

Terms and Conditions for Individual Projects financed by the EEA Financial Mechanism 2004-2009

CHAPTER 1 SCOPE, LEGAL FRAMEWORK, AND DEFINITIONS

ARTICLE 1.1

Scope

These terms and conditions form an integral part of the Grant Agreement and shall apply to the implementation of the Project.

ARTICLE 1.2

Legal Framework

The Grant Agreement shall be read in conjunction with the following documents which, together with the Grant Agreement, constitute the legal framework of the EEA Financial Mechanism 2004-2009:

- (a) Protocol 38a to the EEA Agreement, establishing the EEA Financial Mechanism 2004-2009;
- (b) The Rules and Procedures for the implementation of the EEA Financial Mechanism 2004-2009 adopted by the EFTA States in accordance with Article 8(2) of Protocol 38a, as amended;
- (c) The Memorandum of Understanding on the Implementation of the EEA Financial Mechanism 2004-2009, entered into between the EFTA States and the Beneficiary State.

ARTICLE 1.3

Definitions

General terms, institutions and documents referred to in the Grant Agreement shall be understood in accordance with the provisions of the legal framework referred to in Article 1.2.

CHAPTER 2 GENERAL PRINCIPLES RELATED TO THE IMPLEMENTATION OF THE PROJECT

ARTICLE 2.1

Co-operation

1. The Parties shall take all appropriate and necessary measures to ensure fulfilment of the obligations and objectives arising out of the Grant Agreement.
2. The Parties agree to provide all information necessary for the good functioning of the Grant Agreement and to apply the highest degree of transparency and accountability as well as the principles of good governance, sustainable development and gender equality.
3. The Parties shall promptly inform each other of any circumstances that interfere or threaten to interfere with the successful implementation of the Project.

ARTICLE 2.2

Representation and communication

All communication to the Financial Mechanism Committee in regard to the Grant Agreement shall be directed to the Financial Mechanism Office, which generally represents the Financial Mechanism Committee towards the Focal Point.

ARTICLE 2.3

Main responsibilities of the Focal Point

1. The Focal Point is responsible and accountable for the overall management of the EEA Financial Mechanism 2004-2009 in the Beneficiary State.
2. The Focal Point shall be responsible for the implementation of the Grant Agreement and shall:
 - (a) ensure that the Project is implemented in accordance with the Grant Agreement
 - (b) take all necessary steps to ensure that the Project Promoter is fully committed and able to implement, operate and maintain the project
 - (c) ensure that the Grant is used exclusively for the purpose of the Project and according to the approved Project Implementation Plan and that any necessary financial contributions in

addition to the Grant are received in a timely manner

- (d) ensure that all relevant Community, national and local legislation (including, but not limited to legislation on the environment, public procurement and state aid) shall be fully complied with
- (e) ensure that all assets forming part of the Project are used only for such purposes as provided for in the Grant Agreement
- (f) ensure publicity of the Project in accordance with Article 5.4 of the Rules and Procedures and the Publicity Guidelines
- (g) ensure that the Financial Mechanism Committee is upon request provided with all documents and information related to the implementation of the Project
- (h) make all the necessary and appropriate arrangements in order to strengthen or change the way the Project is managed.

ARTICLE 2.4

Monitoring and audit by the Focal Point

1. The Focal Point shall be responsible for monitoring of the Project. The monitoring shall be thorough enough to enable the Focal Point to certify the information provided by the Project Promoter in the reports referred to in the *Beneficiary State Reporting and Monitoring Guidelines*.
2. The Focal Point shall ensure a complete audit trail in all engaged actors in accordance with Article 6.1 of the Rules and Procedures and sound accounting principles and methods.
3. The Focal Point shall ensure that audit of the Project is conducted in accordance with the audit plan provided according to Article 6.2 of the Rules and Procedures. If necessary, the Focal Point shall draw upon services of a reputable and well established audit company. Furthermore, the project should be included in the existing control/audit procedures of the Project Promoter.
4. The Focal Point shall, in accordance with Article 6.2 of the Rules and Procedures, provide the Financial Mechanism Committee with summaries of all audit reports relevant to the Project. The Focal Point shall upon request provide the Financial Mechanism Office, the Financial Mechanism Committee, or the EFTA Board of Auditors with any audit report relevant to the Project or its implementation, including auditing reports from the Supreme Audit Institution.

