towards the costs incurred by its affiliated entities.

II.26.3 Recovery procedure

Before recovery, Frontex must send a *formal notification* to the partner concerned:

- (a) informing it of its intention to recover the amount unduly paid;
- (b) specifying the amount due and the reasons for recovery; and
- (c) inviting the partner to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the partner, Frontex decides to pursue the recovery procedure, Frontex may confirm recovery by sending a *formal notification* to the partner consisting of a debit note, specifying the terms and the date for payment.

If payment has not been made by the date specified in the debit note, Frontex will recover the amount due:

- (a) by offsetting it, without the partner's prior consent, against any amounts owed to the partner by Frontex or an executive agency (from the Union or the European Atomic Energy Community (Euratom) budget) ('offsetting');

In exceptional circumstances, to safeguard the financial interests of the Union, Frontex may offset before the due date.

An action may be brought against such offsetting before the General Court of the European Union in accordance with Article 263 TFEU;

- (b) by drawing on the financial guarantee where provided for in accordance with Article 5.2 of the Specific agreement ('drawing on the financial guarantee');
- (c) by holding the partners jointly and severally liable up to the maximum EU contribution indicated, for each partner, in the estimated budget (Annex II of the Specific agreement as last amended);
- (d) by taking legal action as provided for in Article II.18.2 or in the Special Conditions or by adopting an enforceable decision as provided for in Article II.18.3.

II.26.4 Interest on late payment

If payment is not made by the date in the debit note, the amount to be recovered will be increased by late-payment interest at the rate set out in Article 5.6 of the Specific agreement from the day following the date for payment in the debit note up to and including the date Frontex receives full payment of the amount.

Partial payments must first be credited against charges and late-payment interest and then against the principal.

II.26.5 Bank charges

Bank charges incurred in the recovery process must be borne by the partner concerned, unless Directive 2007/64/EC⁸ applies.

ARTICLE II.27 — CHECKS, AUDITS AND EVALUATIONS

II.27.1 Technical and financial checks, audits, interim and final evaluations

Frontex may, during the implementation of an *action* or afterwards, carry out technical and financial checks and audits to determine that the partners are implementing the *action* properly and are complying with the obligations under the Specific agreement or the Framework agreement. It may also check the partners' statutory records for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided as part of checks or audits must be treated on a confidential basis.

In addition, Frontex may carry out an interim or final evaluation of the impact of the *action*, measured against the objective of the Union programme concerned.

Frontex checks, audits or evaluations may be carried out either directly by Frontex's own staff or by any other outside body authorised to do so on its behalf.

Frontex may initiate such checks, audits or evaluations during the implementation of the Specific agreement and during a period of five years starting from the date of payment of the balance for the action concerned. This period is limited to three years if the *maximum amount of the grant* is not more than EUR 60.000.

The check, audit or evaluation procedures are considered to be initiated on the date of receipt of the letter of Frontex announcing it.

If the audit is carried out on an affiliated entity, the partner concerned must inform that affiliated entity.

II.27.2 Duty to keep documents

⁸ Directive 2007/64/EC⁸ of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

The partners must keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, during a period of five years starting from the date of payment of the balance for the action concerned.

The period during which documents must be kept is limited to three years if the *maximum amount of the grant* is not more than EUR 60.000.

The periods set out in the first and second subparagraphs are longer if there are ongoing audits, appeals, litigation or pursuit of claims concerning the grant, including in the cases referred to in Article II.27.7. In such cases, the partners must keep the documents until such audits, appeals, litigation or pursuit of claims have been closed.

II.27.3 Obligation to provide information

Where a check, audit or evaluation is initiated before the payment of the balance, the coordinator must provide any information, including information in electronic format, requested by Frontex or by any other outside body authorised by Frontex. Where appropriate, Frontex may request that a partner provides such information directly.

Where a check or audit is initiated after payment of the balance, the information referred to in the previous subparagraph must be provided by the partner concerned.

If the partner concerned does not comply with the obligations set out in the first and second subparagraphs, Frontex may consider:

- (a) any cost insufficiently substantiated by information provided by the partner as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the partner as undue.

