



# **COMMON PROVISIONS**

(October 2007)

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# COMMON PROVISIONS

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## **PART I - Legal and Administrative Provisions**

### **Article 1 - References**

All LIFE+ projects shall be carried out in accordance with, in order of precedence:

- Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 (LIFE+)<sup>1</sup>,
- The special provisions of the grant agreement sent for signature to the coordinating beneficiary,
- These common provisions included in the grant agreement,
- The project proposal (hereinafter referred to as "the project") identified in the grant agreement (Annex I),

which form an integral part of the grant agreement.

### **Article 2 - Responsible Commission service and correspondence**

- 2.1 For the purposes of implementation of the provisions set out below, the Commission shall be represented by the Directorate-General for the Environment in the person of its authorising officer or authorising officer by sub-delegation.
- 2.2 All correspondence must bear the identification number and project title and must be sent to the following address:

**European Commission  
Directorate-General Environment  
Unit ENV.E.4 - BU-9 2/1  
B - 1049 Brussels**

A copy of all correspondence must be sent to the external monitoring team designated by the Commission.

Mail shall be considered to have been received by the Commission on the date on which it is formally registered by the responsible Commission unit referred above.

### **Article 3 - Participants**

LIFE+ projects may involve four types of "participants", depending on their roles and obligations:

- coordinating beneficiary,
- associated beneficiary(ies),
- co-financier(s),
- subcontractor(s).

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<sup>1</sup> OJ L 149, 9.6.2007, p. 1.

#### **Article 4 - Role and obligations of the coordinating beneficiary**

- 4.1 By "coordinating beneficiary" is meant the person or entity which is solely legally and financially responsible to the Commission for the full implementation of the project measures in order to achieve the project objectives and for the dissemination of the project results.
- 4.2 The coordinating beneficiary, through the mandate annexed to the grant agreement, is granted power of attorney by the associated beneficiaries, to act in their name and for their account in signing the grant agreement and its possible subsequent amendments with the Commission.
- 4.3 The coordinating beneficiary accepts all the provisions of the agreement with the Commission.
- 4.4 By virtue of the mandate signed, the coordinating beneficiary alone is entitled to receive funds from the Commission and distribute the amounts corresponding to the associated beneficiaries' participation in the project and as specified in the agreements established between the associated beneficiaries as stipulated in Article 4.8.
- 4.5 Whenever an associated beneficiary/co-financier reduces its financial contribution, it shall be incumbent upon the coordinating beneficiary, in agreement with its associated beneficiaries, to find the necessary resources to ensure correct implementation of the project. In no case shall the Commission increase its contribution or the rate of co-financing.
- 4.6 Notwithstanding the provisions in Article 24, the coordinating beneficiary shall contribute financially to the project.
- 4.7 The coordinating beneficiary shall be the single point of contact for the Commission and shall be the only participant to report directly to the Commission on the technical and financial progress of the project. The coordinating beneficiary shall therefore provide to the Commission all the necessary reports, in accordance with Article 12.
- 4.8 The coordinating beneficiary shall conclude with all associated beneficiaries agreements describing their technical and financial participation in the project. Such agreements shall be fully compatible with the grant agreement signed with the Commission, shall make a precise reference to the present common provisions and shall have, as a minimum, the contents described in the Guidelines issued by the Commission. They shall be signed by the coordinating beneficiary and the associated beneficiaries and notified to the Commission within nine months from the starting date of the project. The provisions of the grant agreement, including the mandate (Articles 5.2 and 5.3), shall take precedence over any other agreement between the associated beneficiary and the coordinating beneficiary which may have an effect on the implementation of the above agreement between the coordinating beneficiary and the Commission.

#### **Article 5 - Role and obligations of associated beneficiaries**

- 5.1 The associated beneficiaries are exclusively the organisations identified as such in the project and committed to the project implementation through relevant forms. The associated beneficiary shall sign the agreement foreseen in Article 4.8 and be directly involved in the technical implementation of one or more tasks of the project.

- 5.2 The associated beneficiary, through the mandate annexed to the grant agreement, grants power of attorney to the coordinating beneficiary, to act in his name and for his account in signing the grant agreement and its possible subsequent amendments with the Commission. Accordingly, the associated beneficiary mandates the coordinating beneficiary to take full legal responsibility for the implementation of the agreement.
- 5.3 The associated beneficiary accepts all the provisions of the agreement with the Commission, in particular all provisions affecting the associated beneficiary and the coordinating beneficiary. In particular, he acknowledges that, by virtue of the mandate signed, the coordinating beneficiary alone is entitled to receive funds from the Commission and distribute the amounts corresponding to the associated beneficiary's participation in the action.
- 5.4 The associated beneficiary shall do everything in his power to help the coordinating beneficiary fulfil the coordinating beneficiary's obligations under the grant agreement. In particular, the associated beneficiary hereby shall provide to the co-ordinating beneficiary whatever documents or information (technical and financial) may be required, as soon as possible after receiving the request from the coordinating beneficiary.
- 5.5 Each associated beneficiary must contribute financially to the project and shall benefit from the financial contribution from the Commission in the conditions stipulated in the agreement foreseen in Article 4.8.
- 5.6 The associated beneficiaries shall not report directly to the Commission on the technical and financial progress unless explicitly requested to do so by the Commission.