ARTICLE 2.5

Immediate reporting on irregularities and other relevant developments

1. The Focal Point shall ensure efficient and prompt investigation of any suspected and actual cases of fraud and irregularity. The Focal Point shall, in accordance with the guidelines on irregularities adopted by the Financial Mechanism Committee, immediately report to the Financial Mechanism Committee all suspected and actual cases of fraud and irregularity as well as all measures related thereto, taken by competent national authorities.
2. The Parties shall immediately inform each other if they become aware of any legal actions initiated or continued against the Project, including actions or decisions taken by the European Community institutions.

ARTICLE 2.6

Implementation contract with the Project Promoter

1. The Focal Point shall ensure the signing of a contract with the Project Promoter on the implementation of the Project. Such implementation contract shall ensure that the obligations undertaken by the Focal Point in this Agreement are properly delegated to the Project Promoter in a manner which ensures enforceability of these obligations. In cases where the Grant, due to provisions in the national legislation, cannot be disbursed to the Project Promoter on the basis of an implementation contract, the Beneficiary State may instead issue a legislative or administrative act of similar effect.
2. Delegation of obligations referred to in paragraph 1 of this Article does not in any way affect the obligations and responsibilities of the Focal Point under this Grant Agreement.
3. Prior to the first disbursement, the Focal Point shall have submitted to the Financial Mechanism Committee a standard version of such an implementation contract or the implementation act.
4. Prior to the first disbursement, the Focal Point shall provide the Financial Mechanism Committee with the following information on the contract or act relevant to the Project:
 - (a) full legal name of the Project Promoter;
 - (b) number of application (FMO number) and name of project;
 - (c) date of entry into force of the contract or date of issuance of the act, and

(d) information as to which standard version of the contract or act is used for the Project.

5. If the standard version of the contract or the act has already been sent to the Financial Mechanism Committee, the reference in paragraph 4(d) of this article is to be considered a fulfilment of paragraph 3.

6. Upon request, the Focal Point shall provide the Financial Mechanism Committee with a copy of the implementation agreement or act, accompanied by a translation into English.

ARTICLE 2.7

Representations and Warranties

The Focal Point represents and warrants that the information provided by, through, or on behalf of the Focal Point in connection with the application for funding, and the conclusion and implementation of this Grant Agreement are authentic, accurate and complete.

CHAPTER 3

DISBURSEMENT AND ELIGIBILITY

ARTICLE 3.1

Eligible Expenditures

1. Only expenses that are eligible according to Article 3.1 of the Rules and Procedures and the *Detailed Eligibility Provisions – Expenditures* can form the basis for the financing from the EEA Financial Mechanism 2004-2009.

2. Final acceptable payment claims must be received within six months of the last date for eligible expenditures referred to in Article 4 of the Grant Agreement. Payment claims received at a later date or deemed not acceptable by the Financial Mechanism Committee will not constitute a basis for disbursement.

3. The Financial Mechanism Committee can, in accordance with Article 3.1.3 of the Rules and Procedures, extend the period of eligibility.

ARTICLE 3.2

Disbursement of the Grant

1. Disbursements are made in accordance with the approved Project Implementation Plan based on requests for disbursements submitted by the Paying Authority.

2. Before disbursement can be made, the Financial Mechanism Committee shall be provided with a Project Interim Report both in electronic and hard copy, certified by the Focal Point and the Paying Authority in accordance with the *Disbursement Guidelines* and the *Beneficiary State Reporting and Monitoring Guidelines*. The Project Interim Report shall cover a period of at least 3 calendar months and be related to expenditures from that period.

3. When the required documents have been provided the Financial Mechanism Committee shall verify that they are in the correct form and that the conditions for the disbursement have been met. Unless the Financial Mechanism Committee decides to make use of remedies provided in Chapter 6, the Financial Mechanism Committee shall as soon as possible and within two months from the receipt of the disbursement request, order its Disbursement Agent to execute the disbursement in question to the Paying Authority. The Financial Mechanism Committee shall notify the Paying Authority when such disbursement order has been submitted.

4. In case of an error made in relation to a disbursement resulting in a higher amount paid than required under the Grant Agreement, the Focal Point shall, upon request from the Financial Mechanism Committee, reimburse without delay any amount unduly disbursed. Similarly, if an error results in a lower amount paid than required, the Financial Mechanism Committee shall, as soon as possible after being made aware of such an error, disburse the missing amount.