II.27.4 On-the-spot visits

During an on-the-spot visit, the partners must allow Frontex staff and outside personnel authorised by Frontex to have access to the sites and premises where the *action* concerned is or was carried out, and to all the necessary information, including information in electronic format.

They must ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form.

If the partner concerned refuses to provide access to the sites, premises and information as required in the first and second subparagraphs, Frontex may consider:

- (a) any cost insufficiently substantiated by information provided by the partner as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the partner as undue.

II.27.5 Contradictory audit procedure

On the basis of the findings made during the audit, a provisional report ('draft audit report') must be drawn up. It must be sent by Frontex or its authorised representative to the partner concerned, which must have 30 calendar days from the date of receipt to submit observations. The final report ('final audit report') must be sent to the partner concerned within 60 calendar days of expiry of the time limit for submission of observations.

II.27.6 Effects of audit findings

On the basis of the final audit findings, Frontex may take the measures it considers necessary, including recovery at the time of payment of the balance or after payment of the balance of all or part of the payments made by it under the Specific agreement concerned, as provided for in Article II.26.

In the case of final audit findings after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the specific grant, determined in accordance with Article II.25, and the total amount paid to the partners under the Specific agreement for the implementation of the *action*.

II.27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations

II.27.7.1 Frontex may extend audit findings from other grants to a specific grant awarded under the Framework agreement if:

- (a) the partner concerned is found to have committed systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations in other EU or Euratom grants awarded under similar conditions and such errors, *irregularities*, *fraud* or breach have a material impact on a specific grant awarded under the Framework agreement; and

- (b) the final audit findings are sent to the partner concerned through a *formal notification*, together with the list of grants affected by the findings within the period referred to in Article II.27.1.

The extension of findings may lead to:

- (a) the rejection of costs as ineligible;
- (b) reduction of the grant as provided for in Article II.25.4;
- (c) recovery of undue amounts as provided for in Article II.26;
- (d) suspension of payments as provided for in Article II.24.1;
- (e) suspension of the *action* implementation as provided for in Article II.16.2;
- (f) termination as provided for in Article II.17.2.

II.27.7.2 Frontex must send a *formal notification* to the partner concerned informing it of the systemic or recurrent errors and of its intention to extend the audit findings, together with the list of grants affected.

- (a) If the findings concern eligibility of costs the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to submit observations on the list of grants affected by the findings;
- (ii) a request to submit revised financial statements for all grants affected;
- (iii) where possible, the correction rate for extrapolation established by Frontex to calculate the amounts to be rejected on the basis of the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations, if the partner concerned:
 - considers that the submission of revised financial statements is not possible or practicable; or
 - will not submit revised financial statements.

Step 2 — The partner concerned has 60 calendar days from when it receives the *formal notification* to submit observations and revised financial statements or to propose a duly substantiated alternative correction method. This period may be extended by Frontex in justified cases.

Step 3 — If the partner concerned submits revised financial statements that take account of the findings Frontex will determine the amount to be corrected on the basis of those revised statements.

If the partner proposes an alternative correction method and Frontex accepts it, Frontex must send a *formal notification* to the partner concerned informing it:

- (i) that it accepts the alternative method;
- (ii) of the revised eligible costs determined by applying this method.

Otherwise Frontex must send a *formal notification* to the partner concerned informing it:

- (i) that it does not accept the observations or the alternative method proposed;
- (ii) of the revised eligible costs determined by applying the extrapolation method initially notified to the partner.

If the systemic or recurrent errors, *irregularities, fraud* or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the partner and approved by Frontex or on the basis of the revised eligible costs after extrapolation; and
- (ii) the total amount paid to the partners under the Specific agreement for the implementation of the *action*;

(b) If the findings concern improper implementation or a breach of another obligation the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to the partner to submit observations on the list of grants affected by the findings and
- (ii) the correction flat rate Frontex intends to apply to the *maximum amount of the grant* or to part of it, according to the principle of proportionality.

Step 2 — The partner concerned has 60 calendar days from receiving the *formal notification* to submit observations or to propose a duly substantiated alternative flat-rate.