**Article 6 - Common obligations for both the coordinating beneficiary and the associated beneficiaries**

- 6.1 The coordinating beneficiary and the associated beneficiaries shall maintain up-to-date books of account, in accordance with the normal accounting conventions imposed on them by law and existing regulations. For the sake of traceability of expenditure and income, an analytical accounting system (cost centre accounting) shall be put in place. The coordinating beneficiary and the associated beneficiaries shall retain, throughout the project and for at least five years after the final payment, all appropriate supporting documentation for all expenditure, income and revenue for the project as reported to the Commission, such as tender documents, invoices, purchase orders, proof of payments, salary slips, time sheets and any other documents used for the calculation and presentation of costs. This documentation shall be clear, precise and effective and shall be submitted to the Commission when requested. The coordinating beneficiary shall retain copies of all supporting documents of all the associated beneficiaries.
- 6.2 The coordinating beneficiary and the associated beneficiaries shall ensure that all invoices include a clear reference to the project, linking them to the analytical accounting system.
- 6.3 The coordinating beneficiary and the associated beneficiaries shall ensure that the Community support is publicised, as detailed in Article 13.
- 6.4 The coordinating beneficiary and the associated beneficiaries shall share freely the know-how necessary for implementation of the project.

- 6.5 The coordinating beneficiary shall not act, in the context of the project, as sub-contractor or supplier to the associated beneficiaries. The associated beneficiaries shall not act, in the context of the project, as sub-contractor or supplier to the coordinating beneficiary or other associated beneficiaries.

#### **Article 7 - Project co-financiers**

- 7.1 Co-financiers shall only contribute financially to the project, shall not be directly involved in the technical implementation of the project and shall not benefit from the Community funding.
- 7.2 The coordinating beneficiary and/or its associated beneficiaries shall conclude with co-financiers any agreements necessary to ensure co-funding, provided these do not infringe the obligations of the coordinating beneficiary and/or associated beneficiaries, as stated in the grant agreement.

#### **Article 8 - Subcontractors**

- 8.1 For specific tasks of a fixed duration, a project may also include subcontractors, who shall not be considered as associated beneficiaries.
- 8.2 Subcontractors shall provide external services to the coordinating beneficiary and/or associated beneficiaries, who shall pay the full price corresponding to the service provided.
- 8.3 Subcontractors shall make no financial investment in the project and, therefore, shall not benefit from any intellectual property rights arising from the project.
- 8.4 Any public coordinating beneficiary/associated beneficiary must award subcontracts in accordance with the applicable rules on public tendering, in conformity with Community Directives on public tendering procedures.

For contracts exceeding €125 000, any private coordinating beneficiary / associated beneficiary shall invite competitive tenders from potential subcontractors and award the contract to the bid offering best value for money; in doing so it shall observe the principles of transparency and equal treatment of potential subcontractors and shall take care to avoid any conflict of interest.

The rules on tendering referred to in the previous two paragraphs shall also apply in case of purchase of durable goods.

- 8.5 All invoices issued by subcontractors shall bear a clear reference to the LIFE+ project (i.e. number and title or short title) and to the order/subcontract issued by the coordinating beneficiary/associated beneficiary. All invoices shall also be sufficiently detailed as to allow identification of single items covered by the service delivered (i.e. clear description and cost of each item).

#### **Article 9 - Role of external monitoring teams**

- 9.1 To follow up the project, the Commission shall be supported by external monitoring teams. The monitoring teams shall assist by following and assessing the project's progress and its coherence with the incurred costs. They shall act strictly as an advisory body to the Commission. The monitoring teams shall be independent from the projects. The monitoring teams shall verify the project's implementation and provide assessments of the reports submitted to the Commission.

- 9.2 Monitoring teams shall not be authorised to take any decision on behalf of the Commission. A recommendation or a statement provided by the monitoring teams to the coordinating beneficiary or to the associated beneficiaries cannot be interpreted as representing a position of the Commission.
- 9.3 The external monitoring teams shall act under the same confidentiality rules as those established between the participants in the project and the Commission (as stipulated in Article 20).

#### **Article 10 - Civil liability**

- 10.1 The Commission may not, under any circumstances or for any reason whatsoever, be held liable in the event of claims deriving from the grant agreement concerning any damage or injury while the project is being carried out. No claim for compensation or repayment accompanying such a complaint shall be accepted by the Commission.
- 10.2 The coordinating beneficiary shall exonerate the Commission from any liability connected to the relationship with their associated beneficiaries or to the agreements signed in this context.
- 10.3 The coordinating beneficiary and associated beneficiaries shall assume sole liability towards third parties, including for damage of any kind sustained by them while the project is being carried out.

#### **Article 11 - Conflict of interest**

- 11.1 The coordinating beneficiary and all associated beneficiaries undertake to take all the necessary measures to prevent any risk of conflicts of interest which could affect the impartial and objective performance of the grant agreement. Such conflicts of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.
- 11.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the grant agreement must be brought to the attention of the Commission, in writing, without delay. The coordinating beneficiary and all associated beneficiaries shall, without delay, take whatever steps are necessary to rectify this situation. The Commission reserves the right to check that the measures taken are appropriate and may itself take further action if this is deemed necessary.

#### **Article 12 - Technical activity reports**

- 12.1 The coordinating beneficiary must regularly inform the Commission on the progress and on the achievements of the LIFE+ project through the submission of the following reports:
- One inception report, to be delivered within nine months of the project start;
  - One final report, to be delivered within three months of the project end;
  - For projects with a duration exceeding 24 months and a Community contribution of more than € 300 000, one mid-term report, to be delivered, together with the request for mid-term pre-financing, after the threshold defined in Article 28.3 has been reached;



- Any progress reports needed to ensure that the delay between consecutive reports does not exceed 18 months.

Exceptionally, if the threshold defined in Article 28.3 is reached within the first nine months of the project duration, the inception report and the mid-term report might be merged into one.

Information concerning the technical and/or financial management of the project can be requested by the Commission at any time.

- 12.2 The form and contents of the reports shall be in accordance with the Guidelines issued by the Commission.