5. The principle of pro rata financing of costs incurred shall apply, meaning that the grant rate referred to in Article 2 of the Grant Agreement shall not be exceeded at any time during the implementation of the Project. This is without prejudice to Article 3.4.

6. When the disbursement has been made, and received by the Paying Authority in full, the Financial Mechanism Committee has fulfilled its obligations relating to that disbursement.

ARTICLE 3.3

Transfer and Use of the Grant

The Focal Point shall ensure that the Paying Authority, within twenty working days of receipt of the disbursement, transfers the disbursement to the Project Promoter. The Financial Mechanism Committee shall be

notified by e-mail before the 15th of each month of the transfers made in the previous month. Such notification shall contain the amount transferred, the name of the recipient, the FMO project number, and the date of the transfer.

ARTICLE 3.4

Increased cost

1. If the cost of the implementation of the Project should exceed the estimated eligible project cost or the estimated total project cost as stipulated in paragraphs 2 and 3 of Article 2 of the Grant Agreement, the Focal Point shall ensure that any such additional funds are made available so as to ensure the full implementation of the Project. If the Focal Point deems that additional funds cannot be made available or additional investments in the project are not advisable, it can instead, after consultation with the Financial Mechanism Committee, decide to cancel the Project and refund the amount already disbursed.

2. The Focal Point shall ensure that the Project Promoter, independently from the responsibility of the Focal Point under paragraph 1, takes on an obligation to provide additional funds if necessary.

CHAPTER 4

OBLIGATIONS RELATED TO THE IMPLEMENTATION OF THE PROJECT

ARTICLE 4.1

Modification of the Project

1. With the exceptions stipulated in paragraph 3 of this article, any modifications of the Project shall be subject to the Financial Mechanism Committee's prior written approval. Before submitting the proposed modifications, the Focal Point shall approve them and confirm that they are necessary and/or suitable for the effectiveness of the Project.

2. Any such modifications may require a new appraisal prior to being accepted or rejected.

3. Modifications of the Project do not need an approval of the Financial Mechanism Committee if they do not affect the scope, objectives or results of the project, and the financial impact is limited to:

- (a) changes in any of the reporting periods for the Project Interim Reports scheduled in the Project Implementation Plan,
 - (b) a transfer between budget headings involving a variation of 15% or less of the amounts in the latest approved Project Implementation Plan under each relevant heading, or,
 - (c) a transfer between activities involving a variation of 15 % or less of the amounts in the latest approved Project Implementation Plan for such activity,
4. Notwithstanding paragraph 3, modifications that result in an increase of administrative costs will always require a prior approval of the Financial Mechanism Committee.

ARTICLE 4.2

Revision of the Project Implementation Plan

The Focal Point must submit a revised Project Implementation Plan to the Financial Mechanism Committee when:

- (a) proposing modification which requires an approval by the Financial Mechanism Committee according to Article 4.1,
- (b) any of the reporting periods for the Project Interim Reports scheduled in the Project Implementation Plan are changed; a revised Project Implementation Plan shall be submitted no later than 60 days before the end of the first affected reporting period, or,
- (c) the Financial Mechanism Committee requests an updated Project Implementation Plan; a revised Project Implementation Plan shall be submitted no later than 30 days after such request is sent.

ARTICLE 4.3

Special provisions on procurement and awarding of contracts

1. The Focal Point shall ensure that public procurement principles and procedures following from national and Community legislation are applied at any level in the implementation of the Grant Agreement.

2. In cases where contracts concluded as part of the implementation of the project fall

below the national or Community thresholds set for public procurement or outside the scope of the applicable public procurement laws, the Focal Point shall ensure that the awarding of such contracts (including the procedures prior to the awarding) and the terms and conditions of such contracts comply with best economic practices, including accountability, allow a full and fair competition between potential providers, and ensure the optimal use of resources from the EEA Financial Mechanism 2004-2009.

3. The Focal Point shall ensure that the highest ethic standards are observed during the procurement and execution of contracts, and shall ensure the application of adequate and effective means to prevent illegal or corrupt practices. No offer, gifts, payments or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward for the award or execution of procurement contracts, shall be accepted.

4. The Focal Point shall ensure that records of the awarding and execution of contracts are kept and provided upon request to the Financial Mechanism Committee.

ARTICLE 4.4

Reporting

The Focal Point shall provide Project Interim Reports, Annual Project Progress Reports and the Project Completion Report in accordance with the *Beneficiary State Monitoring and Reporting Guidelines*.