Step 3 — If Frontex accepts the alternative flat rate proposed by the partner, it must send a *formal notification* to the partner concerned informing it:

- (i) that it accepts the alternative flat-rate;
- (ii) of the corrected grant amount by applying this flat rate.

Otherwise Frontex must send a *formal notification* to the partner concerned informing it:

- (i) that it does not accept the observations or the alternative flat rate proposed;
- (ii) of the corrected grant amount by applying the flat rate initially notified to the partner.

If the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant after flat-rate correction; and
- (ii) the total amount paid to the partners under the Specific agreement for the implementation of the *action*.

II.27.8 Checks and inspections by OLAF

The European Anti-Fraud Office (OLAF) has the same rights as Frontex, particularly the right of access, for the purpose of checks and investigations.

Under Council Regulation (Euratom, EC) No 2185/96⁹ and Regulation (EU, Euratom) No 883/2013¹⁰ OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against *fraud* and other *irregularities*.

Where appropriate, OLAF findings may lead to Frontex recovering amounts from partners.

Moreover, findings arising from an OLAF investigation may lead to criminal prosecutions under national law.

⁹ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by Frontex in order to protect the European Communities' financial interests against fraud and other irregularities.

¹⁰ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

II.27.9 Checks and audits by the European Court of Auditors

The European Court of Auditors has the same rights as Frontex, particularly the right of access, for the purpose of checks and audits.

MODEL

ANNEX IV MANDATE¹¹

I, the undersigned,

[forename and surname of the legal representative of the future partner signing this mandate],

representing,

[full official name of the future partner] [ACRONYM]

[official legal status or form]¹²

[official registration No]¹³

[full official address]

[VAT number],

('the partner'),

for the purposes of signing and implementing the Framework agreement and Specific agreements signed under it [Title & No] with Frontex ('the agreements') for the action entitled the European Joint Master's in Strategic Border Management ('the *action*').

hereby:

1. Mandate

[full official name of the coordinator] [ACRONYM]

¹¹ One original version of this Annex to be included for each partner except for the coordinator.

¹² To be deleted or filled out in accordance with the 'Legal Entity' form.

¹³ To be deleted or filled out in accordance with the 'Legal Entity' form.

[official legal status or form]

[official registration No]¹⁴

[full official address]

[VAT number],

represented by [forename, surname and function of the legal representative of the coordinator] ('the coordinator')

to sign in my name and on my behalf the agreements and their possible subsequent amendments with Frontex.

2. Mandate the coordinator to act on behalf of the partner in compliance with the agreements.

I hereby confirm that the partner accepts all terms and conditions of the agreements and, in particular, all provisions affecting the coordinator and the other partners. In particular, I acknowledge that, by virtue of this mandate, the coordinator alone is entitled to receive funds from Frontex and distribute the amounts corresponding to the partner's participation in the actions.

I hereby accept that the partner will do everything in its power to help the coordinator fulfil its obligations under the agreements, and in particular, to provide to the coordinator, on its request, whatever documents or information may be required.

I hereby declare that the partner agrees that the provisions of the agreements, including this mandate, take precedence over any other agreement between the partner and the coordinator which may have an effect on the implementation of the agreements.

This mandate is annexed to the Framework agreement and forms an integral part of it.

SIGNATURE

¹⁴ To be deleted or filled out in accordance with the 'Legal Entity' form.

[forename, surname, function of the legal representative of the mandating partner]

[signature]

Done at [place], [date]

In duplicate in English]

MODEL

ANNEX V - FINAL TECHNICAL REPORT

I - GENERAL INFORMATION

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| TITLE OF THE CALL FOR PROPOSALS | EUROPEAN JOINT MASTER'S IN STRATEGIC BORDER MANAGEMENT |
| CALL FOR PROPOSALS REFERENCE NUMBER | 2023/FPA/TRU/01 |

| | |
|---------------------------------------|---|
| Name of the grant beneficiary: | |
| Grant agreement number: | |
| Actions: | provision, management, and quality assurance of a programme of study leading to the joint award of the degree of European Joint Master's in Strategic Border Management |
| Start date of the actions: | |
| End date of the actions: | |
| Amount of the grant: | |