All reports shall contain the necessary information for the Commission to evaluate the state of implementation of the project, the respect of the work plan, the financial situation of the project and whether the project's objectives have been achieved or are still achievable. Inception, mid-term and final reports shall also contain the information described in the relevant Articles, 12.5 to 12.7.

- 12.3 All reports, in both paper and electronic versions, shall be simultaneously forwarded to the Commission and to the external monitoring team designated by the Commission, both of them receiving one complete copy of the technical reports, including annexes, and one copy of the statement of expenditure and income.

- 12.4 The coordinating beneficiary shall submit a copy of the final report to the Member State authorities. These latter also have the right to ask for a copy of the mid-term report.

- 12.5 Inception report

In addition to the information required in Article 12.2, the inception report shall contain an assessment as to whether the project objectives and work plan are still valid. On the basis of the inception report submitted by the coordinating beneficiary, and if the project's objectives are not achievable or the work plan is not feasible, the Commission may launch an early termination procedure, in accordance with Article 19.

- 12.6 Mid-term report

In addition to the information required in Article 12.2, the mid-term report shall contain a statement of expenditure and income and sufficient information to allow for a preliminary assessment of the eligibility of costs incurred so far.

- 12.7 Final report

In addition to the information required in Article 12.2, the final report shall contain a statement of expenditure and income and all the information necessary for the Commission to evaluate the eligibility of costs incurred and the sustainability in the future of the project results.

### **Article 13 - Communication actions, publicity for Community support and audio-visual products**

- 13.1 The coordinating beneficiary and associated beneficiaries shall publicise the project and its results, always mentioning the Community support received. Details of this activity shall be given in each activity report.

- 13.2 The coordinating beneficiary and associated beneficiaries shall acknowledge the support given by the Community in all documents and media produced in the framework of the project, using the LIFE logo provided by the Commission. For audio-visual material, the credits at the beginning and/or at the end shall include an explicit and readable mention of the LIFE support (e.g. “With the contribution of the LIFE financial instrument of the European Community”).
- 13.3 The LIFE logo may not be referred to as a certified quality label or eco-label. Its use shall be restricted to dissemination activities.
- 13.4 The coordinating beneficiary shall create a project website or use an existing website for the dissemination of project activities, progress and results. The web address where the main results of the project are available to the public shall be indicated in the reports. This website shall be online at the latest six months after the start of the project, shall be regularly updated and shall be kept for at least five years after the end of the project.
- 13.5 The coordinating beneficiary and associated beneficiaries shall erect and maintain notice boards describing the project at the locations where it is implemented, at strategic places accessible and visible to the public. The LIFE logo shall appear on them at all times.
- 13.6 For LIFE+ Nature projects, the obligations in Article 13.2 and in Article 13.5 also apply for the Natura 2000 logo. The project’s importance in terms of establishing the Natura 2000 network must be described in the notice boards.
- 13.7 A summary of the project, including name and contact information of the coordinating beneficiary, will be placed on the LIFE website and made available to the general public.
- 13.8 All durable goods acquired in the framework of the project shall bear the LIFE logo unless otherwise specified by the Commission.
- 13.9 Notwithstanding the provisions of Article 20, the Commission shall be authorised to publish, in whatever form and in whatever medium, including the Internet, all the information related to the project or produced by the project that it considers relevant. The coordinating beneficiary and all associated beneficiaries shall grant the Commission the non-exclusive right to reproduce, to dub if necessary, to distribute or to use any audio-visual document produced by the project, completely or partly, without time limit, for non-commercial purposes, including during public events. Nevertheless, the Commission shall not be considered as “co-producer”. The Commission reserves the right to use the photographs submitted in the various reports referred to in Article 12 to illustrate any information material it produces. It undertakes to credit these by indicating the project reference number.

#### **Article 14 - Spatial data**

Electronic tools, which include spatial data and are produced in the frame of a LIFE+ project, shall comply with the Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)<sup>2</sup>.

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<sup>2</sup> OJ L 108, 25.4.2007, p. 1.

## **Article 15 - Amendment to the agreement**

- 15.1 The coordinating beneficiary shall inform the Commission, in the technical reports or by letter, of any changes to the project as detailed in the grant agreement. Changes that would fundamentally alter the overall objectives of the project, that would call into question the grant award decision or that would be contrary to the equal treatment of applicants will not be accepted.
- 15.2 When the changes are substantial, written additional agreement by the Commission must be issued. Substantial changes are:
- Significant changes to the nature or content of actions and/or deliverables;
  - Changes of the legal status of the coordinating beneficiary or of an associated beneficiary;
  - Changes to the project partnership structure;
  - Changes to the duration of the project;
  - Changes to the provisional project budget, increasing by more than 10 % and €30 000 the costs foreseen in one or more categories of expenditure. These thresholds shall apply to each of the three subcategories of durable goods. They shall not apply to the category of "overheads", for which the limit stipulated in Article 25.13 may not be exceeded.
- 15.3 In the cases foreseen in Article 15.2 the coordinating beneficiary shall submit a formal request for changes, in accordance with the Guidelines issued by the Commission. When a request for changes includes modifications of the project partnership and/or of the budget made available by an associated beneficiary or a co-financier, the associated beneficiary / co-financier involved shall also sign the modification request. The Commission reserves the right to accept or to refuse the request and may decide not to take into consideration any request received later than three months before the end of the project.

## **Article 16 - Delayed performance**

- 16.1 The starting date of a project is the date indicated in the special provisions of the grant agreement, irrespective of the dates of signature of the grant agreement or of the payment of the first pre-financing.
- 16.2 The coordinating beneficiary shall inform the Commission, without delay and with full details, of any event that is liable to obstruct or delay the performance of the project. The parties concerned shall agree on the measures to be taken.
- 16.3 The Commission reserves the right to terminate the grant agreement or cancel the grant, where a significant delay would occur, that would lead to a reduction in the value of the results.