CHAPTER 5

EXTERNAL MONITORING AND AUDIT

ARTICLE 5.1

Monitoring by the Financial Mechanism Committee

The Financial Mechanism Committee may monitor the implementation and the progress of the Project in order to ensure that it is in compliance with the Grant Agreement. The Financial Mechanism Committee may appoint a Monitoring Agent to conduct the monitoring on its behalf.

ARTICLE 5.2

Audit by the Financial Mechanism Committee

In accordance with Article 6.4 of the Rules and Procedures, the Financial Mechanism Committee may at any time arrange its own audits and inspections of the Project at all relevant locations.

ARTICLE 5.3

Audit by EFTA Board of Auditors

In accordance with Article 6.3 of the Rules and Procedures, the EFTA Board of Auditors may at any time conduct audits of the Project at all relevant locations.

ARTICLE 5.4

Access

1. The Focal Point shall ensure that the Financial Mechanism Committee and Financial Mechanism Office or anyone mandated to perform tasks on their behalf, and the EFTA Board of Auditors, have upon request, prompt, full, and unimpeded access to all information, documents, persons, locations and facilities, public or private, relevant to the implementation of the Grant Agreement. Such access is subject to the applicable limitation under the national legislation of Beneficiary State.

2. The Focal Point shall, upon request, ensure that the above mentioned authorised representatives are accompanied by relevant personnel and provide them with the necessary assistance. Request under this paragraph shall be sent at least two weeks before the planned visit.

ARTICLE 5.5

Responsibility

The external monitoring and audit referred to in this chapter shall not in any way relieve the Focal Point of its obligations under the Grant Agreement regarding monitoring of projects, financial control and audit.

CHAPTER 6

SUSPENSION AND REIMBURSEMENTS

ARTICLE 6.1

Suspension of Disbursements

1. The Financial Mechanism Committee may decide to suspend disbursements of the Grant if:

- (a) the conditions for disbursement in accordance with Article 3.2 have not been met,

- (b) credible information indicates that the implementation or the progress of the Project does not correspond to the Project Implementation Plan or is not in compliance with the Grant Agreement,
- (c) reports referred to in Article 4.4 or any other information requested has not been provided or include incomplete information,
- (d) access required under Chapter 5 is restricted,
- (e) the financial management of the Project has not been in accordance with internationally recognised accounting principles,
- (f) it becomes aware of suspected or actual cases of irregularities or fraud, or if such cases have not been adequately reported, investigated or remedied,
- (g) the implementation of the Project is deemed to be in violation of Community law,
- (h) a fundamental change of circumstances occurs and said circumstances constitute an essential basis for the Grant Agreement or the contribution from the EEA Financial Mechanism 2004-2009 to the Project,
- (i) it becomes aware of any misrepresentation of facts in any information given by or on behalf of the Focal Point affecting, directly or indirectly the implementation of the Grant Agreement,
- (j) interests generated on the designated bank account of the Paying Authority have not been accounted for according to Article 3.2 of the Disbursement Guidelines,
- (k) an adjustment of the Grant is required in order to comply with the grant rate referred to in the Grant Agreement or the requirements referred to in Article 3.2 of the Rules and Procedures, or
- (l) any other obligation stipulated in the Grant Agreement is not complied with by the Focal Point.

2. If possible, the Focal Point shall be given an opportunity to provide its views before the Financial Mechanism Committee takes a decision to suspend disbursements.

3. The decision to suspend disbursements shall be reasoned and immediately effective. The Focal Point shall be notified as soon as

possible but no later than 7 working days from the date of the decision.

4. The Focal Point can at any time present documents or other evidence showing that the conditions in paragraph 1 (a) to (l) no longer apply or do not justify suspension of disbursements, and request that the Financial Mechanism Committee reviews its decision to suspend payments.

5. When the Financial Mechanism Committee finds that the conditions described in paragraph 1 (a) to (l) above no longer apply or justify suspension of disbursements, it shall take a decision to continue disbursements.

ARTICLE 6.2

Reimbursement

1. In case of serious non-compliance with the Grant Agreement, or if suspension of payments is not feasible or likely to be sufficient, the Financial Mechanism Committee may, after having consulted the Focal Point with a view to reaching a solution, decide to demand reimbursement if any of the conditions referred to in littera (b) to (l) of Article 6.1 apply.