II - INFORMATION RELATED TO THE IMPLEMENTED ACTIVITIES

1. ACTIONS SUMMARY AND UPDATE

Please outline the main **activities carried out** since the start of the actions and explain to what extent the results achieved contribute to the actions' **objectives**. Please also summarise the actions' **approach**, **innovative** aspects, the main **outputs/outcomes**, **lessons learnt** as well as the actions' **contribution to call/actions' objectives**. Also indicate any modifications that occurred after the grant was awarded (**obligatory: minimum 500 and maximum 1 000 words**):

2. IMPLEMENTATION OF THE ACTIONS

Please describe how the actions were implemented, what problems or difficulties (if any) occurred, and how these were addressed. Suggestions for improvement or for sharing the information with others national administrations can be mentioned as well (**obligatory: minimum 500 and maximum 1 000 words for each award criterion**):

THE LEVEL OF RELEVANCE OF THE PROPOSAL AND THE CONTRIBUTION OF ITS EXPECTED RESULTS TO THE OBJECTIVES OF THE EUROPEAN JOINT MASTER'S IN STRATEGIC BORDER MANAGEMENT:

Please describe to what extent the overall aims and general objectives of the action were fulfilled. Please indicate the main activities carried out during the implementation of the action and how they led to the main results achieved. In the below table, please present the implementation of activities (*min.200 words-max.500 words*).

Your text here:

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| Dates of implementation → ↓ Activities | | | | | | | | | | | | | |
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CONSORTIUM COOPERATION ARRANGEMENTS

Please describe the level of involvement of each Partner of the Consortium, what was their added value for the EJMSBM implementation, what challenges within Consortium were faced and how they were addressed (*min. 200 words - max. 500 words*).

Your text here:

Please describe how the Consortium was managed and how the decisions were made in order to meet the Programme Requirements and satisfy quality assurance framework (*min. 200 words - max. 500 words*).

Your text here:

QUALITY OF THE ACTION AND IMPLEMENTATION:

Please describe the methodology used for achieving the results as well as the how the actions addressed the target groups and innovative learning approaches (*min. 200 words - max. 500 words*).

Your text here:

Please specify risks and challenges encountered and/or any changes which occurred during the implementation of the actions and the actions taken to address them (*min. 200 words - max. 500 words*).

Your text here:

Provide information about internal and external quality assurance, indicating programme implementation strengths and weaknesses (*min. 200 words - max. 500 words*).

Your text here:

COMPETENCE AND SUPPORT:

Please describe what has been done to ensure the availability of specific experts and trainers as well as administrative and logistical support in order to meet the requirements and the quality standards indicated in the Programme Descriptor and Programme Requirements (*min. 200 words - max. 500 words*).

Your text here:

BUDGET, COST-EFFECTIVENESS AND FINANCIAL MANAGEMENT:

Please describe the action's financial management and cost effectiveness and provide a short summary of the budget used, including information on tasks, roles and resources allocated and *subcontracting* (as referred to in Article II.11.1(d)(ii) of the Framework agreement). If you encountered difficulties related to financial management, please indicate the type of problems and the solutions found to address them (*min. 200 words - max. 500 words*).

Your text here:

3. LIST OF PRODUCTS/OUTPUTS/DELIVERABLES/RESULTS

Please provide a list of all action's deliverables and attach supporting documents, such as proof of deliverables, attendance lists, certificates of completed studies, pictures, etc.

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4. KEY MESSAGES

Please summarise the key messages coming out of the action deemed useful for the future implementation of the European Joint Master's in Strategic Border Management.

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5. ANY OTHER INFORMATION

This section can be used to include any other information that is considered to be relevant for the EJMSBM programme. This also includes the overall action evaluation as well as suggestions for improvements for the EJMSBM programme, the management of the programme or new requirements that should be taken into account.

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6. LIST OF ANNEXES

1. Payment Request
2. Final Financial Statement drawn up in accordance with Annex V to Specific Grant Agreement
3. Final Financial Statement drawn up in accordance with Annex VI to Framework Partnership Agreement
4. Invoices
5. ...

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|---|--|
| Date: | |
| Name and signature of contact person of the coordinating institution: | |
| Name and signature of legal representative: | |

MODEL