## **Article 17 - Postponement of the end date**

- 17.1 A postponement of the end date of a project may be granted only in unforeseeable, exceptional circumstances, which make the implementation of one of more project actions impossible for a certain period of time.
- 17.2 A request for postponement of the end date of a project must be submitted in accordance with the Guidelines issued by the Commission and include sufficient information for the Commission to assess the justification for the delays and the

feasibility of a revised work plan. The Commission reserves the right to accept or to refuse the request and may decide not to take into consideration any request received later than three months before the end of the project.

#### **Article 18 - Reduction in performances and technical failures**

The Commission reserves the right to reduce as appropriate the Community co-financing if substantial quantitative or qualitative reductions occur in the implementation of project actions.

#### **Article 19 - Termination of the project**

19.1 The Commission may terminate the grant agreement, without any indemnity on its part:

- should the coordinating beneficiary, for no valid technical or economic reason, fail to fulfil a substantial obligation incumbent on him under the terms of the grant agreement;
- in the event of *force majeure* or if the action has been suspended as a result of exceptional circumstances;
- if it becomes clear that the project will not achieve its objectives; or
- if the coordinating beneficiary is responsible for substantial irregularities in the management of a project.

19.2 For the purpose of the termination of a project, the Commission shall apply a standard procedure or an urgent procedure.

19.3 Standard procedure

- The Commission will send a first registered letter in which it indicates that the termination procedure has been initiated, explains the reasons for this, enjoins the coordinating beneficiary to comply with the obligations set by the grant agreement and invites him to reply within thirty days of receipt of this first letter.
- After evaluation of any comments submitted by the coordinating beneficiary, the Commission will either annul or suspend the termination procedure, or send a second registered letter in which it will notify the coordinating beneficiary that the project is terminated and set the new end date of the project.

If the Commission does not receive a reply to its first letter within thirty days from the date of its receipt the project is considered to have ended on that deadline.

In all cases where the procedure ends in termination of the project, a final report is due within three months of the new end date of the project.

19.4 Urgent procedure

The Commission may terminate the grant agreement, with immediate effect, without notice and without paying compensation of any kind if:

- The coordinating beneficiary is declared bankrupt, is wound up or is the object of similar proceedings;

- The coordinating beneficiary deliberately made false or incomplete statements to obtain the Community financial contribution provided for in the agreement;
- The coordinating beneficiary has, intentionally or by negligence, committed a substantial irregularity in performing the agreement, which causes or might cause a loss to the Community budget;
- The coordinating beneficiary commits fraud, corruption or any other illegal activity, to the detriment of the Communities' financial interests; or
- The coordinating beneficiary is found guilty of an offence involving his professional conduct by a judgement having the force of *res judicata* or is guilty of grave professional misconduct proven by any justified means.

In this case, the Commission will notify the coordinating beneficiary through a registered letter that the project is terminated with immediate effect. A final report is due within three months of the new end date of the project.

- 19.5 Termination of the grant agreement for financial irregularities shall be without prejudice to the application of other administrative measures or penalties which may be imposed in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>3</sup>.

In the event of termination of the grant agreement, the Commission may demand full or partial repayment of amounts already paid. Only the information available at the end of the procedures described in Articles 19.3 and 19.4 will be considered to determine the amount of eligible expenditure.

- 19.6 The coordinating beneficiary may terminate the project at any time by giving formal written notice, provided valid economic or technical reasons exist. The coordinating beneficiary shall be under an obligation to present a final report, at the latest three months after the above mentioned formal written notice, outlining the status of the implementation of the project and the reasons for termination, together with a final statement of expenditure and income, on the basis of which the Commission will determine the amount of eligible expenditure. If no reasons are given or if the Commission does not accept the reasons, the coordinating beneficiary shall be deemed to have terminated this agreement improperly and the Commission may ask for repayment of amounts already paid.

## **Article 20 - Confidentiality**

The Commission and the coordinating beneficiary/associated beneficiaries undertake to preserve the confidentiality of any document, information or other material communicated to them in confidence, disclosure of which could harm another party. The parties shall remain bound by this obligation beyond the closing date of the project. The personal data included in the project will be placed on an electronic management tool, which is made available to the European Commission, to other EU institutions and to an external monitoring team, which are bound by a confidentiality agreement. This management tool is used exclusively to manage LIFE projects.

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<sup>3</sup> OJ L 312, 23.12.1995, p. 1.

## **Article 21 - Protection of data**

- 21.1 The coordinating beneficiary has the right to access data and information in possession of the Commission which concern its project, and to request possible corrections.
- 21.2 The Commission, the coordinating beneficiary and the associated beneficiaries will respect Regulation (EC) no 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>4</sup>.
- 21.3 Notwithstanding the provisions of Article 20, the coordinating beneficiary shall be aware of the obligations set by the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>5</sup>.

## **Article 22 - Ownership and exploitation of results**

- 22.1 The coordinating beneficiary and/or its associated beneficiaries shall be the owners of documents, possibly patentable or patented inventions and expertise obtained pursuant to the project.
- 22.2 The Commission, with a view to promoting the use of techniques or models favourable to the environment, attaches great importance to the coordinating beneficiary making these documents, patents and know-how available in the Community as soon as they are available, on non-discriminatory and reasonable commercial conditions.
- 22.3 The Commission expects the coordinating beneficiary and/or its associated beneficiaries to comply with Article 22.2 for a period of five years after termination of the project.
- 22.4 Should the coordinating beneficiary, for no legitimate reason, refuse to give access to these products or to grant licences under these conditions, the Commission reserves the right to apply the rules in Article 19 or, if the project has ended, to demand full or partial repayment of the Community contribution.