2. Prior to making such a decision, the Financial Mechanism Committee shall notify the Focal Point of its intention to demand reimbursement. The notification shall outline the reason for the proposed measures. The Focal Point can within 45 working days from the date of the notification provide any documents relevant to the decision.

3. At any time prior to the decision to demand reimbursement, the Focal Point and the Financial Mechanism Committee can enter into a dialogue with a view to ensure that the said decision is based on accurate and correct facts.

4. The Focal Point shall be notified of a decision referred to in paragraph 1 of this article as soon as possible but no later than 7 working days from the date of the decision. The notification shall outline the reason for the decision.

5. Within three months from the decision of the Financial Mechanism Committee, the Focal Point shall, with the exception stipulated in paragraph 7 of this article, reimburse the Financial Mechanism Committee the amount requested, subject to the specifications detailed in the decision.

6. Reimbursement from the Focal Point to the Financial Mechanism Committee is not

contingent upon reimbursement from the Project Promoter.

7. If the Project Promoter is a private entity and the Focal Point shows that it has and is taking appropriate measures to recover the funds from the Project Promoter, the Financial Mechanism Committee can decide to give the Focal Point up to one year to reimburse the requested funds. In such a case, the Financial Mechanism Committee can also decide to contribute up to 50% of reasonable legal fees related to the recovery of the funds.

8. If a demand for reimbursement to the Financial Mechanism Committee is not complied with by the Focal Point, or a dispute related to a demand for reimbursement arises that cannot be solved in accordance with Article 7.1, the Parties may bring the dispute before Oslo Tingrett in accordance with Article 1.7 of the Rules and Procedures.

ARTICLE 6.3

General suspension of disbursements

1. The Financial Mechanism Committee may, after having consulted the Focal Point with a view to reaching a solution, suspend payments if:

- (a) information or documents obtained by or provided to the Financial Mechanism Committee indicate the presence of systemic or widespread shortcomings regarding the management of the financial contribution from the EEA Financial Mechanism 2004-2009 in the Beneficiary State, or
- (b) a demand for reimbursement related to any type of project in the Beneficiary State financed by the EEA Financial Mechanism 2004-2009 has not been complied with by the Focal Point.

2. The procedures referred to in paragraphs 2 to ~~4~~5 of Article 6.2 shall apply mutatis mutandis to suspension of disbursements under this article.

3. If the situation referred to in paragraph 1(a) of this article relate directly to this Project, the Financial Mechanism Committee can apply the procedures under Article 6.1.

CHAPTER 7

FINAL PROVISIONS

ARTICLE 7.1

Dispute settlement

The Parties waive their rights to bring any dispute related to the Grant Agreement before any national or international court, and agree to settle such a dispute in an amicable manner. This article shall be without prejudice to paragraph 8 of Article 6.2.

ARTICLE 7.2

Waiver of Responsibility

1. Any appraisal of the Project undertaken before or after the approval of the Project by the Financial Mechanism Committee, does not in any way diminish the responsibility of the Focal Point to verify and confirm the correctness of the documents and information forming the basis of the Grant Agreement.

2. Nothing contained in the Grant Agreement shall be construed as imposing upon the Financial Mechanism Committee or the Financial Mechanism Office any responsibility of any kind for the supervision, execution, completion, or operation of the Project.

3. The Financial Mechanism Committee does not assume any risk or responsibility whatsoever for any damages, injuries, or other possible adverse effects caused by the Project, including, but not limited to inconsistencies in the planning of the Project, other project(s) that might affect it or that it might affect, or public discontent. It is the full and sole responsibility of the Focal Point to satisfactorily address such issues.

4. Neither the Focal Point, nor the Project Promoter or any other party shall have recourse to the Financial Mechanism Committee for further financial support or assistance to the Project in whatsoever form over and above what has been provided for in the Grant Agreement.

5. Neither the European Free Trade Association, its Secretariat, including the Financial Mechanism Office, its officials or employees, nor the Financial Mechanism Committee, its members or alternate members, nor the EFTA States, can be held liable for any damages or injuries of whatever nature sustained by the Focal Point or the Beneficiary State, the Project Promoter or any other third person, in connection, be it direct or indirect, with the Grant Agreement.

ARTICLE 7.3

Language

1. All communications shall take place in the English language.
2. To the extent that original documents are not available in the English language, the documents shall be accompanied by full and accurate translations into English.
3. The Focal Point shall bear the responsibility for the accuracy of the translation and the possible consequences that might arise from any inaccurate translations.