

Regulation on the implementation of the European Economic Area (EEA) Financial Mechanism 2009-2014

adopted by the EEA Financial Mechanism Committee
pursuant to Article 8.8 of Protocol 38b to the EEA Agreement
on 13 January 2011 and confirmed by the Standing Committee
of the EFTA States on 18 January 2011

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Chapter 1 **General provisions**

Article 1.1 **Subject matter**

1. This Regulation applies to the implementation of the EEA Financial Mechanism 2009-2014 and was adopted in accordance with Article 8 of Protocol 38b to the EEA Agreement.
2. This Regulation lays down the general rules governing the EEA Financial Mechanism 2009-2014 without prejudice to the provisions laid down in Protocol 38b to the EEA Agreement.

Article 1.2 **Objectives**

1. The overall objectives of the EEA Financial Mechanism 2009-2014 are to contribute to the reduction of economic and social disparities in the European Economic Area and to strengthen bilateral relations between the Donor States and the Beneficiary States through financial contributions in the priority sectors listed in paragraph 2.
2. The financial contributions are available in the following priority sectors:
 - (a) environmental protection and management;
 - (b) climate change and renewable energy;
 - (c) civil society;
 - (d) human and social development;
 - (e) protecting cultural heritage.
3. Academic research may be eligible for funding in so far as it is targeted at one or more of the priority sectors.
4. The indicative allocation target for each Beneficiary State is at least 30% of its total allocation for priority sectors listed in paragraphs 2(a) and (b) combined, and 10% of its total allocation for the priority sector under paragraph 2(c).
5. In order to ensure efficient and targeted use of the financial contribution from the EEA Financial Mechanism 2009-2014, its implementation shall be within the programme areas listed in Annex 1 and agreed upon in the MoU.

Article 1.3 **Principle of co-operation**

The objectives of the EEA Financial Mechanism 2009-2014 shall be pursued in the framework of close co-operation between the Donor States and the Beneficiary States.

Article 1.4 **The legal framework**

1. This Regulation shall be read in conjunction with the following documents which, together with the Regulation and its annexes, constitute the legal framework of the EEA Financial Mechanism 2009-2014:
 - (a) Protocol 38b to the EEA Agreement on the EEA Financial Mechanism 2009-2014;
 - (b) the Memorandum of Understanding on the Implementation of the EEA Financial Mechanism 2009-2014 (hereinafter referred to as the MoU), entered into between the Donor States and the Beneficiary State;
 - (c) the programme agreements; and
 - (d) any guidelines adopted by the FMC after consultation with the Beneficiary States.
2. The Beneficiary State shall ensure that any additional provisions applicable to the implementation of the EEA Financial Mechanism 2009-2014 are kept to a minimum. The legal framework mentioned in paragraph 1 takes precedence over any such provisions.

Article 1.5 **Definitions**

1. For the purposes of this Regulation, the following terms shall have the meanings assigned to them here:
 - (a) "Audit Authority": a national public entity, functionally independent of the National Focal Point, the Certifying Authority and the Programme Operator, designated by the Beneficiary State and responsible for verifying the effective functioning of the management and control system.
 - (b) "Certifying Authority": a national public entity, functionally independent of the Audit Authority and the Programme Operator, designated by the Beneficiary State to certify financial information.
 - (c) "Donor partnership project": a project implemented in close cooperation with a project partner whose primary location is in one of the Donor States.
 - (d) "Donor programme partner": a public entity in a Donor State or an inter-governmental organisation designated by the FMC advising on the preparation and/or implementation of a programme.
 - (e) "Donor States": Iceland, Liechtenstein and Norway.

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- (f) “EEA Financial Mechanism Committee” (hereinafter referred to as the FMC): The committee established by the Standing Committee of the EFTA States to manage the EEA Financial Mechanism 2009-2014.
- (g) “Evaluation”: a systematic, objective and independent assessment of the design, implementation and/or results achieved in programmes and projects with the aim of determining the relevance, effectiveness, efficiency, economy, impacts and sustainability of the financial contribution.
- (h) “Financial Mechanism Office” (hereinafter referred to as the FMO): The office assisting the FMC in managing the EEA Financial Mechanism 2009-2014. The FMO, which is administratively a part of the European Free Trade Association, is responsible for the day-to-day implementation of the EEA Financial Mechanism 2009-2014 on behalf of the FMC and serves as a contact point.
- (i) “Monitoring”: the observation of project and programme implementation in order to ensure that agreed procedures are followed, to verify progress and to identify potential problems in a timely manner so as to allow for corrective action.
- (j) “Monitoring Committee”: a committee established by the National Focal Point to review progress in the implementation of the EEA Financial Mechanism 2009-2014 towards reaching its expected outcomes and objectives.
- (k) “National Focal Point”: a national public entity designated by the Beneficiary State to have the overall responsibility for reaching the objectives of the EEA Financial Mechanism 2009-2014 and implementing the MoU.
- (l) “Net allocation”: The total financial contribution to a Beneficiary State, net of Donor State management cost referred to in Article 1.8.
- (m) “Non-governmental organisation” (hereinafter referred to as NGO): a non-profit voluntary organisation established as a legal entity, having a non-commercial purpose, independent of local, regional and central government, public entities, political parties and commercial organisations. Religious institutions and political parties are not considered NGOs
- (n) “Programme”: a structure setting out a development strategy with a coherent set of measures to be carried out through projects with the support of the EEA Financial Mechanism 2009-2014 and aimed at achieving agreed objectives and outcomes.
- (o) “Programme agreement”: an agreement between the FMC and the National Focal Point regulating the implementation of a particular programme.
- (p) “Programme area”: a thematic field within a priority sector, with a specific overall objective and specific measurable outcomes.
- (q) “Programme grant”: the financial contribution from the Donor States to a programme.
- (r) “Programme Operator”: a public or private entity, commercial or non-commercial, as well as non-governmental organisations, having the responsibility for preparing and implementing a programme.
- (s) “Programme partner”: a public or private entity, commercial or non-commercial, as well as non-governmental organisations, actively involved in, and effectively contributing to, the implementation of a programme.
- (t) “Project”: an economically indivisible series of works fulfilling a precise technical function and with clearly identifiable aims related to the programme under which it falls. A project may include one or more sub-projects. Without prejudice to Article 5.5, projects are selected by the Programme Operator.
- (u) “Project contract”: an agreement between the Programme Operator and the Project Promoter regulating the implementation of a particular project.
- (v) “Project grant”: a grant awarded by a Programme Operator to a Project Promoter to implement a project.
- (w) “Project partner”: a public or private entity, commercial or non-commercial, as well as non-governmental organisations, all of whose primary locations are either in the Donor States, Beneficiary States or a country outside the European Economic Area that has a common border with the respective Beneficiary State, or any inter-governmental organisation, actively involved in, and effectively contributing to, the implementation of a project. It shares with the Project Promoter a common economic or social goal which is to be realised through the implementation of that project. For donor partnership programmes falling under the programme area “Research within Priority sectors”, the term “project partner” is defined in the Annex 12.
- (x) “Project Promoter”: a public or private entity, commercial or non-commercial, as well as non-governmental organisations, having the responsibility for initiating, preparing and implementing a project.

(y) “Social partners”: representatives of employers’ organisations and trade unions.

2. The terms “objective”, “outcome” and “output” of a programme are described in Annex 9.

Article 1.6 **Principles of implementation**

The highest degree of transparency, accountability and cost efficiency as well as the principles of good governance, sustainable development, gender equality and equal opportunities shall be applied in all implementation phases of the EEA Financial Mechanism 2009-2014. The Donor States exercise zero-tolerance towards corruption.

Article 1.7 **Financial contribution**

1. In accordance with Article 2 of Protocol 38b, the financial contribution from the EEA Financial Mechanism 2009-2014 shall be €988.5 million, to be made available for commitment in annual tranches of €197.7 million over the period running from 1 May 2009 to 30 April 2014, inclusive.

2. Annual commitment tranches refers to funds that may during its respective year and onwards be made available for projects, management costs, technical assistance, and other costs related to the implementation of the EEA Financial Mechanism 2009-2014.

Article 1.8 **Management costs of the Donor States**

1. The management costs of the Donor States shall be covered by the financial contribution.

2. Management costs shall include:

- (a) the costs of running the FMO;
- (b) the costs linked to the functions of the FMC;
- (c) the costs of audits performed by or on behalf of the EFTA Board of Auditors;
- (d) the costs related to appraisal, monitoring, evaluation, reporting, and auditing performed by or on behalf of the FMC;
- (e) the costs related to the participation of donor programme partners, including preparatory work to facilitate donor partnership programmes.

3. The costs referred to in paragraph 1 are fixed at 7.5% of the total amount of the financial contribution.

Article 1.9 **Management costs of the Beneficiary State**

General administrative costs incurred by the Beneficiary State in relation to the implementation of the EEA Financial Mechanism 2009-2014 shall not be covered by the EEA Financial Mechanism 2009-2014. Specific costs which are necessary, clearly identifiable, and directly and exclusively related to the management of the EEA Financial Mechanism 2009-2014 can be covered through technical assistance. The eligibility of such costs is set in Article 7.12.

Article 1.10 **Resources for the reserve**

1. The Donor States and the Beneficiary States shall in the MoU decide to set aside a reserve, consisting of a minimum of 5% of the Beneficiary State’s total allocation, for example to react to unforeseen developments in the Beneficiary State. Not later than 31 January 2013, the Beneficiary State shall submit to the FMC a proposal on the allocation of the reserve within the framework of the EEA Financial Mechanism 2009-2014, either in the form of a new programme or as an addition to an existing programme or programmes. The FMC shall decide on the allocation of the reserve in accordance with Article 5.3 or paragraph 8 of Article 5.9, as appropriate. The Donor States may in exceptional cases waive the requirement of a reserve according to this paragraph.

2. The Donor States and the Beneficiary States may agree to set aside a maximum of 10% of the total contribution from the EEA Financial Mechanism 2009-2014 to fund the completion of specific projects selected within the framework of the EEA Financial Mechanism 2004-2009. The total amount of such a reserve and the projects to be funded from this reserve shall be confirmed in the MoU. The rules of the EEA Financial Mechanism 2004-2009 shall apply to the implementation of such projects and the final date of eligibility shall be no later than 30 April 2012.

Chapter 2 **Strategic approach**

Article 2.1 **Memorandum of Understanding**

1. In order to ensure efficient and targeted implementation the Donor States shall conclude an MoU with each Beneficiary State.

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2. The MoU shall establish a framework for cooperation and contain the following elements:

- (a) the designation of national entities involved in the implementation of the EEA Financial Mechanism 2009-2014 and identification of their functions in the national management and control structures (Annex A to the MoU).
- (b) an implementation framework (Annex B to the MoU) consisting of the following financial and substantive parameters:
 - (i) a list of agreed programme areas, the financial contribution from the EEA Financial Mechanism 2009-2014 by programme area;
 - (ii) identification of programmes, their main focus and outcomes, as appropriate, as well as any specific concerns relating to target groups, geographical areas or other issues;
 - (iii) identification of programme operators, as appropriate;
 - (iv) initiatives to strengthening the bilateral relations between the Donor States and the Beneficiary States, including the identification of programme areas in which donor partnership programmes as referred to in Article 3.2 shall be prepared, the designation of donor programme partners, the allocation of funds for such programmes, and programmes, or component thereof, that are dedicated exclusively to donor partnership projects;
 - (v) in specific cases, the identification of pre-defined projects to be included in relevant programmes;
 - (vi) identification of small grant schemes, as appropriate.

3. Annex A may be subject to review at the annual meetings. Amendments to Annex A agreed upon at the annual meetings do not require a formal change to the Memorandum of Understanding. Such amendments shall be confirmed through an exchange of letters between the FMC and the National Focal Point.

4. Annex B may be changed through an exchange of letters between the FMC and the National Focal Point.

5. The provisions of the MoU shall be interpreted in a manner consistent with this Regulation.

6. A template for the MoU is provided in Annex 2.

Article 2.2
Strategic Report

1. The National Focal Point shall submit to the FMC an annual report on its implementation of the EEA Financial Mechanism 2009-2014, hereinafter referred to as the Strategic Report. The reporting periods shall follow the calendar year.

2. The Strategic Report shall provide:

- (a) an assessment of the contribution of the EEA Financial Mechanism 2009-2014 towards the reduction of social and economic disparities in the Beneficiary State;
- (b) an assessment of the contribution of the EEA Financial Mechanism 2009-2014 towards strengthening of bilateral relations with the Donor States;
- (c) an assessment of the efficiency and the effectiveness of the national management and control structures established in the Beneficiary State;
- (d) information on preparation and subsequent implementation and progress of the programmes within the programme areas set out in the implementation framework, including financial figures;
- (e) the results of audits, reviews and evaluations carried out, and the plans for audits, reviews and evaluations for the next reporting periods;
- (f) the results of monitoring carried out and the monitoring plan for the next reporting period;
- (g) a summary of actual output and an assessment of progress towards expected outcomes for each programme;
- (h) an assessment of the implementation of the communication strategy, in accordance with the Information and Publicity Requirements in Annex 4; and
- (i) a summary of irregularities detected and the measures taken as well as a summary of complaints received under the complaint mechanism referred to in Article 11.8.

3. The Strategic Report shall form the basis of discussions at the annual meeting, and shall be subject to approval by the FMC at that time. The opinion of the Monitoring Committee in respect of the Strategic Report shall be provided at the annual meeting by its representative.

4. The Strategic Report shall be written in English and submitted to the FMC no later than 31 March each year.

5. The final Strategic Report shall be submitted within six months of the FMC's approval of the last final programme report, but not later than 31

October 2017, unless extensions under paragraphs 4 or 5 of Article 7.14 have been granted.

6. The template for the Strategic Report is provided in Annex 3.

Article 2.3 **Annual meeting**

1. An annual meeting shall be held between the FMC and the National Focal Point. The National Focal Point is responsible for organising the meeting and shall, when appropriate, arrange for site visits.

2. The annual meeting shall allow the FMC and the National Focal Point to examine progress achieved over the previous reporting period and agree on any necessary measures to be taken.

3. The timing of the annual meeting shall be set out in the MoU. If the date is later than 31 August, the Beneficiary State shall submit a brief update of the Strategic Report two weeks prior to the annual meeting.