## **Article 23 - Law applicable and competent court**

The Community contribution shall be governed by the terms of the grant agreement, the Community rules applicable and, on a subsidiary basis, by the law of Belgium relating to grants.

The coordinating beneficiary may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the grant agreement and the arrangements for implementing it before the Court of First Instance of the European Communities and, in the event of an appeal, the Court of Justice of the European Communities.

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<sup>4</sup> OJ L 8, 12.1.2001, p. 1.

<sup>5</sup> OJ L 145, 31.5.2001, p. 43.

## **PART II - Financial provisions**

### **Article 24 - Community financial contribution to the project**

24.1 The amount of the Community financial contribution shall be determined by applying the percentage specified in the grant agreement to the eligible costs incurred.

24.2 Under no circumstances may the total amount paid by the Commission to the coordinating beneficiary exceed the maximum amount set for the Community contribution in the grant agreement, even if the total actual eligible costs of a project exceed the budget set in the grant agreement.

The coordinating beneficiary shall ensure that no other direct or indirect European Union funding is used to co-finance the project. If such a situation occurs during implementation of the project the coordinating beneficiary must inform the Commission without delay about the measures it intends to take to comply with its obligation. The independent auditor provided for in Article 31 shall check the sources of the project financing.

24.3 Notwithstanding the obligations set in Articles 4.6 and 5.5, the coordinating beneficiary and the associated beneficiaries accept that the Community contribution may not have the purpose or effect of producing a profit. Profit shall be defined as a surplus of receipts over the costs of the project when the request is made for final payment.

24.4 Receipts are defined as funds received from the Commission, associated beneficiaries and co-financiers and direct revenues generated, exclusively and directly, by the project (such as participation fees for conferences, sales of timber, etc).

The coordinating beneficiary must ensure that any receipts generated by and during the implementation of the project shall be counted as direct revenue to the project.

Such direct revenue shall always be declared and the Commission shall reduce its financial contribution in order to balance total income against total expenses.

24.5 Without prejudice to the right to terminate the agreement under Article 19, and without prejudice to the right of the Commission to apply the penalties referred to in Article 27, if an action is not implemented or is implemented poorly, partially or late, the Commission may proportionally reduce the Community contribution initially provided for in line with the actual implementation of the action on the terms laid down in the grant agreement.

24.6 The bank account or sub-account used by the coordinating beneficiary must make it possible to identify funds paid by the Commission. If the funds paid to this account yield interest or equivalent benefits under the law of the State on whose territory the account is opened, such interest or benefits shall, if they are generated by pre-financing payments, be recovered by the Commission as specified in Article 24.7.

24.7 The coordinating beneficiary shall inform the Commission of the amount of any interest or equivalent benefits yielded by the pre-financing amount it has received from the Commission. This notification must be made when the request for payment of the balance of the grant is made. The interest shall not be treated as

direct revenue for the project and will be recovered by the Commission by offsetting it against the payment of the balance.

In addition, where the pre-financing payment exceeds €750 000 the interest or equivalent benefits yielded at end of any calendar year will be communicated by the coordinating beneficiary to the Commission by 31 January in the subsequent year. Such interest will be recovered by way of a recovery order.

As an exception, where the pre-financing payment is lower than €50 000 interest accrued will not be due to the Commission.

Interest yielded by pre-financing paid to Member States is not due to the Commission.

- 24.8 The coordinating beneficiary and its associated beneficiaries, if any, accept that the Community financial contribution shall not constitute a claim on the Commission and may not, therefore, be assigned to any other body or transferred to a third party in any way.

## **Article 25 - Eligible costs**

- 25.1 To be considered eligible, costs must be:

- provided for in the budget of the project or have been authorised through an amendment to the grant agreement;
- directly linked to, and necessary for, carrying out the project covered by the grant agreement;
- reasonable and comply with the principles of sound financial management, in particular in terms of value for money and cost-effectiveness;
- compliant with applicable tax and social legislation; and
- actually incurred during the lifetime of the project, as defined in the grant agreement, be recorded in the coordinating beneficiary's or any associated beneficiaries' accounts or tax documents, and be identifiable and controllable.

A cost shall be considered as incurred during the lifetime of the project when:

- the legal obligation to pay was contracted after the signature of the grant agreement by the Commission;
- the implementation of the corresponding action started after the start date for the project and was completed before the end date (the only exceptions are the cost of the bank guarantee covering the period after the signature of the grant agreement and before the start of the project and for the six months after the project end date and the cost of the independent audit referred to in Article 31); and
- the cost has been fully paid before the submission of the final financial statement of expenditure and income.

- 25.2 Personnel costs shall be charged in respect of the actual time devoted to the project. They shall be calculated on the basis of the actual gross salary or wages plus obligatory social charges and any other statutory costs included in the remuneration, but excluding any other cost. The time, which each employee spends working on the project, shall be recorded on a timely basis using timesheets or an equivalent time registration system established and certified regularly by the coordinating beneficiary / associated beneficiary.



Service contracts with individuals may be charged to this category on condition that the individual concerned works in the coordinating beneficiary's/associated beneficiary's premises and under its supervision and provided that such practice complies with the relevant national legislation. The time which each individual spends working on the project, shall be recorded on a timely basis using timesheets or an equivalent time registration system established and certified regularly by the coordinating beneficiary / associated beneficiary. The eligible cost shall equal the actual payment made to the individual concerned in relation to the project.

Civil servants' salary costs may be funded only to the extent that they relate to the cost of project implementation activities that the relevant public body would not have carried out had the project concerned not been undertaken. The staff in question must be specifically seconded to a project and they must represent an additional cost with respect to existing permanent staff. Moreover, the sum of the public bodies' contributions (as coordinating beneficiary and/or associated beneficiary) to the project must exceed (by at least 2 %) the sum of the salary costs of the civil servants charged to the project.

25.3 Travel and subsistence costs shall be charged in accordance with the internal rules of the coordinating beneficiary or associated beneficiary.

25.4 External assistance costs relate to sub-contracting costs (work undertaken by external companies, renting of equipment or infrastructure, etc.).

Costs related to the purchase or leasing (as opposed to renting) of durable equipment, infrastructure or consumables supplied under subcontract shall not be charged to the budget item for external assistance. These costs shall be declared separately under the appropriate budget headings.

The costs of auditing by an independent auditor are charged to this category.

25.5 Depreciation charges relating to durable goods shall be considered only when the durable goods are:

- placed on the coordinating beneficiary's or associated beneficiary's inventory of durable goods,
- treated as capital expenditure in accordance with the tax and accounting rules applicable to the coordinating beneficiary or associated beneficiaries in the project,
- purchased or leased at normal market rates.

25.6 Notwithstanding the specific provisions in Article 25.7 and in Article 25.9, the coordinating beneficiary/associated beneficiary shall apply its internal accounting standard/rules to calculate the eligible depreciation charge, taking into account the type of infrastructure/equipment, the date of its purchase/manufacture/lease, the duration of the project and the rate of actual use for the purposes of the project. The independent auditor as required by Article 31 shall confirm that the actual depreciation charges which are recorded in coordinating beneficiary's / associated beneficiary's accounting systems are reported as project expenses.

However these eligible depreciation charges will be limited to the following ceilings:

- Infrastructure costs: 25% of the total purchase cost;
- Equipment costs: 50% of the total purchase cost.

- 25.7 As an exception to Article 25.6, for projects funded under LIFE+ Environment Policy and Governance and LIFE+ Biodiversity, no ceiling applies to prototypes, for which 100% of the purchase costs are eligible for co-funding.

A prototype is infrastructure and/or equipment specifically created for the implementation of the project and that has never been commercialised and/or is not available as a serial product. The prototype must play a crucial role in the demonstration activities of the project. Only components purchased and used within the life of the project may be declared.

A prototype may not be used for commercial purposes during the life of the project and for five years after the project ends. Should the prototype or any of its components be used for commercial purposes (i.e. sold, leased, rented or used to produce goods or services) during, or within five years from the end of the project, this shall be declared. The costs of creating the prototype shall then be depreciated in accordance with Articles 25.5 and 25.6.

- 25.8 The depreciation charges relating to durable goods acquired before the starting date of the project shall be considered ineligible. Such costs are considered to be included in the "overheads" cost category.

- 25.9 For LIFE+ Nature projects, the costs incurred for durable goods by public authorities or non-governmental / private non-commercial organisations, intrinsically connected with implementation of the project and used to a significant degree within its duration shall be considered eligible in full. Such eligibility shall be subject to the coordinating beneficiary and associated beneficiaries undertaking to continue to assign these goods definitively to nature conservation activities beyond the end of the project co-financed under LIFE+ Nature.

- 25.10 For LIFE+ Nature projects, the costs related to land / rights purchases and leases shall be eligible and shall be accounted for separately from durable goods. The provisions in Article 35 shall apply.

- 25.11 Expenditure on consumable material shall relate to the purchase, manufacture, repair or use of any material, goods or equipment which is:

- not included on the inventory of durable goods of the coordinating beneficiary or associated beneficiaries in the project;
- not treated as capital expenditure in accordance with the tax and accounting rules applicable to the coordinating beneficiary or associated beneficiaries in the project;
- specifically related to implementation of the project (however general office consumables/supplies are considered to be included in the "overheads" cost category).

- 25.12 Other costs mean any costs necessary for the project, not falling within a defined category. Expenses listed must be verifiable and not above the actual costs. The costs incurred in effecting the bank guarantee, when required by the Commission, are charged to this category.

- 25.13 Overheads shall be eligible for flat-rate funding of a maximum of 7% of the total amount of eligible direct costs actually incurred, excluding land purchase/lease costs. They need not be supported by accounting documents. They shall be eligible as indirect costs which are intended to cover general indirect costs needed

to employ, manage, accommodate and support directly or indirectly the personnel working on the project.

## **Article 26 - Ineligible costs**

The following costs shall not be regarded as eligible and therefore are not included by the Commission in the calculation of the total eligible cost:

- any cost incurred for an action which benefits from aid under other Community financial instruments;
- costs incurred in relation to activities not foreseen in the project or to modifications of actions, for which the written additional agreement foreseen in Article 15 was not issued;
- costs incurred for the purchase of durable goods or for the production of communication material, including notice boards and websites, not bearing the LIFE logo (and the Natura 2000 logo, when applicable);
- costs for which a coordinating beneficiary and / or associated beneficiary already receives an operating grant from the Commission during the period in question;
- any costs related to any action that can be considered as a compensatory measure which are the responsibility of a Member State and which are decided in relation to the Birds' and Habitats' Directives;
- costs relating to management plans, action plans and similar plans, drafted or modified in the context of a LIFE+ project, if the related plan is not legally operational before the project end date. This includes the completion, before the project end date, of all procedural/legal steps in Member States where such procedures are foreseen;
- costs in any category of expenditure over and above that foreseen in the budget plus 10% and €30 000 (as referred to in Article 15.2);
- invoicing between associated beneficiaries and between associated beneficiaries and the coordinating beneficiary;
- costs which result from transactions between departments of associated beneficiaries or of the coordinating beneficiary except where it can be proven that such transactions represent the best value for money and exclude all elements of profit, VAT and overheads;
- exchange rate losses;
- unnecessary or wasteful outlays;
- distribution, marketing and advertising expenses to promote products or commercial activities, except where specifically indicated in the project;
- any provisions for possible future losses or liabilities;
- interest charges;
- doubtful debts;
- financial expenses or costs related to finding / obtaining alternative sources of co-financing;