4. Representatives of the Audit Authority, Certifying Authority, Monitoring Committee, Programme Operators and the representatives of the Donor State Embassies in the Beneficiary States shall be invited to attend the meeting. The programme partners may be invited as observers.

5. The National Focal Point is responsible for preparing the draft agenda, which shall reflect the main issues set out in the Strategic Report. The draft agenda shall be sent with the Strategic Report, and the agenda's final version shall be agreed upon between the FMC and the National Focal Point at least one week before the meeting.

6. Decisions taken at the annual meeting shall be set out in the agreed minutes. The National Focal Point is responsible for the drafting of the minutes from the meeting, summarising the main points and the action points discussed at the meeting and following the structure of the agenda. These minutes shall be decision oriented, follow-up oriented and task oriented.

7. The approved Strategic Report and the minutes agreed between the FMC and the National Focal Point shall be published on the website of the National Focal Point within one month of the annual meeting. The attachment containing the audit plan shall not be published.

Chapter 3 **Bilateral relations**

Article 3.1 **General principles**

1. In order to contribute to the overall objective of strengthening the relations between the Donor States and the Beneficiary States, the preparation and implementation of the EEA Financial Mechanism 2009-2014 shall, where appropriate, be carried out in partnership.

2. Partnership may take the form of donor partnership programmes and/or donor partnership projects. In addition, within all programmes funds shall be set aside for networking and exchange of knowledge and/or for the establishment and development of partnerships and the preparation of applications for donor partnership projects.

Article 3.2 **Donor partnership programmes**

1. The purpose of donor partnership programmes is to facilitate networking, exchange, sharing and transfer of knowledge, technology, experience and good practices between public entities in the Donor States and the Beneficiary States.

2. The Donor States shall through the MoU designate one or more donor programme partners for each programme area identified according to paragraph 2(b)(iv) of Article 2.1. Donor programme partners can also be agreed upon by the FMC and the National Focal Point through an exchange of letters.

3. The donor programme partner(s) shall be invited to advise on the preparation and implementation of the donor partnership programme.

4. The Donor States and the Beneficiary States shall in the MoU identify the programme areas where all or part of the funding shall be allocated to donor partnership programmes dedicated exclusively to donor partnership projects.

5. Donor partnership programmes falling under the Programme Area "Research within Priority sectors" shall be established and implemented in accordance with this Regulation and Annex 12. The following articles of this Regulation shall not apply to such programmes:

- (a) Article 3.3 (Cooperation Committee);
- (b) Article 6.1 (Modes of selection);
- (c) Article 6.3 (Calls for proposals);
- (d) Article 6.4 (Selection Committee);
- (e) Article 6.5 (Selection procedures);

- (f) Article 7.13 (Proof of expenditure);
- (g) Article 8.2 (Advance payments); and
- (h) Article 8.3 (Interim payments).

Article 3.3 Cooperation Committee

1. The Programme Operator of a donor partnership programme shall establish a Cooperation Committee, consisting of representatives from the Programme Operator and the donor programme partner(s). The Cooperation Committee shall provide advice on the preparation and implementation of the programme. The Cooperation Committees shall be chaired by a representative of the Programme Operator. Representatives of the FMC and the National Focal Point shall be invited to participate as observers.

2. All documents presented to and produced by the Cooperation Committee shall be in English. The Committee meetings shall be conducted in English.

3. The tasks of the Cooperation Committee include:

- (a) advising on selection criteria and the texts for call(s) for proposals;
- (b) advising on possible project partners in the Donor States;
- (c) reviewing progress made towards achieving the outcome(s) and objective(s) of the programme;
- (d) examining the results of the implementation of the programme;
- (e) reviewing the annual programme reports; and
- (f) advising the Programme Operator of any revision of the programme likely to facilitate the achievement of the programme's expected outcome(s) and objective(s).

Article 3.4 Donor partnership projects

Projects may be prepared and implemented in cooperation with one or more legal entity in the Donor States. With reference to the objectives of the EEA Financial Mechanism 2009-2014 related to bilateral relations, the Programme Operator shall encourage and facilitate the establishment of such partnerships.

Article 3.5 Funds for bilateral relations at national level

1. The Beneficiary State shall set aside a minimum of 0.5% of the Beneficiary State's total allocation

for a fund to facilitate outreach and networking between the Programme Operators and programme partners, or potential project partners from the Donor States prior to or during the preparation of a programme proposal and during the implementation of the programme. The eligibility of expenditures to be covered by the fund under this paragraph is detailed in Article 7.7.

2. The National Focal Point shall manage the use of the funds mentioned in paragraph 1 and report on the use of them in the Strategic Report. The first date of eligibility for support under this article shall be the date of the last signature of the MoU with the respective Beneficiary State.

3. Payment claims from the National Focal Point related to this fund shall be submitted with payment claims for the technical assistance in accordance with paragraph 8 of Article 7.12.

Article 3.6 Funds for bilateral relations at programme level

1. The Programme Operator shall within each programme set aside a share of the programme budget for a fund to facilitate:

- (a) the search for project partners from the Donor States prior to or during the preparation of a project application;
- (b) the development of such partnerships; and
- (c) the preparation of an application for a donor partnership project.

2. The eligibility of expenditures to be covered by the fund under paragraph 1 is detailed in paragraph 1 of Article 7.7.

3. The Programme Operator shall within each programme set aside a share of the programme budget for a fund to facilitate networking, exchange, sharing and transfer of knowledge, technology, experience and best practices between Project Promoters and entities in the Donor States. Contributions from the fund shall be available to approved projects within the programme to which the project belongs, whether these projects are donor partnership projects or not, as an additional source of funding, based on applications submitted by the Project Promoters. The eligibility of expenditures to be covered by the fund under this paragraph is detailed in paragraph 3 of Article 7.7.

4. The combined allocation to the funds referred to in paragraphs 1 and 3 shall not be less than 1.5% of the eligible expenditure of the programme.

5. The FMC can in justified cases waive the requirement for either of the funds referred to in paragraphs 1 and 3.

6. The applicable rules on state aid and public procurement shall be complied with. The selection procedures and criteria for awarding support from these funds, the grant rate and the maximum grant amount shall be suggested in the programme proposal and set in the programme agreement.

- (a) a National Focal Point;
- (b) a Certifying Authority;
- (c) an Audit Authority; and
- (d) an appropriate national public entity responsible for the preparation and submission of irregularities reports.

2. The National Focal Point shall establish a Monitoring Committee.

3. The Donor States and the Beneficiary State may in the MoU decide that the National Focal Point, in addition to its tasks referred to in Article 4.3, takes on the tasks of the Certifying Authority under Article 4.5. Such arrangements shall nevertheless ensure the adequate functional separation of tasks related to payments from other tasks within the National Focal Point. If such arrangements are agreed upon, paragraph 5 shall not apply.

4. Without prejudice to Articles 2.1 and 5.13, the National Focal Point shall, in consultation with the FMC, designate a Programme Operator for each programme. The Programme Operator shall have strong ties to the sector within which the programme belongs. For programmes under the programme area 'Funds for Non-governmental Organisations', the Programme Operator shall be autonomous of national, regional and local governmental institutions. Should such an autonomous Programme Operator be unattainable, the FMC may in exceptional cases waive this requirement but only to the extent necessary.

5. In exceptional cases, the FMC may approve that the National Focal Point takes the role of a Programme Operator for one or more programmes.

Chapter 4

Management and control systems

Article 4.1

General principles of the management and control systems

1. The Beneficiary State shall be responsible for the management and control of programmes. The management and control systems established by the Beneficiary State for the EEA Financial Mechanism 2009-2014 shall ensure the respect of the principles of economy, efficiency and effectiveness.

2. The management and control systems shall provide for:

- (a) the definition of the functions of the entities concerned in management and control and the allocation of functions within each entity;
- (b) compliance with the principle of separation of functions between and within such entities;
- (c) procedures for ensuring the correctness and regularity of expenditure;
- (d) reliable accounting, monitoring and financial reporting systems in computerised form;
- (e) a system of reporting and monitoring where the responsible entity entrusts the execution of tasks to another entity;
- (f) arrangements for auditing the functioning of the systems;
- (g) systems and procedures to ensure an adequate audit trail; and
- (h) reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.

3. The Beneficiary State shall comply with the requirements defined by the FMC for submitting information electronically.

Article 4.2

Designation of national entities

1. The Beneficiary State shall in the MoU designate the following entities for the implementation of the EEA Financial Mechanism 2009-2014:

Article 4.3

National Focal Point

1. The National Focal Point shall have the overall responsibility for reaching the objectives of the EEA Financial Mechanism 2009-2014 as well as for the implementation of the EEA Financial Mechanism 2009-2014 in the Beneficiary State. It shall serve as a contact point and be responsible and accountable for the implementation of the MoU.

2. The National Focal Point represents the Beneficiary State in its relations with the FMC regarding the implementation of the EEA Financial Mechanism 2009-2014 in the Beneficiary State.

3. The National Focal Point shall guide the work of the Monitoring Committee. The National Focal Point shall collect from the Programme Operator, and provide the Monitoring Committee with, the documents required to permit the implementation of the programmes to be monitored in light of their specific expected outcome(s) and objective(s).

4. With the aim of highlighting the role of the EEA Financial Mechanism 2009-2014 and to ensure that assistance from the mechanism is transparent, the National Focal Point shall provide information on the existence in the Beneficiary State of the EEA Financial Mechanism 2009-2014, its objectives (including cooperation with Donor State entities), implementation and overall impact. This will be provided in accordance with the Information and Publicity Requirements in Annex 4, in particular through the following measures:

- (a) a communication strategy for the EEA Financial Mechanism 2009-2014;
- (b) at least three major information activities on the implementation of the EEA Financial Mechanism 2009-2014, such as a seminar or a conference with stakeholders, a press conference or press event, including a launching event and a closing event for the EEA Financial Mechanism 2009-2014; and
- (c) a dedicated website on the EEA and Norwegian Financial Mechanisms 2009-2014 in the language(s) of the Beneficiary State and in English, with information on all programmes, bilateral relations with the Donor States related to the EEA Financial Mechanism 2009-2014, an overview of calls for proposals, contact information and relevant documents.

5. The National Focal Point shall ensure that the Programme Operators fulfil their information and publicity obligations in accordance with this Regulation and the Information and Publicity Requirements in Annex 4.

6. The National Focal Point shall ensure that the programmes are implemented in accordance with this Regulation and monitor the progress and quality of their implementation. To this end, the National Focal Point may take the action it deems necessary and compatible with this Regulation, including to verify the quality and content of any documents provided to the FMC through the National Focal Point and request the necessary modification to such documents.

7. The National Focal Point shall carry out regular monitoring of the programmes with regards to their progress towards the programme outcome(s) and objective(s) according to agreed indicators and financial requirements specified for the programme. Results of the monitoring shall be reported in the Strategic Report.

8. The role of the National Focal Point may be further specified in the MoU.

Article 4.4 Monitoring Committee

1. The National Focal Point shall establish a Monitoring Committee for the EEA Financial Mechanism 2009-2014 within six months from the date of the signing of the MoU.

2. The Monitoring Committee shall be chaired by a representative of the National Focal Point. Its composition shall include representatives from relevant ministries local and regional authorities, civil society, the social partners and, where relevant, the private sector.

3. The FMC shall be invited to participate in the meetings of the Monitoring Committee as an observer.

4. The Monitoring Committee shall satisfy itself as to the effectiveness and quality of the implementation of the EEA Financial Mechanism 2009-2014, in accordance with the following provisions:

- (a) it shall periodically review progress made towards achieving the objectives of the EEA Financial Mechanism 2009-2014 on the basis of documents submitted by the National Focal Point and the Programme Operators;
- (b) it shall examine the results of implementation, particularly the achievement of the outputs as well as the progress towards expected outcome(s) and objective(s) set for programmes, and of the evaluations referred to in Chapter 9;
- (c) it shall assess and prepare an opinion on the Strategic Reports;
- (d) it may propose to the National Focal Point any revision or examination of the implementation framework in Annex B to the MoU likely to make possible the attainment of the EEA Financial Mechanism 2009-2014 objectives referred to in Article 1.2 or to improve its management, including its financial management.

Article 4.5 Certifying Authority

1. The Certifying Authority shall be responsible in particular for:

- (a) submitting to the FMC certified interim financial reports and final programme reports referred to in Articles 8.3 and 5.12, respectively, certifying that:
 - (i) the summary of eligible expenditure submitted by the Programme Operator is

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- in full conformity with the supporting documents;
- (ii) the supporting documents have been examined and found to be authentic, correct and accurate;
 - (iii) the summary of eligible expenditure is based on verifiable accounting which is in compliance with generally accepted accounting principles and methods;
 - (iv) the summary of eligible expenditure falls within eligible expenditure under this Regulation;
 - (v) the summary of expenditure is incurred as part of the implementation of the Programme in accordance with the programme agreement;
 - (vi) sufficient audit trail exists; and
 - (vii) co-financing committed to the programme has been paid.
- (b) submitting to the FMC a forecast of likely payment applications as referred to in Article 8.5;
 - (c) declaring to the FMC any interest earned as referred to in Article 8.7;
 - (d) taking account for certification purposes of the results of all audits carried out by or under the responsibility of the Audit Authority;
 - (e) maintaining accounting records in computerised form of expenditure declared to the FMC;
 - (f) ensuring that payments are transferred to the Programme Operators according to paragraph 2 of Article 8.1; and
 - (g) ensuring that amounts recovered and amounts withdrawn following cancellation of all or part of the financial contribution for a programme or project are reimbursed to the FMC prior to the closure of the programme.
2. Subject to contrary provision of the national law of the Beneficiary State, the Certifying Authority shall ensure the establishment and maintenance of a separate interest-bearing bank account dedicated to the EEA Financial Mechanism 2009-2014.