- entertainment expenses, except such expenses accepted as being wholly and exclusively necessary for carrying out the work under the project;
- any costs relating to other projects financed by third parties;
- assets and services donated, including voluntary work;
- travel and accommodation expenses and any form of remuneration in the name of agents of the Community institutions and of the external monitoring teams;
- investments in major infrastructure;
- fundamental scientific research;
- licence or patent fees or other fees related to the protection of intellectual property rights;
- costs for EMAS and ECOLABEL registration procedures;
- land purchase, if not complying with the conditions set in Article 35.

This list is not exhaustive.

### **Article 27 - Financial penalties**

By virtue of the Financial Regulation applicable to the general budget of the European Communities<sup>6</sup>, any coordinating beneficiary declared to be in grave breach of its obligations shall be liable to financial penalties of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality. The coordinating beneficiary shall be notified in writing through a registered letter of any decision by the Commission to apply such financial penalties.

### **Article 28 - Methods of payment**

28.1 The financial contribution from the Community shall be paid in two or three instalments.

28.2 A first pre-financing payment, equivalent to 40% of the maximum Community financial contribution. This payment is increased to 50% for projects with an implementation period of less than 24 months or a Community contribution of less than €300 000. Either contribution will be paid within 45 days of the receipt of:

- the grant agreement signed by both parties;
- a signed payment request stating the name and address of the coordinating beneficiary, the name and address of the bank, the bank account details, the project reference;
- depending on the coordinating beneficiary's financial viability as evaluated during the selection phase, a guarantee issued by a bank or an insurance company may be requested by the Commission during the revision phase. This guarantee will equal the amount of the first pre-financing and will cover the duration of the project plus six months. Its validity will be extended in the event of an extension of the project. In exceptional cases this guarantee could

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<sup>6</sup> OJ L 248, 16.9.2002, p. 1 and OJ L 390, 30.12.2006, p. 1.

be replaced by joint and several guarantees by a third party. The guarantee is to be in the format set out in Annex II.

- 28.3 A mid-term pre-financing payment, equivalent to 30% of the maximum Community financial contribution, will be paid for projects with an implementation period of more than 24 months and a Community contribution of more than €300 000. This payment will be made on condition that at least 150% of the first pre-financing payment has been consumed (as a percentage of costs incurred) and that the payment has been requested at least nine months before the project's end date. The payment shall be made after the approval, by the Commission, of the inception report, the mid-term technical report and the statement of expenditure and income provided for in Article 12.

In exceptional cases when a first pre-financing has not been paid, the coordinating beneficiary may request a mid-term pre-financing payment on the condition that an amount equivalent to at least 60 % of the maximum contribution foreseen in the Special Conditions has been spent. The amount of this payment will then be determined by applying the percentage specified in the grant agreement to the eligible costs incurred at the date of the mid-term technical report and the statement of expenditure and income.

To approve the mid-term technical report and the mid-term statement of expenditure and make the payment, the Commission shall have 105 days commencing on the date of the receipt of:

- a signed request for payment stating the name and address of the coordinating beneficiary, the name and address of the bank, the bank account details, the amount requested, the project reference number and any reference specified by the coordinating beneficiary to identify payment;
- the official registration number, organisation, name and address of the auditor when required by Article 31;
- the corresponding statement of expenditure and income and the mid-term report (Article 12).

If no comments are received from the Commission by this deadline, the mid-term technical report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall in no way imply the recognition of the regularity or of the authenticity, completeness and correctness of the declarations and of the information they contain.

- 28.4 The balance (final payment) shall be made after the approval, by the Commission, of both the final technical report and the statement of expenditure and income provided for in Article 12.

To approve the final technical report and the final statement of expenditure and make the payment, the Commission shall have 105 days commencing on the date of receipt of:

- a signed payment request stating the name and address of the coordinating beneficiary, the name and address of the bank, the bank account details, the amount requested, the project reference number and any reference specified by the coordinating beneficiary to identify payment;
- the corresponding statement of expenditure and income covering the entire project period and the final report (Article 12);

- an audit report if required by Article 31.

If no comments are received from the Commission by this deadline, the final report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall in no way imply the recognition of the regularity or of the authenticity, completeness and correctness of the declarations and of the information they contain.

- 28.5 The Commission may suspend or reject the payment request within the 105-day period, counting from the date of receipt of the request for payment and the other documents required under Articles 28.2, 28.3 or 28.4. The Commission must give the coordinating beneficiary written notification of suspension.
- 28.6 If the abovementioned payment periods have been suspended, the time remaining shall begin to run again from the date when the additional information required is received.
- 28.7 In case of rejection of either the financial or technical part of the reports, the 105-day period shall begin to run again from the date of receipt of the new reports.
- 28.8 Commission payments shall be made in Euro (€).
- 28.9 All payments shall be made in the name of the coordinating beneficiary to the bank account indicated in Annex VII. Any change of account must be immediately communicated to the Commission.
- 28.10 The payment shall be considered made on the day it is debited from the Commission's bank account.
- 28.11 Without prejudice to possible suspension of the payment period the coordinating beneficiary may be entitled to late payment interest in accordance with Article 106 of the Implementing Rules to the Financial Regulation<sup>7</sup>.
- 28.12 If any amount is unduly paid to the coordinating beneficiary or if recovery is justified under the terms of the agreement, the coordinating beneficiary undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.
- 28.13 In the event of termination of the grant agreement in the cases specified in Article 19 the Commission may request full or partial repayment of sums paid to the coordinating beneficiary. The Commission shall determine the manner and the time limits for such full or partial repayment and will apply a criterion of proportionality.
- 28.14 Should the coordinating beneficiary fail to repay such amounts within the time limit set by the Commission, the Commission may increase the sums due by adding interest at the rate applied by the European Central Bank to its main refinancing operations plus three and a half percentage points. The reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union.
- 28.15 Bank charges occasioned by the repayment of sums due to the Commission shall be borne entirely by the coordinating beneficiary.