Article 4.6
Audit Authority

1. The Audit Authority shall be responsible in particular for:

- (a) ensuring that audits are carried out to verify the effective functioning of the management and

control system at the level of the Beneficiary State;

- (b) ensuring that at least one audit is carried out of each programme to verify the effective functioning of its management and control system;
- (c) ensuring that audits are carried out on projects on the basis of an appropriate sample to verify expenditure declared;
- (d) presenting to the FMC within nine months of the approval of the programme an audit strategy, the method to be used, the sampling method for audits on projects and the indicative planning of audits to ensure that audits are spread evenly throughout the programming period;
- (e) by 31 December each year from 2012 to 2017:
 - (i) submitting to the FMC an annual audit report setting out the findings of the audits carried out during the previous 12 month-period ending on 30 June of the year concerned in accordance with the audit strategy of the programme and reporting any shortcomings found in the systems for the management and control of the programme. The first report to be submitted by 31 December 2012 shall cover the period up to 30 June 2012. The information concerning the audits carried out after 1 July 2017 shall be included in the final audit report supporting the closure declaration referred to in subparagraph (f);
 - (ii) issuing an opinion to the FMC, on the basis of the controls and audits that have been carried out under its responsibility, as to whether the management and control system functions effectively, so as to provide a reasonable assurance that statements of actual expenditure incurred presented to the FMC are correct and as a consequence reasonable assurance that the underlying transactions are legal and regular;
- (f) submitting to the FMC at the latest by 31 December 2017 a closure declaration assessing the validity of the application for payment of the final balance claimed in the final programme report.

2. Where the Audit Authority chooses not to carry out audits according to paragraphs 1(a) through (c), it shall appoint an independent and certified auditor to perform these tasks.

3. The Audit Authority shall ensure that the audit complies with internationally accepted audit standards.

4. The FMC shall provide its comments on the audit strategy presented under paragraph 1(d) no later than three months from receipt thereof. In the absence of comments within this period it shall be considered to have been accepted.

5. Should the FMC decide to grant extensions in accordance with paragraphs 4 or 5 of Article 7.14, it may modify the dates referred to in this article.

Article 4.7 **Responsibilities of the Programme Operator**

1. The Programme Operator shall be responsible for preparing and implementing the programme in accordance with the principles of economy, efficiency and effectiveness and in particular for:

- (a) ensuring that projects contribute to the overall objectives of the EEA Financial Mechanism 2009-2014 and the specific programme outcome(s) and objective(s) and that they comply with this Regulation, the programme agreement as well as applicable national and European Union law in all implementation phases;
- (b) collecting applications, selecting projects to be funded and signing project contracts for each project;
- (c) verifying the project outputs and that the expenditure declared by the Projects Promoters has actually been incurred and complies with this Regulation, the programme agreement as well as applicable national and European Union law;
- (d) ensuring that payments of the project grant are made in a timely manner;
- (e) ensuring the quality of the implementation of the programme and verifying the projects' progress towards expected outcomes, *inter alia* through reviews and/or on-the-spot verification of projects carried out on a sample basis;
- (f) conducting annual monitoring of a sample of projects, selected based on risk assessment and including random samples;
- (g) ensuring that the financial contribution is used exclusively for the purpose of the programme and its projects and according to the programme agreement and that all assets forming part of the programme are used only for such purposes as provided for in the programme agreement;
- (h) ensuring that there is a system for recording and storing in computerised form accounting records for each project under the programme and that the data on implementation necessary for financial management, reporting, monitoring, verifications, audits and evaluation are collected;
- (i) establishing an organisational structure of the Programme Operator that ensures independence and functional separation of the division responsible for verification of payment claims from other divisions responsible for the implementation of the programme;
- (j) subject to contrary provisions of the national law of the Beneficiary State, establishing and maintaining a separate interest-bearing bank account dedicated to the funds intended for regranting;
- (k) ensuring that Project Promoters maintain either a separate accounting system or an adequate accounting code for all transactions relating to the project without prejudice to national accounting rules;
- (l) ensuring transparency and availability of documents in accordance with the requirements of Article 8.8;
- (m) ensuring that the Certifying Authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- (n) drawing up and submitting the interim financial reports, the annual programme report, the final programme report and reports on interests earned in accordance with Articles 5.11, 5.12, 8.3, 8.4 and 8.7;
- (o) submitting to the Certifying Authority a forecast of likely payment applications necessary for the Certifying Authority to fulfil its obligations in accordance with Article 8.5;
- (p) ensuring entry of project-specific statistical data to maintain the reporting database in accordance with the Programme Operator's Manual (Annex 9);
- (q) ensuring that the FMC and the National Focal Point is upon request, and within reasonable time, provided with all documents and information related to the implementation of the programme and its projects;
- (r) ensuring that the Project Promoters are fully committed and able to implement their projects;
- (s) ensuring that all necessary and appropriate measures are taken to prevent, detect and nullify any cases of suspected or actual irregularities, that they are investigated promptly and efficiently and properly reported and remedied, including making any financial corrections that may be appropriate;

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- (t) ensuring that all relevant local, national and European Union legislation (including, but not limited to, legislation on the environment, public procurement and state aid) are complied with; and
- (u) complying with any other obligations stipulated in the programme agreement.

2. The Programme Operator shall comply with the Information and Publicity Requirements in Annex 4. It shall provide information on the existence, the objectives, and the implementation of the programme, as well as on the cooperation with Donor State entities, in particular through the following measures:

- (a) a communication plan for the programme;
- (b) at least two major information activities on progress in the programme and its projects, such as a seminar or a conference with stakeholders, a press conference or press event; and
- (c) a dedicated website on the programme in the language(s) of the Beneficiary State and in English, with information on all calls for proposals and all supported projects, bilateral relations between the Donor States and the Beneficiary State related to the programme, contact information and relevant documents.

3. The Programme Operator shall ensure that the Project Promoters fulfil their information and publicity obligations in accordance with the Information and Publicity Requirements in Annex 4.

4. The Programme Operator shall comply with the requirements defined by the FMC for submitting information electronically.

Article 4.8

Setting up of management and control systems

1. Before the approval of the first programme by the FMC or at the latest within twelve months of the date of the last signature of the MoU, the National Focal Point shall submit to the FMC a detailed description of the management and control systems, covering in particular the organisation and procedures of:

- (a) the National Focal Point, the Certifying Authority and any other national entities involved in the implementation of the EEA Financial Mechanism 2009-2014 according to the MoU;
- (b) the Audit Authority and any other entities carrying out audits under its responsibility.

2. Within six months from the submission of the first interim financial report, the National Focal Point shall submit to the FMC a detailed description of the management and control systems of the Programme Operator and their functions, covering in particular:

- (a) the system for verification of payment claims;
- (b) the audit and monitoring systems;
- (c) the system for preventing, mitigating, detecting, reporting on and remedying irregularities; and
- (d) the system established to maintain an audit trail of all supported activities.

3. The detailed descriptions referred to in paragraphs 1 and 2 shall be accompanied by a report and an opinion confirming that the implementation system of the Beneficiary State and the Programme Operator complies with this Regulation and generally accepted accounting principles. The report shall assess the proportionality of the management and control systems' requirements in relation to the effectiveness of achieving the objectives of the programmes.

4. The report and the opinion referred to in paragraph 3 shall be drawn up by the Audit Authority. Where the Audit Authority chooses not to carry out audits itself, it shall appoint an independent and certified auditor to perform these tasks.

5. Prior to disbursing the first payment to any programme, the FMC shall determine whether the Beneficiary State has complied with paragraph 1 of this article.

Chapter 5 Programmes

Article 5.1

Preparation of programmes

1. The EEA Financial Mechanism 2009-2014 is implemented in the Beneficiary States through programmes. With the exceptions provided in paragraph 2, a programme shall fall under not more than one programme area identified in the MoU, save as otherwise agreed between the Donor States and the Beneficiary State.

2. In Beneficiary States receiving 3% or less of the total financial contribution from the EEA Financial Mechanism 2009-2014, programmes can fall under more than one programme area.

3. The Donor States and the Beneficiary States may consult on possible and specific programmes before a formal programme proposal is submitted to the FMC.

4. On the basis of the approved MoU and within the programme areas identified therein, the Programme Operator shall, through the National Focal Point, submit a formal proposal for each programme to the FMC within eight months of the date of the designation of the Programme Operator according to Article 4.2, but no later than 31 January 2013. The FMO may be consulted for advice during the preparation of the programme proposal.

5. The programme proposal shall be in accordance with the Programme Operators' Manual (Annex 9) and limited to the objective and the expected outcomes of the relevant programme area as outlined in Annex 1.

Article 5.2 Programme proposals

1. The purpose of a programme proposal is to describe:

- (a) the substantive and operative competence of the programme operator;
- (b) the main features of the programme;
- (c) the programme's contribution to the overall objective and expected outcomes of the relevant programme area; and
- (d) the details in respect of the implementation of the programme, including financial planning as well as risk assessment and mitigation.

2. Programme proposals shall be in the format and contain the information required in the template for programme proposals (attachment to Annex 9).

Article 5.3 Appraisal of and decision on a programme

1. The FMC shall appraise the programme proposals in order to determine whether the programme contributes to the objectives of the EEA Financial Mechanism 2009-2014, and complies with the legal framework of the EEA Financial Mechanism 2009-2014, national and European Union law.

2. The FMC shall make a decision on each programme no later than four months following the receipt of all relevant documents and necessary information.

3. The FMC may decide to:

- (a) approve the programme without conditions;

- (b) approve the programme with conditions;

- (c) approve the programme in a modified form; or

- (d) reject the programme.

4. The FMC shall not reject a programme without giving the Programme Operator an opportunity to remedy the deficiencies of the programme.

5. Should a programme be rejected by the FMC, the Programme Operator may, through the National Focal Point, resubmit once a revised programme proposal within four months from the date of the rejection. The National Focal Point may, as an alternative and within the same deadline, propose that the funds intended for the rejected programme be used for another programme, provided that such reallocation is compatible with the MoU. If the receiving programme has already been approved, such reallocation of funds shall comply with paragraph 8 of Article 5.9.

Article 5.4 Grant rates and minimum size of project grants

1. The contribution from the EEA Financial Mechanism 2009-2014 shall not exceed 85% of eligible expenditure of the programme, except for:

- (a) donor partnership programmes;
- (b) programmes under the programme area "Funds for Non-governmental Organisations";
- (c) programmes operated by the FMO, inter-governmental organisations or Donor State entities in accordance with Article 5.13; and
- (d) other programmes of special interest,

where the FMC may set a higher programme grant rate.

2. The maximum project grant rate shall be proposed in the programme proposal and determined in the programme agreement. It shall take into account the need to ensure Project Promoters' commitment and ownership, as well as sustainability of the project. When proposing the project grant rate, the Programme Operator shall further take into account any economic benefit, e.g. cost savings or increased profit, which is a result from receiving a financial contribution. Economic benefits shall be used in a manner which supports the objectives of the project. The applicable rules on state aid, procedural and substantive, shall be complied with.

3. In case of support to NGOs and social partners the project grant rate may be up to 90% of eligible expenditure of the project and up to 100% for scholarships.

4. Co-financing under paragraphs 1 to 3 shall be in the form of cash, including electronic transfers.

5. In case of projects implemented by NGOs or social partners, in-kind contribution in the form of voluntary work may constitute up to 50% of the co-financing required by the programme for the project. The Programme Operator shall in the programme proposal specify the appropriate unit prices for voluntary work which shall be in accordance with salary normally paid for such work in the Beneficiary State, including the required social security contributions. The prices may vary depending on region in which the work is performed or the type of voluntary work, and may be adjusted during the implementation of the Programme in order to take into account changes in salaries.

6. In case of projects under donor partnership programmes falling under the programme area "Research within Priority sectors", in-kind contribution in the form of labour may constitute up to 100% of the co-financing required for the project. The Programme Operator shall in the programme proposal specify the appropriate unit prices for the labour which shall be in accordance with salary normally paid for such labour in the Beneficiary State, including the required social security contributions. The prices may vary depending on region in which the labour is performed or the type of labour, and may be adjusted during the implementation of the Programme in order to take into account changes in salaries.

7. The amount of grant assistance applied for within a programme shall normally not be less than € 1,000,000 and, without prejudice to paragraph 8, in no cases less than €170,000.

8. The Programme Operator may propose a lower threshold in the following cases:

- (a) programmes under the programme areas "Funds for Non-governmental Organisations", "Institutional Framework in the Asylum and Migration Sector" and "Exchange in Culture and Arts within European Cultural Heritage";
- (b) small grants referred to in Article 5.6, funds for bilateral relations referred to in Articles 3.5 and 3.6; and
- (c) scholarships and research projects.

Article 5.5

Selection of pre-defined projects

1. In addition to any pre-defined project identified in the MoU, the Programme Operator may in exceptional cases propose any pre-defined projects to be implemented within programmes.

2. The following information on the pre-defined projects shall be provided as an Annex to the programme proposal:

- (a) background and justification for the project including reference to relevant national priorities;
- (b) objective and expected outcome(s) of the project;
- (c) information on the Project Promoter;
- (d) the results of feasibility studies when applicable;
- (e) a timetable for implementing the project; and
- (f) the financing plan showing the total planned financial resources and the planned contribution from the EEA Financial Mechanism 2009-2014.

3. The Programme Operator shall, prior to signing a project contract for a pre-defined project, appraise the project in order to verify its quality and contribution to the objectives of the Programme as well as compliance with EU and national legislation.

Article 5.6

Small grant schemes within a programme

1. The Programme Operator may in the programme proposal suggest the establishment of one or more small grant schemes within a programme.

2. The combined allocation to the small grant scheme(s) shall not be more than 20 % of the eligible expenditure of the programme.

3. The amount of grant assistance applied for within a small grant scheme shall not be less than €5,000 and not more than € 250,000. Scholarships to natural persons may be for less than €5,000.

4. The small grant scheme(s) shall normally be managed and implemented by the Programme Operator. The Programme Operator may subcontract to one or more public or private entities, commercial or non-commercial, as well as non-governmental organisations, the management and implementation of small grant schemes. The subcontracted entity shall have strong ties to the sector within which the programme belongs. Such subcontracting shall be without prejudice to the responsibility of the Programme Operator for the programme. The management costs of a small grant scheme shall be counted as part of the management costs of the Programme Operator in respect of the ceiling referred to in paragraph 2 of Article 7.10.

5. In cases where the Programme Operator subcontracts the management and implementation of a small grant scheme, the selection of the small grant

scheme operator by the Programme Operator shall be made in compliance with public procurement rules. The small grant scheme operator shall provide guarantees of its solvency and competence in the domain concerned as well as in administrative and financial management.

6. The provisions of this Regulation applicable to the Programme Operator shall be applicable *mutatis mutandis* to the small grant scheme operator, with the exception that reports of the latter shall be incorporated into the reporting structures of the Programme Operator.

Article 5.7 Programme agreement

1. For each approved programme a programme agreement shall be concluded between the FMC and the National Focal Point.

2. The programme agreement sets out the terms and conditions of the operation of the programme as well as the roles and responsibilities of the parties.

3. The programme agreement template is provided in Annex 10.

Article 5.8 Programme implementation agreement

1. For each approved programme a programme implementation agreement shall be concluded between the National Focal Point and the Programme Operator.

2. In cases where a programme implementation agreement cannot, due to provisions in the national legislation, be made between the National Focal Point and the Programme Operator, the Beneficiary State may instead issue a legislative or administrative act of similar effect and content.

3. The programme implementation agreement shall set out the terms and conditions of the operation of the programme as well as the roles and responsibilities of the parties. It shall in particular include provisions that ensure that the Programme Operator undertakes to comply fully with the provisions of the legal framework of the EEA Financial Mechanism 2009-2014 referred to in Article 1.4 that are relevant for the operation of the programme, including any obligation that are valid after the programme has been completed. The programme implementation agreement shall contain an explicit reference to the programme agreement and this Regulation and, as a minimum, provisions on the following:

(a) obligations regarding reporting that enables the National Focal Point to comply with its reporting obligations to the FMC;

(b) obligations related to the Programme Operator's reporting obligations to the FMC and the Certifying Authority and its duty to provide documents upon request;

(c) the maximum amount of the programme grant and its breakdown between the items listed in Article 7.1;

(d) the eligibility of expenditures;

(e) the first and final dates of eligibility of expenditures;

(f) modifications of the programme;

(g) ensuring that the access requested in relation to monitoring, audits and evaluations is provided without delay;

(h) ensuring that obligations regarding publicity are complied with;

(i) the right of the National Focal Point to suspend payments and request reimbursement from the Programme Operator in case decision on such actions is taken by the FMC or the National Focal Point;

(j) that termination of the Programme Agreement referred to in Article 5.7 may result in a termination of the programme implementation agreement; and

(k) a reference to programme partnerships, if relevant.

4. The National Focal Point shall warrant that the obligations of the Programme Operator under the programme implementation agreement are valid and enforceable under the applicable national law of the Beneficiary State.

5. The National Focal Point shall forward a draft programme implementation agreement to the FMC for review. The FMC shall, prior to the signing of the programme agreement referred to in Article 5.7, confirm that the programme implementation agreement complies with the minimum standards set in paragraph 3 of this article.

6. Confirmation according to paragraph 5 is strictly limited to declaring that the obligation under paragraph 3 is met and shall neither be construed to imply any opinion or guarantees on the completeness, validity or enforceability of the programme implementation agreement, nor result in any responsibility by the FMC for any deficiencies, incompleteness or inaccuracies of the programme implementation agreement.

Article 5.9
Modification of programmes

1. Unless otherwise explicitly stipulated in the programme agreement, any modification of the programme is subject to prior approval by the FMC.
2. Programmes may be modified, in particular in one or more of the following cases:
 - (a) in order to respond to unforeseen events in the Beneficiary States;
 - (b) in order to take into account the conclusions of the review of the implementation framework at an annual meeting;
 - (c) in order to take into account conclusions from an evaluation referred to in Chapter 9;
 - (d) when changes are necessary to enhance the impact of the programme; or
 - (e) in order to mitigate risks and/or implementation difficulties.
3. The Programme Operator shall describe and justify the modification, as well as the likely impact on the financial figures, risk assessment, outputs and outcomes of the programme. The National Focal Point shall provide its provisional approval to the modification proposal.
4. The FMC shall, in consultation with the National Focal Point, assess whether the proposed modification amounts to a substantial change which would require a screening by the European Commission according to Article 5.10. A substantial change is assumed to have been proposed when it affects the overall objective or the outcome of the programme or when the change conflicts with recommendations or comments provided by the European Commission as part of its screening of the programme proposal.
5. The FMC shall assess the proposed modification and provide a formal response no later than two months following the receipt of all relevant documents and necessary information.
6. All modifications agreed between the FMC and the National Focal Point shall formally be noted at the annual meeting.
7. The modification shall be formalised through an amendment of the programme agreement referred to in Article 5.7. The National Focal Point shall inform the Monitoring Committee of the modification.
8. Should a modification of a programme result in a reduction of the programme grant, the National Focal Point may allocate the amount that becomes available to other approved programmes within the Beneficiary State. A prior approval of the FMC and

of the Programme Operator of the programme receiving the funds shall be required. The modification shall be in compliance with the MoU. Such allocation must be completed and formalised no later than 31 October 2014. The Programme Operator of the programme receiving the funds shall allocate the funds in accordance with Article 6.9.

Article 5.10
Screening by the European Commission

1. The European Commission shall screen all programmes and any substantial change(s) in a programme for their compatibility with the European Union's objectives. The FMO will forward the relevant documentation to the European Commission.
2. The results of the screening, as well as any comments issued by the European Commission preceding the conclusion of the screening, shall be taken into account by the FMC.

Article 5.11
Annual programme report

1. The Programme Operator shall submit an annual programme report as described in Annex 9 to the FMC and the National Focal Point. The purpose of the report is to describe:
 - (a) the progress in implementing the programme compared to the plans set out in the programme agreement and/or the preceding annual programme report and in achieving the expected outputs;
 - (b) the programme's contribution to the overall objective and outcomes of the programme area;
 - (c) specific details of challenges to implementation and plans to overcome such challenges, including any changes to risk mitigation measures and financial plans; and
 - (d) a summary listing of irregularities and of the measures taken to remedy these.
2. The reporting periods for the annual programme reports shall be the calendar year. The report shall be submitted not later than 15 February each year. The first annual reports for programmes approved by the FMC in the first half of the year shall be submitted in the following year; first annual reports from other programme shall be submitted in the second year following their approval.
3. The FMC shall inform the National Focal Point and the Programme Operator of its opinion on the annual programme report within two months of the date of receipt. If the FMC does not respond within

the time limit laid down, the report shall be considered to have been accepted.

Article 5.12 **Final programme report**

1. The Programme Operator shall, through the Certifying Authority, submit a final programme report to the FMC and the National Focal Point as described in Annex 9. The purpose of the report is to provide:

- (a) an overall assessment of the implementation of the programme, including comparison to the plans set out in the programme proposal and any lessons learned;
- (b) an assessment of the programme's contribution to the overall objective and outcomes of the programme area upon completion of all projects and the closure of the programme;
- (c) overview of irregularities and measures taken to remedy these;
- (d) specific details in respect of meeting and/or adapting financial plans; and
- (e) financial information, including a calculation of the final balance referred to in Article 8.4.

2. The final programme report shall be forwarded to the FMC by the Certifying Authority, which shall certify the financial annex to the report in accordance with Article 4.5, within three months of the completion of the last project under the programme, and not later than 30 April 2017, unless extensions under paragraphs 4 or 5 of Article 7.14 have been granted.

3. The FMC shall review the final programme report in order to determine whether it fulfils its formal and substantive requirements. The FMC shall approve the report no later than two months following the receipt of the report and all relevant documents and necessary information.

Article 5.13 **Programmes operated by the FMO, inter-governmental organisations or Donor State entities**

1. The National Focal Point, with the consent of the FMC, may entrust the operations of a programme to the FMO, inter-governmental organisations or Donor State entities. In such cases, the provisions of this Regulation related to the implementation of the programme, its preparation, eligibility of applicants, application and appraisal process, programme agreement, disbursements, monitoring, audits, irregularities, suspension of payments and financial corrections, reporting, and publicity, do

not apply. The entrusted Programme Operator shall apply specific rules in this regard, to ensure implementation in line with the principles stated in Article 1.6.

2. When the FMO acts as a Programme Operator, the implementation of the programme shall normally be performed by a fund operator, appointed and contracted by the FMO. The roles and responsibilities of the FMO and the fund operator shall be governed by an implementation agreement between the FMO and the fund operator. The implementation agreement shall contain provisions on reporting to the National Focal Point.

3. When the operation of a programme has been entrusted to an inter-governmental organisation or a Donor State entity, its roles and responsibilities shall be governed by a programme implementation agreement between the FMC and the Programme Operator.

4. The funds for regranting within a programme referred to in this article as well as the costs of the Programme Operator and/or the fund operator shall be covered by the financial contribution to the respective Beneficiary State.

5. When a programme is being operated by the FMO, an inter-governmental organisation or a Donor State entity according to this article, the Beneficiary State bears no responsibility for the implementation of the programme, financially or otherwise, except as provided for in paragraph 4.

Chapter 6 **Selection of projects**

Article 6.1 **Modes of selection**

1. Projects shall be selected through calls for proposals organised in accordance with this Chapter.

2. By way of derogation from paragraph 1, pre-defined projects may be identified without a call for proposals. Such projects shall be identified in accordance with paragraph 2(b)(v) of Article 2.1 and Article 5.5. Information on such projects shall be provided in the programme proposal in accordance with Article 5.5.

Article 6.2 **Eligibility of applicants**

1. Any entity, public or private, commercial or non-commercial and non-governmental organisations,

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established as a legal person in the respective Beneficiary State as well as inter-governmental organisations operating in the Beneficiary State are considered eligible applicants of projects.

2. Natural persons who are legal residents of the Donor States or of the respective Beneficiary State are eligible applicants under scholarship programmes and scholarship components under any programme, and under the programme area “Exchange in Culture and Arts within European Cultural Heritage”.

3. The Programme Operator, taking into account the overall objectives of the EEA Financial Mechanism 2009-2014 and of the programme, and with the aim of ensuring targeted implementation, may propose limitations to the eligibility of applicants. Such limitations, if approved by the FMC, shall be explicitly stipulated in the programme agreement.

Article 6.3
Calls for proposals

1. Calls for proposals shall be organised by the Programme Operator. Their content, form and publication shall be in accordance with the programme agreement and this Regulation. The Programme Operator shall in its programme proposal explain the methods of publicity, the estimated timing and amounts of the calls.

2. Calls for proposals shall as a minimum comply with the following.

- (a) they shall be widely publicised with a view to reach all potential applicants. The national, regional and local media, as well as specialised publications and web based tools shall be used as relevant. Any limitation on the publication shall be justified in the programme proposal;
- (b) they shall include a clear and reasonable deadline, which shall be at least two months from the date of the publication of the announcement, and an address for submission. The announcement shall specify the hour when the call expires, whether the deadline refers to a post stamp or actual delivery time to the office of the Programme Operator and the permissible method(s) of delivery. The announcement must specify whether one or more copies of the application are required;
- (c) they shall clearly specify the eligible applicants and any restrictions, limitations or exclusions that they may be subject to;
- (d) they shall contain detailed selection criteria as well as a scoring chart;
- (e) they shall clearly address what kind of activities and expenditure are eligible;

- (f) they shall provide a description of the selection process and the decision-making structure;
- (g) they shall provide a clear reference or a link to the application form and user guide;
- (h) they shall clearly state the total amount available through the call, as well as the minimum and maximum amount of each project grant;
- (i) they shall contain provisions on the payment model;
- (j) they shall clearly state the co-financing requirements;
- (k) they shall provide clear references to further information, including a reference to this Regulation and the guidelines adopted by the FMC as well as other documentation prepared by the Programme Operator that is relevant to the call; and
- (l) they shall provide contact information for queries and the timeframe for answering such queries.

3. The call shall be published on the website of the Programme Operator in the national language(s) and in English.

4. The FMC and the National Focal Point shall be informed of all calls for proposals at least two weeks in advance of their announcement, and, at the same time, be provided with an English translation of the text of each call.

Article 6.4
Selection Committee

1. The Programme Operator shall establish a Selection Committee that shall recommend the projects to be funded within the programme. The Selection Committee shall consist of at least three persons possessing the relevant expertise. At least one of them shall be external to the Programme Operator.

2. The FMC and the National Focal Point shall be invited to participate in the meetings of the Selection Committee as observers. In donor partnership programmes the donor programme partner shall be invited to participate in the meetings of the Selection Committee in an advisory capacity.

3. The Programme Operator shall provide interpretation assistance for Selection Committee meetings when necessary. The Selection Committee shall keep minutes of its meetings. The FMC shall be provided with a summary of the minutes in English no later than two weeks after the meeting.

4. In donor partnership programmes dedicated exclusively to donor partnership projects, the Selection Committee shall consist of an equal number of members appointed by the Programme Operator and the donor programme partner. The working language of such Selection Committees, as well as the language of project applications and other documents relevant to its work, shall be English.

Article 6.5 **Selection procedures**

1. The Programme Operator shall review the applications for compliance with administrative and eligibility criteria. Applicants whose applications are rejected at this stage shall be informed and given a reasonable time to appeal that decision.

2. Each application that meets the administrative and eligibility criteria shall be reviewed by two independent and impartial experts appointed by the Programme Operator. In donor partnership programmes dedicated exclusively to donor partnership projects, one expert shall be appointed by the Programme Operator and one appointed by the donor programme partner. Costs related to experts shall be covered from the management cost of the Programme Operator.

3. The experts shall separately score the project according to the selection criteria published with the call for proposals. For the purposes of ranking the projects, the average of the scores awarded by the experts shall be used.

4. If the difference between the scores given by the two experts is more than 30% of the higher score, a third expert shall be commissioned by the Programme Operator to score the project independently. In such cases the average score of the two closest scores shall be used for the ranking of the projects.

5. The Programme Operator shall provide the Selection Committee with a list of projects ranked in accordance with paragraphs 3 and 4. It shall at the same time provide the FMC with the ranked list in English. The Selection Committee shall review the ranked list of projects. It may modify the ranking of the projects in justified cases. The justification for the modifications shall be detailed in the minutes of the meeting of the Selection Committee. If such a modification results in a project's rejection, the affected applicant shall be informed in writing about the justification for the modification. The Selection Committee shall submit the list of recommended projects to the Programme Operator.

6. The Programme Operator shall verify that the selection process has been conducted in accordance

with the Regulation and that the recommendations from the Selection Committee comply with the rules and objectives of the programme. Following such verification the Programme Operator shall, based on the decision of the Selection Committee, make a decision on which projects shall be supported. If the Programme Operator modifies the decision of the Selection Committee, it shall inform the applicants affected and provide them with a justification.

7. The Programme Operator shall notify the applicants about the results of the selection process within a reasonable time and publicise the results.

8. In exceptional cases, the Programme Operator may in its programme proposal suggest the use of different selection procedures that it has already established and used successfully. The FMC may approve the use of such procedures only if it determines that they duly respect the principles of transparency, efficiency and quality. If approved by the FMC, the procedures shall be described in the programme agreement.

9. The Programme Operator shall store all documents related to the selection procedures for at least three years following the approval of the final programme report by the FMC.

Article 6.6 **Conflict of interest**

1. A conflict of interest situation is deemed to be present when a person involved in the selection process (e.g. independent experts, members of Selection Committees, staff involved in review of compliance with administrative and eligibility criteria) has direct or indirect interests that are or appear to be incompatible with the impartial and/or objective exercise of the functions related to the selection process. Such interests may be related to economic interests, political or national affinities, family or emotional ties, other shared interests with the applicant or its partner, or any other interests liable to influence the impartial and objective performance of the person involved in the selection of projects.

2. The Programme Operator shall take every reasonable measure to prevent a conflict of interest situation from occurring. If a conflict of interest situation nevertheless occurs, the Programme Operator shall take all the necessary measures to prevent that such a situation affects the integrity of the selection process.

Article 6.7
Project contract

1. For each approved project a project contract shall be concluded between the Programme Operator and the Project Promoter.
2. In cases where a project contract cannot, due to provisions in the national legislation, be made between the Programme Operator and the Project Promoter, the Beneficiary State may instead issue a legislative or administrative act of similar effect and content.
3. The project contract sets out the terms and conditions of grant assistance as well as the roles and responsibilities of the parties. It shall in particular include provisions that ensure that the Project Promoter undertakes to comply fully with the provisions of the legal framework of the EEA Financial Mechanism 2009-2014 referred to in Article 1.4 that are relevant for the implementation of the project, including any obligation that is valid after the project has been completed. The project contract shall contain an explicit reference to the programme agreement and this Regulation and, as a minimum, provisions on the following:
 - (a) obligations regarding reporting that enables the Programme Operator to comply with its reporting obligations to the FMC and the National Focal Point;
 - (b) the maximum amount of the project grant in euro and the maximum project grant rate;
 - (c) the eligibility of expenditures;
 - (d) the method of calculating indirect costs and its maximum amount;
 - (e) the first and final dates of eligibility of expenditures;
 - (f) modifications of the project;
 - (g) ensuring that the access requested in relation to monitoring, audits and evaluations is provided without delay;
 - (h) ensuring that obligations regarding publicity are complied with;
 - (i) the right of the Programme Operator to suspend payments and request reimbursement from the Project Promoter in case decision on such actions is taken by the FMC, Programme Operator or the National Focal Point;
 - (j) resolution of disputes and jurisdiction;
 - (k) a detailed budget, with itemised costs and unit prices, and which may allow for up to 5% contingency; and
 - (l) a reference to partnership agreements or letters of intent, if relevant.

4. Project contracts for projects within a research programme or a research component under any programme shall contain provisions on intellectual property rights. These provisions shall *mutatis mutandis* be in compliance with Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006.
5. The obligations of the Project Promoter under the project contract shall be valid and enforceable under the applicable national law of the Beneficiary State.
6. The Programme Operator may request the FMC to confirm that the project contract template complies with the minimum standards set in paragraph 3 of this article.
7. Confirmation according to paragraph 6 is strictly limited to declaring that the obligation under paragraph 3 is met and shall neither be construed to imply any opinion or guarantees on the completeness, validity or enforceability of the project contract, nor result in any responsibility by the FMC for any deficiencies, incompleteness or inaccuracies of the project contract.

Article 6.8
Project partners and partnership agreements

1. A project may be implemented in partnership with project partners as defined in Article 1.5.1(w). If a project is implemented in such a partnership, the Project Promoter shall sign a partnership agreement with the project partners.
2. The partnership agreement shall contain the following:
 - (a) provisions on the roles and responsibilities of the parties;
 - (b) provisions on the financial arrangements between the parties, including, but not limited to, which expenditure the project partners can get reimbursed from the project budget;
 - (c) provisions on the method of calculating indirect costs and their maximum amount;
 - (d) currency exchange rules for such expenditure and its reimbursement;
 - (e) provisions on audits on the project partners;
 - (f) a detailed budget, with itemised costs and unit prices; and
 - (g) provisions on dispute resolution.
3. Partnership agreements for projects within a research programme or a research component under any programme shall contain provisions on intellectual property rights. These provisions shall *mutatis mutandis* be in compliance with Regulation

(EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006.

4. The partnership agreement shall be in English if one of the parties to the agreement is an entity from the Donor States.

5. The eligibility of expenditures incurred by a project partner is subject to the same limitations as would apply if the expenditures were incurred by the Project Promoter.

6. The creation and implementation of the relationship between the Project Promoter and the project partner shall comply with the applicable national and European Union law on public procurement as well as Article 7.16 of this Regulation.

7. The partnership agreement shall be submitted to the Programme Operator before the signing of the project contract. The Programme Operator shall verify that the partnership agreement complies with this article.

Article 6.9

Grant awarding and reallocation of funds

1. Project grants that have upon project closure not been fully utilised, as well as project grants that have been cancelled due to irregularities or for other reasons, may, subject to paragraph 2 of Article 12.2, be reallocated to future calls for proposals within the same programme or to additional activities of already approved projects, provided that these additional activities contribute to the objectives of the projects receiving the additional funds.

2. Any decision to reallocate project grants to already approved projects shall be based on recommendations by the Selection Committee. The Selection Committee shall base its recommendations on transparent and objective criteria. By applying these criteria, the Selection Committee shall ensure equal treatment of all Project Promoters but may in justified cases give priority to:

- (a) certain geographical regions lagging behind; and
- (b) a clearly defined group of less privileged Project Promoters.

3. The criteria shall be made available on the website of the Programme Operator no later than one month prior to any decision to reallocate funds according to paragraph 2. Project Promoters shall be informed in writing without delay when such criteria have been published on the website.

Chapter 7

Eligibility of expenditures

Article 7.1

Eligible expenditures of a programme

Eligible expenditures of a programme are:

- (a) management costs of the Programme Operator in accordance with the detailed budget annexed to the programme agreement and Article 7.10;
- (b) payments to projects within the programme in accordance with this Regulation, the programme agreement and the project contract;
- (c) expenditure of funds for bilateral relations in accordance with Article 7.7;
- (d) complementary action of the Programme Operator in accordance with Article 7.11;
- (e) expenditure related to the preparation of a programme proposal in accordance with Article 7.9; and
- (f) expenditure related to the mitigation of exchange rate risks in accordance with paragraph 5 of Article 8.6 and explicitly approved by the FMC.

Article 7.2

General principles on the eligibility of expenditures

1. The principles set forth in this article shall apply *mutatis mutandis* to all eligible expenditures unless otherwise explicitly stated in this Regulation.

2. Eligible expenditures of projects are those actually incurred by the Project Promoter, which meet the following criteria:

- (a) they are incurred between the first and final dates of eligibility of a project as specified in the project contract;
- (b) they are connected with the subject of the project contract and they are indicated in the estimated overall budget of the project;
- (c) they are proportionate and necessary for the implementation of the project;
- (d) they must be used for the sole purpose of achieving the objective(s) of the project and its expected outcome(s), in a manner consistent with the principles of economy, efficiency and effectiveness;
- (e) they are identifiable and verifiable, in particular through being recorded in the accounting records of the Project Promoter and determined according to the applicable

accounting standards of the country where the Project Promoter is established and according to generally accepted accounting principles; and

- (f) they comply with the requirements of applicable tax and social legislation.

3. Expenditures are considered to have been incurred when the cost has been invoiced, paid and the subject matter delivered (in case of goods) or performed (in case of services and works). Exceptionally, costs in respect of which an invoice has been issued in the final month of eligibility are also deemed to be incurred within the dates of eligibility if the costs are paid within 30 days of the final date for eligibility. Overheads and depreciation of equipment are considered to have been incurred when they are recorded on the accounts of the Project Promoter.

4. The Project Promoter's internal accounting and auditing procedures must permit direct reconciliation of the expenditures and revenue declared in respect of the project with the corresponding accounting statements and supporting documents.

Article 7.3

Eligible direct expenditures in a project

1. The eligible direct expenditures for a project are those expenditures which are identified by the Project Promoter and/or the project partner, in accordance with their accounting principles and usual internal rules, as specific expenditures directly linked to the implementation of the project and which can therefore be booked to it directly. In particular, the following direct expenditures are eligible provided that they satisfy the criteria set out in Article 7.2:

- (a) the cost of staff assigned to the project, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this corresponds to the Project Promoter's and project partner's usual policy on remuneration. The corresponding salary costs of staff of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;
- (b) travel and subsistence allowances for staff taking part in the project, provided that they are in line with the Project Promoter's and project partner's usual practices on travel costs and do not exceed the relevant national scales;
- (c) cost of new or second hand equipment, provided that it is depreciated in accordance

with generally accepted accounting principles applicable to the Project Promoter and generally accepted for items of the same kind. Only the portion of the depreciation corresponding to the duration of the project and the rate of actual use for the purposes of the project may be taken into account by the Programme Operator, except where the nature and/or the context of its use justifies different treatment by the Programme Operator. The application of such exceptions shall be regulated in the programme agreement and shall comply with the applicable rules on state aid;

- (d) purchase of land and real estate under the conditions set in Article 7.5;
- (e) costs of consumables and supplies, provided that they are identifiable and assigned to the project;
- (f) costs entailed by other contracts awarded by a Project Promoter for the purposes of carrying out the project, provided that the awarding complies with the applicable rules on public procurement and this Regulation; and
- (g) costs arising directly from requirements imposed by the project contract for each project (e.g. dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of any financial services (especially the cost of financial guarantees).

2. In exceptional and duly justified cases, the Programme Operator may in its programme proposal suggest additional expenditures to be eligible or exclude certain expenditure listed in paragraph 1. Such deviations, if approved by the FMC, shall be explicitly stipulated in the programme agreement.

Article 7.4

Indirect costs in projects (overheads)

1. Indirect costs are all eligible costs that cannot be identified by the Project Promoter and/or the project partner as being directly attributed to the project but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project. They may not include any eligible direct costs. Indirect costs of the project shall represent a fair apportionment of the overall overheads of the Project Promoter or the project partner. They may be identified according to one of the following methods:

- (a) based on actual indirect costs for those Project Promoters and project partners that have an

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analytical accounting system to identify their indirect costs as indicated above;

- (b) a Project Promoter and project partners may opt for a flat rate of up to 20% of its total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the Project Promoter; or
- (c) in case of a project implemented within a research programme or within a research component within any programme, the Project Promoter and project partners that are non-profit public bodies, secondary and higher education establishments, research organisations and SMEs, which, due to the lack of analytical accounting, are unable to identify with certainty their real indirect costs for the project, may opt for a flat-rate of up to 60% of the total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the Project Promoter. If these Project Promoters or partners change their status during the life of the project, this flat rate shall be applicable up to the moment they lose their status.

2. Project Promoters and/or project partners that have identified their indirect costs in a manner comparable to paragraph 1(a) under the sixth or seventh Framework Programme of the European Commission cannot make use the methods described in paragraphs 1(b) or (c).

3. The application of the methods described in paragraphs 1(b) and (c) is subject to the provision of a certification according to paragraph 4 of Article 7.13.

4. The method of calculating the indirect costs and its maximum amount shall be determined in the project contract. The method of calculation of indirect costs of a project partner shall be stipulated in the partnership agreement between the Project Promoter and the project partner.

5. In exceptional and duly justified cases, the Programme Operator may in its programme proposal suggest restricting the eligibility of indirect costs. Such restrictions, if approved by the FMC, shall be explicitly stipulated in the programme agreement.

Article 7.5

Purchase of real estate and land

1. The cost of purchase of real estate, meaning buildings constructed or under development and the appropriate rights to the land on which they are

built, and land not built on may be eligible under the following conditions, without prejudice to the application of stricter national rules:

- (a) there shall be a direct link between the purchase and the objectives of the project;
- (b) purchase of real estate and/or land may not represent more than 10% of the total eligible expenditure of the project, unless a higher percentage is explicitly authorised in the programme agreement and set in the decision to award the project grant.
- (c) a certificate shall be obtained prior to the purchase from an independent qualified evaluator or duly authorised official entity confirming that the purchase price does not exceed the market value and that it is free of all obligations in terms of mortgage and other liabilities, particularly in respect of damage related to pollution. In case of purchase of real estate the certificate must either confirm that the building in question is in conformity with national regulations, or specify what is not in conformity with national regulations but which is to be rectified by the Project Promoter under the project;
- (d) the real estate and/or the land shall be used for the purpose and for the period specified in the decision to award the project grant. The ownership must be transferred to the Project Promoter, or those explicitly designated by the Project Promoter in the project application as recipients of the real estate and/or the land, prior to the completion of the project. The real estate and/or the land cannot be sold, rented, or mortgaged within five years of the completion of the project, or longer if stipulated in the project contract. The FMC may waive this restriction if it would result in an unforeseen and unreasonable burden on the Project Promoter;
- (e) the real estate and/or land may only be used in conformity with the objectives of the project. In particular, buildings may be used to accommodate public administration services only where such use is in conformity with the objective of the project; and
- (f) the purchase of real estate and/or land shall be explicitly approved by the Programme Operator prior to the purchase, either in the project contract or by a later decision.

2. The restrictions referred to in paragraph 1(d) apply also to buildings that are constructed or reconstructed through a financial contribution from the EEA Financial Mechanism 2009-2014.

3. The mortgage restriction referred to in paragraph 1(d) does not apply to a mortgage taken in favour

of the Programme Operator or the National Focal Point when its purpose is solely to ensure compliance with the said paragraph.

4. Expenditure on site preparation and construction which is essential for the implementation of the project may be eligible.

5. The cost of real estate and/or land already owned, directly or indirectly, by the Project Promoter, or purchase of real estate and/or land owned, directly or indirectly, by the project partner or a public administration, shall not be eligible. Under no circumstances shall real estate and/or land be purchased for speculative purposes. The real estate and/or the land shall not have received a national or external donor grant in the last 10 years which would give rise to a duplication of funding.

Article 7.6 Excluded costs

1. This article shall apply *mutatis mutandis* to all costs unless otherwise explicitly stated in this Regulation.

2. The following costs shall not be considered eligible:

- (a) interest on debt, debt service charges and late payment charges;
- (b) charges for financial transactions and other purely financial costs, except costs related to accounts required by the FMC, the National Focal Point or the applicable law and costs of financial services imposed by the project contract;
- (c) provisions for losses or potential future liabilities;
- (d) exchange losses, except losses covered by a provision explicitly approved by the FMC for each programme;
- (e) recoverable VAT;
- (f) costs that are covered by other sources;
- (g) fines, penalties and costs of litigation; and
- (h) excessive or reckless expenditure.

Article 7.7 Funds for bilateral relations

1. The following categories of expenditure are eligible for funds referred to in Article 3.5 and paragraph 1 of Article 3.6:

- (a) fees and travel costs for participation in conferences, seminars, courses, meetings and workshops;

- (b) travel costs for study trips;
- (c) travel and salary costs for visits by experts;
- (d) costs related to feasibility studies and preparation of financial and economic analysis;
- (e) costs of conferences, seminars, courses, meetings and workshops;
- (f) purchase of data necessary for the preparation of the application; and
- (g) external consultancy fees.

2. Travel costs according to paragraph 1 include subsistence allowance in accordance with paragraph 1(b) of Article 7.3.

3. The categories of expenditure referred to in paragraphs 1(a) to (c) are eligible for funds referred to in paragraph 3 of Article 3.6.

Article 7.8 Scholarships and mobility programmes

1. Grants to natural persons from a scholarship programme or from the scholarship component under any programme, may be calculated as a lump sum. Eligible items are:

- (a) monthly stipend;
- (b) allocation for study material;
- (c) travel costs, insurance and conference fees; and
- (d) tuition fees.

2. The Programme Operator responsible for a scholarship programme or a scholarship component within any programme shall specify any unit amounts in the programme proposal. The determination of the amounts shall take into account the reasonable costs in the area of the host institution.

Article 7.9 Costs for preparation of programmes

1. Costs incurred by the Programme Operator directly related to the preparation of a programme approved by the FMC may be eligible. The following categories of preparation costs may be eligible, provided that the expenditure is proportionate, necessary and directly related to the preparation of the programme:

- (a) salaries of the staff of the Programme Operator assigned exclusively to the preparation of the programme;
- (b) travel and subsistence allowance exclusively related to the preparation of the programme;

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- (c) costs related to feasibility studies or other necessary supporting documents, including expert fees;
- (d) costs related to translation of the programme proposal together with supporting documents into English;
- (e) preparation for public procurement and compliance with state aid rules; and
- (f) costs related to public consultation.

2. The first date of eligibility of costs under this article shall be the date when the National Focal Point, in accordance with paragraph 4 of Article 4.2, designates the Programme Operator. The last date of eligibility shall be the day when the programme proposal is received by the FMC. By way of derogation from paragraph 3 of Article 7.2, costs that are eligible according to this article shall be invoiced and paid no later than one month after the last date of eligibility.

3. The Programme Operator shall provide a detailed budget for costs for preparation of the programme in the programme proposal. The maximum amount of eligible costs under this article shall be set in the programme agreement and not exceed 0.5% of the total eligible costs of the programme or €100,000, whichever is lower.

4. Costs related to preparation of programmes shall be claimed with the first interim financial report on a format provided by the FMC (Annex 11). The claim shall be certified by the Certifying Authority in accordance with Article 4.5.

Article 7.10
Eligibility of management cost incurred by
Programme Operator

1. The management cost of a Programme Operator up to a ceiling set in paragraph 2 may be considered as eligible costs. The first date of eligibility of expenditures of managements cost of a Programme Operator shall be on the date when the FMC approves the programme. Without prejudice to paragraphs 4 and 5 of Article 7.14, the final date of eligibility shall be the 30 April 2017 unless an earlier date is specified in the programme agreement.

2. The maximum management cost of a programme shall be calculated as a percentage of the total eligible expenditures of the programme. It shall be the sum of the following amounts:

- (a) 10% of the first €10 million;
- (b) 7% of the next €40 million;
- (c) 5% of the next €50 million;

- (d) 4% of the remaining total eligible expenditures of the programme.

3. The following categories of expenditure are eligible as management costs, provided that the expenditure is proportionate and necessary:

- (a) preparation of the implementation of the programme, including the development of procedures for project selection and financial flows;
- (b) assisting possible applicants and Project Promoters in complying with the requirements set by the Programme Operator for project applications and/or the implementation of projects;
- (c) selection of projects, including costs of experts, costs related to the operation of the Selection Committee, and appeals;
- (d) verification of payment claims and transfers of payments to Project Promoters;
- (e) monitoring of projects and reviews;
- (f) audits and on-the-spot verification of projects;
- (g) promotional and information activities, including calls for proposals and information work during the application period as well as information events to share experiences and evaluate the impact of the programme;
- (h) expenditures related to reporting obligations to the FMC, the National Focal Point and/or the Certifying Authority;
- (i) charges related to the establishment and operation of bank accounts required under this Regulation or the programme agreement, including costs of incoming and outgoing transfers; and
- (j) overheads, calculated in accordance with paragraphs 1(a) or (b) of Article 7.4, as appropriate, and subject to the requirements in paragraph 4 of Article 7.13.

4. Programme Operators within programme area “Funds for non-governmental organisations” may, in order to meet obligations related to capacity building of the sector, suggest in their programme proposal a higher ceiling for the management costs but never more than 30% above the ceiling stipulated in paragraph 2. Such a ceiling, if approved by the FMC, shall be explicitly stipulated in the programme agreement. The ceiling for management costs and complementary action under Article 7.11 combined shall not exceed 15% of the total eligible cost of the programme.

5. In cases where the selection of the Programme Operator in the Beneficiary State is conducted through a competitive tendering procedure, the

FMC can in the programme agreement, decide that the contract value shall be accepted as management costs *in lieu* of actually incurred expenditures. The ceilings set out in paragraphs 2 and 4 shall apply.

Article 7.11
Complementary action by the Programme Operator

1. Complementary action consists of activities that are organised by the Programme Operator and contribute to the objective(s) of the programme with the primary aim of:

- (a) strengthening co-operation between the Programme Operators and similar entities within the Beneficiary States and Donor States; and
- (b) exchanging experiences and best practices related to the implementation of the programme.

2. The following categories of complementary action may be eligible, provided that the expenditure is proportionate and necessary:

- (a) costs of events, such as rent of facilities, interpretation, travel costs, subsistence allowance, and publicity costs directly related to the event; and
- (b) salaries, travel costs and subsistence allowance of personnel of entities other than the Programme Operator that are directly involved in the complementary action, and of personnel of the Programme Operator when such cost can be clearly separated from costs related to the management of the programme.

3. For costs of complementary action to be eligible the action must have been explicitly approved by the FMC and the costs specified in the detailed budget of the programme, annexed to the programme agreement. Costs of complementary action may not exceed an amount equal to 20% of the management costs for the programme, except in the case of funds for NGOs where the ceiling shall be 30%, subject to the maximum ceiling in paragraph 4 of Article 7.10.

Article 7.12
Technical assistance to the Beneficiary State

1. Costs incurred by Beneficiary States in relation to the implementation of the EEA Financial Mechanism 2009-2014 are ineligible, except as provided for in this article and falling within the categories set out in paragraph 2.

2 The following categories of expenditure may be eligible costs for technical assistance under the

conditions and limits set out in paragraphs 3-8, provided that the expenditure is proportionate and necessary:

- (a) in the case of additional management systems specifically established for the EEA Financial Mechanism 2009-2014, expenditure relating to the preparation, evaluation, financial flow, and monitoring of the assistance and of programmes;
- (b) expenditure on meetings of Monitoring Committees, preparation of and participation in annual meetings with the Donor States, and other meetings with the Donor States relating to the implementation of the assistance. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance;
- (c) expenditure on meetings and conferences organised by the National Focal Point or the Certifying Authority to share experience related to the implementation, monitoring, reporting and auditing of projects funded by the EEA Financial Mechanism 2009-2014, including expenditure related to travel and accommodation of participants. The FMC shall agree to the agenda of such a meeting or conference in advance, and representatives of the Donor States shall be invited to participate in such meetings or conferences;
- (d) expenditure related to promotional and information activities;
- (e) expenditure related to audits referred to in Article 4.6 and paragraph 3 of Article 4.8;
- (f) expenditure related to on-the-spot verifications of programmes and projects;
- (g) expenditure related to reviews and evaluations; and
- (h) expenditure related to technical assistance for the implementation of the EEA Financial Mechanism 2004-2009 incurred during the 12 months following the final date of eligibility for that technical assistance.

3. Expenditure in the Beneficiary State on salaries, social security contributions and other statutory costs, is eligible only in the following cases:

- (a) civil servants or other public officials temporarily assigned, by duly documented decision of the competent authority, to carry out tasks referred to in paragraph 2 on an exclusive and additional basis;

(b) other staff employed to carry out tasks referred to in paragraph 2.

4. Contributions from the EEA Financial Mechanism 2009-2014 to the expenditure under paragraph 2 shall not exceed 1.5% of the total contribution to the respective Beneficiary State.

5. The amount shall be fixed in an agreement on technical assistance between the FMC and the National Focal Point.

6. The National Focal Point shall coordinate the use of the technical assistance. It shall as soon as possible after the signing of the MoU, provide the FMC with a budget for the whole implementation period, including a detailed budget for the first calendar year. No later than 30 September each year, the National Focal Point shall forward to the FMC a detailed budget for the following calendar year. Where the National Focal Point receives support for technical assistance under both the EEA and Norwegian Financial Mechanisms, it shall prepare one budget covering the technical assistance from both mechanisms.

7. The first date of eligibility for support under this article shall be the date of the last signature of the MoU with the respective Beneficiary State. If support for technical assistance is received under both the EEA and the Norwegian Financial Mechanisms, the first date of eligibility of any funding for technical assistance shall be the date of the last signature of the whichever MoU is signed first.

8. Articles 5.11 and 5.12 and Chapter 8 shall apply *mutatis mutandis* to technical assistance.

Article 7.13 **Proof of expenditure**

1. Costs incurred by Programme Operators, Project Promoters and project partners shall be supported by receipted invoices, or alternatively by accounting documents of equivalent probative value.

2. Where activities are implemented in the framework of competitive tendering procedures, payments by Programme Operators, Project Promoters and project partners shall be supported by receipted invoices based on the signed contracts. In all other cases, payments by Programme Operators, Project Promoters and project partners shall be justified by expenditure actually paid by the entities concerned in implementing the project.

3. A report by an independent and certified auditor, certifying that the claimed costs are incurred in accordance with this Regulation, the national law and accounting practices of the project partner's country, shall, subject to paragraph 6, be seen as

sufficient proof of costs incurred by a Project Promoter or a project partner whose primary location is in a Donor State or a Beneficiary State.

4. Overheads identified according to paragraphs 1(b) and (c) of Article 7.4, do not need to be supported by accounting documents. Nevertheless, the Project Promoter and project partners shall, prior to the awarding of the grant, provide the Programme Operator with a report by an independent and certified auditor certifying that the flat-rate overheads represent a fair apportionment of the overall overheads of the Project Promoter and/or the project partners, and that paragraph 2 of Article 7.4 does not prevent them from applying the flat-rate methods.

5. The report referred to in paragraph 4 may be used for any subsequent projects implemented under the EEA Financial Mechanism 2009-2014 by the same Project Promoter and/or project partner, provided that the report's assumptions have not changed.

6. The Programme Operator may decide to apply paragraph 3 only to project partners whose primary location is in the Donor States. The Programme Operator shall, through the National Focal Point, notify the FMC of such a decision.

7. The Certifying Authority may further define the methods of verifying payment claims, which may consist of verification on a sample basis.

Article 7.14

Period of eligibility of expenditures in projects

1. Unless a later date is provided in the programme agreement, programme implementation agreement, or the project contract, expenditure incurred shall be eligible for assistance as of the date on which the Programme Operator decides to award the project grant. The Programme Operator shall in the same decision fix the final date of eligibility which shall be no later than either one year after the scheduled completion of the project or the date referred to in paragraph 3, whichever is earlier.

2. The first and final dates of eligibility of each project shall be stated in the project contract for that project.

3. Expenditures incurred after 30 April 2016 shall not be eligible. In respect of the transitional support to Spain, the deadline for eligibility of expenditure shall be 31 December 2015.

4. In exceptional cases where further delays are justified, the FMC can extend the period of eligibility to 30 April 2017. In respect of the transitional support to Spain, the period of eligibility can not be extended.

5. If a project is, on the final date of eligibility, subject to judicial procedures or administrative appeal with suspensory effects, the FMC can give further extensions if it deems that such extension is in the interests of the EEA Financial Mechanism 2009-2014.

6. If a project has not been completed on its final date of eligibility, the Programme Operator shall ensure that funds are made available to complete the project in a timely manner. If such funds cannot be guaranteed, the Programme Operator shall reimburse to the FMC its financial contribution to the project. If, at the date of the final date of eligibility, clearly identifiable and viable components of the projects have been completed, the FMC may waive, in full or in part, its right to reimbursement.

Article 7.15 Durability of projects

1. The Programme Operator shall ensure that projects that involve investment in real estate and/or land (including renovation) are operational for at least five years after the Programme Operator's approval of the project completion report and that the real estate and/or land is used for the purpose of the project as described in the project contract.

2. For other projects, the period of minimum post-completion operation shall be determined by the Programme Operator, described in the call for proposals and included in the project contract. The determination of this period shall be guided by the aim of promoting the sustainability of the project and of ensuring that the financial support provided to the project generates the maximum benefits to its target group and final beneficiaries.

3. The Beneficiary State and the Programme Operator shall ensure that the Project Promoter retains the contribution from the EEA Financial Mechanism 2009-2014 only if the project is in compliance with paragraphs 1 and 2.

Article 7.16 Procurement

1. National and European Union law on public procurement shall be complied with at any level in the implementation of programmes and projects.

2. A Project Promoter that receives 50% or more of the eligible expenditure of the project as a project grant from a programme under the EEA Financial Mechanism 2009-2014 shall conduct its procurement for that project in compliance with the national public procurement law as though the Project Promoter were a contracting authority under

paragraph 9 of Article 1 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. This paragraph applies *mutatis mutandis* to project partners.

3. Paragraph 2 does not apply to NGOs unless the amount of the contract is at or above European Union thresholds set for public procurement.

4. In cases where contracts concluded as part of the implementation of the Programme fall below the national or European Union thresholds set for public procurement or outside the scope of the applicable public procurement laws, the awarding of such contracts (including the procedures prior to the awarding) and the terms and conditions of such contracts shall comply with best economic practices, including accountability, allow a full and fair competition between potential providers, for example by way of effective price comparison, and ensure the optimal use of resources from the EEA Financial Mechanism 2009-2014.

5. The highest ethical standards shall be observed during the procurement and execution of contracts. The Programme Operator 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.

6. The Programme Operator shall ensure that records of the awarding and execution of contracts are kept for at least three years from the closure of the programme and provided upon request to the FMC.

Chapter 8 Financial management

Article 8.1 Common rules for payments

1. Payments to programmes shall be made when all relevant conditions for payments stipulated in the programme agreement and this Regulation have been fulfilled.

2. Payments to programmes shall take the form of advance payments, interim payments and payments of the final balance. Without prejudice to paragraph 3, they shall be made to the designated account of the Beneficiary State. Subject to contrary

provisions in national law, the Beneficiary State shall transfer the payments to the Programme Operator within 15 working days from reception of the payment.

3. The FMC and the National Focal Point may agree to transfer payments directly from the FMC to the designated account of the Programme Operator.

4. The FMC may retain up to 10% of the management cost portion of every advance and interim payment to the programme. The retained amount shall not be paid until the final programme report has been approved by the FMC.

5. Payments to programmes shall be calculated by applying the co-financing rate laid down in the programme agreement. The principle of pro rata financing shall apply, meaning that the payments of the programme grant from the FMC shall be matched within one month by payment from the entity or entities responsible for providing the co-financing.

6. Payments of the project grant to the Project Promoters may take the form of advance payments, interim payments and payments of the final balance. The level of advance payments and their off-set mechanism shall be proposed in the programme proposal and set in the programme agreement.

Article 8.2 Advance payments

1. Advance payments are the part of the programme grant necessary to cover its share of justified estimated programme expenditure for up to two full reporting periods referred to in paragraph 1 of Article 8.3. The maximum advance payment shall be set in the programme agreement. The advance payment shall be made when the relevant conditions in the programme agreement and this Regulation have been fulfilled.

2. As from the beginning of the second reporting period, the procedure for interim payments set out in Article 8.3 shall apply.

Article 8.3 Interim payments

1. There shall be three reporting periods in each calendar year:

- (a) 1 January – 30 April;
- (b) 1 May – 31 August; and
- (c) 1 September – 31 December.

2. Interim payments shall be paid based on an interim financial report submitted by the Programme Operator in a format provided by the FMC (Annex 11), certified by the Certifying Authority in accordance with Article 4.5, and approved by the FMC.

3. Without prejudice to paragraph 10 and subject to budgetary appropriations of the Donor States, interim payments from the FMC shall be made on the following payment dates: 15 April, 15 August and 15 December. Should a payment date land on a weekend or an EFTA public holiday, the payment shall be made on the next EFTA working day.

4. Interim financial reports shall be received by the FMC according to the following schedule:

- (a) on, or before, 15 March for payments to be made on 15 April;
- (b) on, or before, 15 July for payments to be made on 15 August;
- (c) on, or before, 15 November for payments to be made on 15 December.

5. Payment based on an interim financial report received after its due date but on, or before, the following due date referred to in paragraph 4 shall be due as the report would have been received on its following due date. If an interim financial report has not been received within eight months from the end of the reporting period in which expenditure has been incurred by the Programme Operator, previously proposed expenditure for that period shall be declared ineligible and cancelled.

6. Interim financial reports shall include:

- (a) a statement of actual expenditure incurred during the reporting period preceding the payment date; and
- (b) a statement of proposed expenditure for the reporting period immediately following the payment date.

7. The actual incurred expenditure for the last reporting period shall be reported in the final programme report.

8. When the interim financial report has been provided, the FMC shall verify that it is in the correct form and that the conditions for payment have been met. If that verification is positive, interim payments shall be transferred no later than on the payment dates referred to in paragraph 3.

9. Interim payments shall in principle consist of the proposed expenditure for the following reporting period less the difference between the proposed expenditure for the previous reporting period and actual expenditure in that period, taking into account any justified unplanned expenditure in the reporting period within which the interim financial

report is submitted. The FMC may modify the amount of the interim payment if the proposed expenditures are considered to be unjustified. The FMC shall provide the National Focal Point, Certifying Authority and the Programme Operator with a justification of the modification without delay.

10. Should verification according to paragraph 8 be negative, the FMC, the National Focal Point and the Programme Operator shall closely cooperate to remedy the deficiencies. The FMC may provisionally hold interim payments until such deficiencies have been remedied. When the FMC, after receiving all necessary information, has positively verified interim financial report, it shall at the first possible payment date or when it deems it necessary following that verification release the payment due, unless the FMC decides to make use of remedies provided in Chapter 12.

Article 8.4 **Payment of the final balance**

1. The final balance is:
 - (a) the total reported eligible expenditure of the programme, taking into account any previous reimbursements,
 - (b) less the following amounts:
 - (i) the total advance and interim payments to the programme from the FMC;
 - (ii) any co-financing from sources other than the EEA Financial Mechanism 2009-2014;
 - (iii) total interest earned until the date of the final programme report but not reimbursed to the FMC; and
 - (iv) any funds reimbursed from Project Promoters to the Programme Operator, not paid to other projects or reimbursed to the FMC.
2. The EEA Financial Mechanism 2009-2014 share of the final balance is the final balance according to paragraph 1 multiplied by the programme grant rate.
3. The final balance shall be calculated and reported in the financial annex to the final programme report in a format provided by the FMC (attachment 2 to Annex 9).
4. Any final balance payable to the Programme Operator shall be transferred by the FMC no later than one month after FMC's approval of the final programme report.
5. Any final balance payable to the FMC shall be reimbursed to the FMC within the same deadline. Any interest earned on the bank account of the

Programme Operator between the date of the final programme report and the reimbursement date shall be included in the reimbursement.

Article 8.5 **Forecast of likely payment applications**

At the latest by 20 February, 20 May, 20 September and 10 December each year, the Certifying Authority shall send to the FMC, in a format provided by the FMC (Annex 7), a justified forecast of likely payment applications from the Beneficiary State for the remainder of the current financial year and subsequent financial years.

Article 8.6 **Use of the euro**

1. Amounts set out in programmes, interim financial reports, annual programme reports and final programme reports shall be denominated in euro. Programme grants and payments from the FMC to entities in the Beneficiary State, shall be denominated and carried out in euro. The amounts shall be rounded to the nearest euro.
2. Programme Operators in Beneficiary States that have not adopted the euro as their currency on the date of an application for payment shall convert into euro the amounts of expenditure incurred in their national currency. This amount shall be converted into euro using the monthly accounting exchange rate of the European Commission in the month during which the expenditure was registered in the accounts of the Programme Operator of the programme concerned.
3. When the euro becomes the currency of a Beneficiary State, the conversion procedure set out in paragraph 2 shall continue to apply to all expenditure recorded in the accounts by the Programme Operator before that date.
4. Neither the Donor States nor the FMC are responsible for losses resulting from exchange rate fluctuations.
5. The Programme Operator may in its programme proposal suggest a reserve for exchange rate losses suffered by the Programme Operator and the Project Promoters. Such a proposal shall be duly justified and provide a clear and transparent method of calculating the exchange rate losses and of their settlement. The amount of the reserve shall not exceed 1% of the total eligible costs of the Programme.
6. The Programme Operator may at any time, with the approval of the National Focal Point, cancel the reserve and make it available for projects within the programme. The FMC shall be informed before any arrangements are made to reallocate the funds. Any

decision to reallocate funds to already approved projects shall be taken in accordance with paragraphs 2 and 3 of Article 6.9.

Article 8.7
Interest

1. Any interest generated on the following bank accounts shall be regarded as a resource for the FMC:

- (a) accounts held in the Beneficiary State on which funds from the FMC are kept until they are transferred to the Programme Operators; and
- (b) accounts established by the Programme Operator according to paragraph 1(j) of Article 4.7 for funds intended for regranting.

2. The Programme Operator shall annually and no later than 1 March declare to the Certifying Authority any interest earned on the account referred to in paragraph 1(b). The interest earned shall be reimbursed to the Certifying Authority within 20 working days of having been declared.

3. The Certifying Authority shall annually and within three calendar months after year-end declare to the FMC any interest earned on the accounts referred to in paragraph 1 in a format provided by the FMC (Annex 8). The Certifying Authority shall verify the correctness of the declared interest. The interest earned shall be reimbursed to the FMC within 15 working days of having been declared.

4. The interest earned on accounts referred to in paragraph 1(a) during the year in which the final Strategic Report is submitted shall be declared by the Certifying Authority to the FMC within one month of the submission of the final Strategic Report. The interest earned shall be reimbursed to the FMC within 15 working days of having been declared.

5. The interest earned on accounts referred to in paragraph 1(b) during the year in which the final programme report is submitted shall be declared in the final programme report and shall be included in the calculation of the final balance payment.

6. Beneficiary States that have not adopted the euro as their currency and use accounts held in the national currency shall convert the interest earned into euros using the average of the monthly accounting exchange rates of the European Commission. During the years referred to in paragraphs 4 and 5 the average exchange rate for the period 1 January to the date of the submission of the respective reports shall apply.

Article 8.8

Transparency and availability of documents

1. The Beneficiary State shall ensure an audit trail for financial contributions from the EEA Financial Mechanism 2009-2014 that permits:

- (a) reconciliation of the expenditure certified by the Certifying Authority in the interim financial reports and the final programme report and original supporting documents held at the various administrative levels and/or by the Programme Operator, the Project Promoter and its partners; and
- (b) verification of the allocation and transfer of the available EEA Financial Mechanism 2009-2014's and national financial contributions.

2. The Beneficiary State shall ensure that all the supporting documents regarding expenditure and audits on the programme concerned are kept either in the form of originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

3. The documents shall be kept available for the FMC and the EFTA Board of Auditors for a period of at least three years following the FMC's approval of the final programme report.

Chapter 9
Evaluations

Article 9.1

Responsibilities of Beneficiary States

1. The Beneficiary State shall carry out evaluations of programmes to assess actual and/or expected effects at the outcome level. It shall present its evaluation plan in the Strategic Report.

2. Evaluation shall be carried out by experts or entities independent of the National Focal Point, the Certifying Authority and the Programme Operator in accordance with the Evaluation Guidelines.

3. The results of the evaluations shall be sent to the FMC, the National Focal Point, the Monitoring Committee and the Programme Operator, and made public. Prior to publication, the FMC, the National Focal Point and the Programme Operator shall be given the opportunity to provide comments.

Article 9.2

Role of the FMC

1. The FMC may carry out evaluations related to the overall objectives of the EEA Financial Mechanism 2009-2014, objectives of programme

areas or evaluations of the overall contribution of the EEA Financial Mechanism 2009-2014 to a specific Beneficiary State.

2. The FMC may, in consultation with the Beneficiary State concerned, carry out evaluations of on-going or completed programmes to assess actual and/or expected effects at outcome level.

3. The results shall be sent to the National Focal Point, the Monitoring Committee and the Programme Operator, and made public. Prior to publication, the National Focal Point and the Programme Operator shall be given the opportunity to provide comments.

Chapter 10

External monitoring and audits

Article 10.1

External monitoring

Without prejudice to the monitoring carried out by the National Focal Point or the Programme Operator, the FMC may select programmes for external monitoring. The FMC shall inform the National Focal Point and the Programme Operator about any planned monitoring two weeks in advance.

Article 10.2

EFTA Board of Auditors

1. The EFTA Board of Auditors may conduct audits of all programmes and projects funded by the EEA Financial Mechanism 2009-2014 as well as the management of the EEA Financial Mechanism 2009-2014 in the Beneficiary State. The Beneficiary States' representatives shall, upon request, accompany the auditors and provide them with all the necessary assistance.

2. The EFTA Board of Auditors shall, except in urgent cases, give two weeks' notice to the FMC and the National Focal Point concerned before an audit is carried out.

Article 10.3

Audits and on-the-spot verifications arranged by the FMC

1. Without prejudice to the audits carried out by the Audit Authority, the FMC may arrange audits and on-the-spot verifications of programmes and projects, and to verify the effective functioning of the management and control systems in the Beneficiary State. The National Focal Point's

representatives shall, upon request, accompany the authorised representatives of the FMC and provide them with all necessary assistance.

2. The FMC shall, except in urgent cases, give two weeks' notice to the National Focal Point and the Programme Operator concerned before an audit or on-the-spot verification is carried out.

3. The National Focal Point and the Programme Operator shall be given an opportunity to provide comments to an audit report before it is finalised.

Article 10.4

Access

The persons performing audits or on-the-spot verifications according to this chapter shall upon request be granted prompt, full, and unimpeded access to all information, documents, persons, locations and facilities, public or private, relevant to the audit or the verification. Such access shall be subject to the applicable limitations under national legislation of the Beneficiary State. The auditors shall enjoy the same rights as those extended to equivalent authorities of the Beneficiary State itself.

Chapter 11

Irregularities

Article 11.1

Responsibilities related to irregularities

1. The Beneficiary State and the Programme Operator shall make every effort possible to prevent, detect, and nullify the effect of any cases of irregularities. Similarly, any suspected and actual cases of irregularities shall be investigated promptly and efficiently, and properly remedied, including making any financial corrections that may be appropriate.

2. Unduly paid amounts shall be recovered and reimbursed in accordance with the programme agreements and this Regulation.

Article 11.2

Definition of irregularities

An irregularity shall mean an infringement of:

- (a) the legal framework of the EEA Financial Mechanism 2009-2014 referred to in Article 1.4;
- (b) any provision of European Union law; or

- (c) any provision of the national law of the Beneficiary State,

which affects or prejudices any stage of the implementation of the EEA Financial Mechanism 2009-2014 in the Beneficiary State, in particular, but not limited to, the implementation and/or the budget of any programme, project or other activities financed by the EEA Financial Mechanism 2009-2014, for instance by unjustified or disproportionate expenditure, or by reducing or losing revenue under the programme and/or the project.

Article 11.3 **Entities responsible for reporting**

1. An appropriate national public entity to be responsible for the preparation and submission of irregularities reports on behalf of the Beneficiary State shall be designated and agreed upon in the MoU.
2. Irregularities that affect or prejudice the implementation of the EEA Financial Mechanism 2009-2014, as well as any measures taken by competent national authorities to prevent, detect, investigate, or remedy such irregularities, shall be reported by the designated entity to the FMC in accordance with this Regulation and in a format provided by the FMC (Annex 5).
3. The Programme Operator shall report to the designated entity on all irregularities, their investigation and any remedies taken. The Programme Operator shall closely co-operate with the designated entity to ensure rapid, accurate and full reporting of irregularities to the FMC.

Article 11.4 **Immediate reporting on irregularities**

The designated entity shall, regardless of the amounts involved, immediately report to the FMC all suspected and actual cases of irregularities when any of the following applies:

- (a) they involve allegations of an act or omission which constitutes a criminal offence under the national legislation of the Beneficiary State, such as corruption, fraud, bribery or embezzlement;
- (b) they indicate the presence of serious mismanagement affecting the use of the financial contribution from the EEA Financial Mechanism 2009-2014; or
- (c) they pose an immediate threat to the successful completion of the project, due to the amounts in proportion to the total project cost, their gravity or any other reason.

Article 11.5 **Regular reporting on irregularities**

1. For irregularities other than those referred to in Article 11.4 or paragraph 1 of Article 11.7, the designated entity shall within two months of the end of each quarter, submit to the FMC a report, describing any suspected and actual cases of irregularities discovered during that quarter and which have been the subject of a primary administrative or judicial finding.
2. Should there be no irregularities to report on during the quarter, the designated entity shall inform the FMC of this fact within the time limit set in paragraph 1.
3. For the purpose of this article “primary administrative or judicial finding” means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

Article 11.6 **Reporting on progress regarding already reported irregularities**

1. Together with each report on new irregularities referred to in paragraph 1 of Article 11.5, the designated entity shall report to the FMC on the progress made in the investigation and remedy of previously reported irregularities.
2. Should there be no progress to report on under this article, the designated entity shall inform the FMC of this fact within the time limit set in paragraph 1 of Article 11.5.

Article 11.7 **Reporting on irregularities upon request**

1. Unless requested by the FMC, the following cases of irregularities need not be reported:
 - (a) cases where the irregularity consists solely in the failure to implement a project, in whole or in part, owing to the bankruptcy of the Project Promoter;
 - (b) cases brought to the attention of the Programme Operator, National Focal Point or Certifying Authority by the Project Promoter voluntarily and before detection by any of them, whether before or after the payment of the project grant related to that irregularity;

(c) cases which are detected and corrected by the Programme Operator, National Focal Point or Certifying Authority before any payment to the Project Promoter of the project grant and before inclusion of the expenditure concerned in an interim financial report or final programme report.

2. Paragraph 1 does not apply to irregularities that shall be reported immediately according to Article 11.4 or irregularities preceding a bankruptcy.

3. The designated entity shall, upon request from the FMC, provide information on irregularities referred to in paragraph 1 within one month.

4. The designated entity shall keep a registry of irregularities that do not need to be reported to the FMC.

Article 11.8 Complaint mechanism

1. The Beneficiary State shall establish a complaint mechanism that shall be capable of effectively processing and deciding on complaints about suspected non-compliance with the principles of good governance in relation to the implementation of the EEA Financial Mechanism 2009-2014 in the respective Beneficiary State.

2. Information on how to submit a complaint shall be prominently placed on the website of the National Focal Point referred to in paragraph 4(c) of Article 4.3.

3. The Beneficiary State shall without delay report to the FMC on any complaints involving suspected irregularities referred to in Article 11.4. Complaints involving suspicion of other irregularities shall be reported to the FMC in the reports referred to in Articles 11.5 and 11.6. The FMC shall, when relevant, be consulted on the appropriate response.

Chapter 12 Suspension of payments, financial corrections and reimbursement

Article 12.1 Suspension of payments

1. The FMC may decide to suspend payments if one or more of the following applies:

(a) the conditions for payments in accordance with Chapter 8 have not been met;

(b) credible information indicates that the progress of the programme is not in accordance with the programme agreement;

(c) reports referred to in Article 5.11 and Chapter 11 or any other information requested has not been provided or include incomplete information;

(d) access required under Chapter 10 and the programme agreement is restricted;

(e) the financial management of the programme has not been in accordance with generally accepted accounting principles;

(f) it becomes aware of suspected or actual cases of irregularities, or such cases have not been adequately reported, investigated or remedied;

(g) the implementation of the programme is deemed to be in violation of national or European Union law;

(h) a fundamental change of circumstances occurs and said circumstances constitute an essential basis for the financial contribution from the EEA Financial Mechanism 2009-2014 to the programme;

(i) it becomes aware of any misrepresentation of facts in any information given by or on behalf of the National Focal Point, Certifying Authority or the Programme Operator affecting, directly or indirectly, the implementation of the programme agreement;

(j) interests generated on the bank accounts referred to in Article 8.7 have not been accounted for or reimbursed;

(k) the procedure under Article 12.4 has been opened; or

(l) any other obligation stipulated in the programme agreement or this Regulation is not complied with by the National Focal Point, the Certifying Authority or the Programme Operator.

2. The FMC may decide to suspend payments to a programme if any of the conditions in subparagraphs (b), (d), (e), (f) or (g) of paragraph 1 apply *mutatis mutandis* to any of the projects under that programme and the Programme Operator has not taken the appropriate and necessary measures to investigate and, when appropriate, remedy such deficiencies or prevent loss of funds. Suspension due to deficiencies in projects shall be proportionate to the scope and extent of the breach.

3. Except for urgent cases, the National Focal Point and the Programme Operator shall be given an opportunity to provide their views before the FMC takes a decision to suspend payments. The decision to suspend payments shall be reasoned and

immediately effective. The National Focal Point and the Programme Operator shall be notified no later than seven working days from the date of the decision.

4. The National Focal Point and/or the Programme Operator can at any time present documents or other relevant evidence and request that the FMC reviews its decision to suspend payments.

5. When the FMC finds that the conditions for suspension no longer apply, it shall take a decision to continue payments.

Article 12.2 **Financial corrections**

1. In addition to financial corrections made by the Beneficiary State or the Programme Operator, the FMC may make financial corrections based on the criteria in Article 12.3 consisting of cancelling all or part of the financial contribution of the EEA Financial Mechanism 2009-2014 to the programme or the Beneficiary State in question.

2. Financial contributions cancelled in accordance with paragraph 1 or with Article 11.1 may be reused under the programme for projects other than those that were the subject of the correction. When a financial correction is made for systemic irregularities or irregularities related to management or control systems within a programme, the financial contribution may not be reused for that programme.

3. Financial contributions that may, according to paragraph 2, be reused for the programme within which the irregularities occurred, shall be reallocated by the Programme Operator in accordance with Article 6.9.

4. Financial contributions that may, according to paragraph 2, not be used for the same programme, shall be allocated in accordance with paragraph 8 of Article 5.9.

5. Financial contributions not reallocated according to paragraphs 3 and 4 within the relevant timeline shall be reimbursed to the FMC no later than 31 October 2015. Paragraph 5 of Article 12.5 shall apply to late reimbursements.

Article 12.3 **Criteria for financial corrections**

1. The FMC may make financial corrections according to Article 12.2 if one or more of the following applies:

(a) a serious deficiency exists in the management and control systems established by the Beneficiary State for the EEA Financial

Mechanism 2009-2014 which puts at risk the financial contribution from the EEA Financial Mechanism 2009-2014;

(b) a serious breach of the programme agreement has occurred;

(c) a serious deficiency exists in the management and control system of the programme which puts at risk the financial contribution from the EEA Financial Mechanism 2009-2014;

(d) expenditure reported in a certified interim financial report or in a final programme report is irregular and has not been corrected by the National Focal Point or the Programme Operator prior to the sending of the notification according to paragraph 1 of Article 12.4; or

(e) the National Focal Point and/or the Programme Operator have not complied with its obligations to investigate and/or remedy irregularities under Article 11.1 prior to the sending of the notification according to paragraph 1 of Article 12.4.

2. The FMC shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied, or whether the corrected amount can be based on an actual amount detected as irregular.

3. The FMC shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found.

Article 12.4 **Procedure**

1. Prior to making a decision referred to in paragraph 1 of Article 12.2, the FMC shall notify the National Focal Point and the Programme Operator of its intention to make such a decision. The notification shall outline the reasons for the decision and indicate the relevant amounts. The National Focal Point and the Programme Operator can within two months from the sending of the notification provide any documents relevant to the decision.

2. Where the FMC proposes a financial correction on the basis of extrapolation or at a flat rate, the National Focal Point and the Programme Operator shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of the irregularity was less than the FMC's assessment. In agreement with the FMC, the National Focal Point may limit the scope of this examination to an appropriate proportion or sample of the documentation

concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

3. The FMC shall take account of any evidence supplied by the National Focal Point or the Programme Operator within the time limits referred to in paragraphs 1 and 2. At any time prior to the decision on financial corrections, the National Focal Point, the Programme Operator and the FMC can enter into a dialogue with a view to ensuring that the decision is based on accurate and correct facts.

4. The National Focal Point and the Programme Operator shall be notified of a decision referred to in paragraph 1 of Article 12.2 no later than seven working days from the date of the decision. The notification shall outline the reasons for the decision.

Article 12.5 Reimbursement

1. The Beneficiary State shall reimburse the amount requested to the FMC within three months of the decision referred to in Article 12.2.

2. The FMC shall waive any claim for reimbursement from the Beneficiary State of funds that were subject to irregularities in a project if the National Focal Point shows that the loss and the circumstances related thereto are not due to negligent performance or non-performance of duties of entities referred to in paragraphs 1 and 2 Article 4.2 and of the Programme Operator's duties, and the National Focal Point and the Programme Operator have taken all reasonable measures to seek recovery of such funds.

3. Reimbursement from the Beneficiary State to the FMC is not contingent upon reimbursement from the Programme Operator or the Project Promoter.

4. If the Programme Operator is a private entity and the National Focal Point shows that it has and is taking appropriate measures to recover the funds from the Programme Operator, the FMC may decide to give the Beneficiary State up to one year to reimburse the requested funds. In such a case, the FMC may also decide to contribute up to 50% of reasonable legal fees related to the recovery of the funds from the Programme Operator. For the purpose of this paragraph, a Programme Operator is considered to be a private entity when less than the majority of the votes at its managerial board meetings is controlled by public entities, such as public authorities, public agencies or companies fully owned by such authorities or agencies.

5. Any delay in reimbursement shall give rise to interest on account of late payment, starting on the

due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

Article 12.6 General suspension of payments to a Beneficiary State

1. The FMC may, after having consulted the National Focal Point with a view to reaching a solution, suspend all payments to the Beneficiary State if:

- (a) information or documents obtained by or provided to the FMC indicate the presence of systemic or widespread shortcomings regarding the management of the financial contribution from the EEA Financial Mechanism 2009-2014 in the Beneficiary State; or
- (b) a demand for reimbursement related to any type of assistance in the Beneficiary State financed by the EEA Financial Instrument 1999-2003, the EEA or Norwegian Financial Mechanisms 2004-2009 or the EEA or Norwegian Financial Mechanisms 2009-2014 has not been complied with by the Beneficiary State.

2. The procedures referred to in paragraphs 1, 3 and 4 of Article 12.4 shall apply *mutatis mutandis* to suspension of payments under this article.

Chapter 13 Final provisions

Article 13.1 Language

1. All communications between the FMC and the Beneficiary State shall be in English.
2. Original documents (in languages other than English) sent to the FMC shall be accompanied by translations into English. The Beneficiary State shall bear full responsibility for the accuracy of the translation.

Article 13.2 Liability

1. The responsibility of the Donor States with regard to the EEA Financial Mechanism 2009-2014 is limited to providing financial contributions in

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accordance with the relevant programme agreements.

2. No liability to the Beneficiary State, Programme Operators, Project Promoters, other recipient of grants, or any third parties is or will be assumed by the Donor States, the FMC, or the European Free Trade Association, including the FMO.

Article 13.3
Applicable law and jurisdiction

1. The laws of the Kingdom of Norway shall govern the co-operation between the EEA Financial Mechanism 2009-2014 and the Beneficiary States as well as the interpretation of the programme agreement and this Regulation.

2. The FMC and the National Focal Point waive their rights to bring any dispute related to the programme agreement before any national or international court, and agree to settle such a dispute in an amicable manner.

3. If a demand for reimbursement to the FMC 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 paragraph 2, the Parties may bring the dispute before Oslo Tingrett.

4. The FMC may claim execution of judgement or court order obtained in accordance with paragraph 3 in any court or appropriate authority within the

territory of the Beneficiary State or within another country where the Beneficiary State has assets.

5. The Beneficiary State shall vest its National Focal Point with the authority to receive services of process on its behalf.

Article 13.4
Amendments

1. This Regulation may be amended by decision of the FMC, subject to subsequent confirmation by the Standing Committee of the EFTA States.

2. Annexes to this Regulation may be amended by decision of the FMC.

3. The FMC may adopt additional guidelines as necessary after consultation with the Beneficiary States.

4. Any substantive amendment to the documents referred to in paragraphs 1-3 shall be subject to prior consultation with the Beneficiary States. The FMC shall as soon as possible inform the National Focal Points about any changes made to these documents.

Article 13.5
Entry into force

This Regulation shall enter into force on the day following its confirmation by the Standing Committee of the EFTA States.