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<sup>7</sup> OJ L 111, 28.4.2007, p. 13.

- 28.16 The debit note drawn up by the Commission and transmitted to the coordinating beneficiary owing a repayment to the Commission shall be enforceable within the meaning of Article 256 of the EC Treaty.
- 28.17 If payment has not been made by the due date, sums owed to the Commission may be recovered by offsetting them against any sums owed to the coordinating beneficiary, after informing him accordingly by registered letter with advice of delivery or equivalent, or by calling in the financial guarantee provided in accordance with Article 28.2. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the Commission may recover by offsetting before the due date of the payment. The coordinating beneficiary's prior consent shall not be required.

#### **Article 29 - Statement of expenditure and income**

- 29.1 Statements of expenditure and income shall be submitted on the occasion of mid-term and final reports. They shall cover the same time period as the corresponding technical report.
- 29.2 Statements of expenditure and income shall be presented in accordance with the Guidelines provided by the Commission. One copy shall be transmitted to the Commission and one to the external monitoring team designated by the Commission.
- 29.3 The coordinating beneficiary shall certify that information contained in requests for payment is full, reliable and true, that the financial documents submitted to the Commission comply with the common provisions, that the costs declared are the actual costs and that all receipts have been declared.
- 29.4 Documents justifying expenditure (e.g. invoices) do not have to be annexed to the statement of expenditure and income. The coordinating beneficiary shall, however, if requested, provide the Commission with all details, including invoices, which it might need for evaluation of the expenditure and of the corresponding activity report.
- 29.5 Only the Euro (€) shall be used in the statement of expenditure and income. The coordinating beneficiary or an associated beneficiary having their accounts in other currencies shall convert amounts into Euro using the exchange rate applied by the European Central Bank on the first working day of the year in which the expenditure is paid.

#### **Article 30 - Value added tax**

- 30.1 When the coordinating beneficiary or any of its associated beneficiaries is not in a position to recover the VAT paid under the project, this amount shall be considered eligible expenditure.
- 30.2 For VAT charges to be considered eligible the coordinating beneficiary must prove with legal documents that it and/or its associated beneficiaries must pay and may not recover the VAT for the assets and services required for the project.

#### **Article 31 - Independent financial audit**

- 31.1 An independent auditor, nominated by the coordinating beneficiary, shall verify the final statement of expenditure and income provided to the Commission when

the maximum Community contribution set in the Special Provisions exceeds €300 000.

- 31.2 The auditor shall verify compliance with national legislation and accounting rules and certify that all costs incurred comply with this grant agreement. The auditor shall also check the sources of the project financing, and in particular that co-financing does not stem from other Community financial instruments. The work to be performed must be in accordance with, and in the format of, the Guidelines provided by the Commission.

### **Article 32 - Commission financial audit**

- 32.1 The Commission, or any representative authorised by the Commission, may audit a coordinating beneficiary or associated beneficiary at any time during the project implementation period and up to five years after the final payment of the Community contribution, as referred to in Article 28.4.
- 32.2 The audit shall be carried out on a confidential basis.
- 32.3 The Commission or any authorised representative shall have access to the documentation required to ascertain the eligibility of the costs of the participants in the project, such as invoices, payroll extracts, purchase orders, proof of payment, time sheets and any other documents used for the calculation and presentation of costs.
- 32.4 The Commission shall take appropriate steps to ensure that its authorised representatives treat confidentially the data to which they have access or which are provided to them.
- 32.5 The Commission may verify the use made of the Community's financial contribution by the coordinating beneficiary and associated beneficiaries.
- 32.6 Information on the findings of the audit shall be sent to the coordinating beneficiary. The coordinating beneficiary may communicate its observations to the Commission within one month of receiving it. The Commission may decide not to take into account any observations conveyed after the deadline.
- 32.7 On the basis of the conclusions of the audit, the Commission shall take all appropriate measures it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it.
- 32.8 The Court of Auditors may verify the use made of the Community's financial contribution in the framework of this grant agreement, on the basis of its own procedures.
- 32.9 By virtue of Council Regulation (Euratom, EC) No 2185/96<sup>8</sup> and Regulation (EC) No 1073/1999 of the European Parliament and of the Council<sup>9</sup>, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Community law for the protection of the financial interests of the European Communities against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Commission.

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<sup>8</sup> OJ L 292, 15.11.1996, p. 2.

<sup>9</sup> OJ L 136, 31.5.1999, p. 1.



### **Article 33 - Checks and inspections**

- 33.1 The coordinating beneficiary and the associated beneficiaries undertake to allow Commission staff and persons authorised by the Commission appropriate access to their sites or premises where the project is being carried out and to all documents relating to the technical and financial management of the operation. Access by persons authorised by the Commission may be subject to confidentiality arrangements to be agreed between the Commission and the coordinating beneficiary.
- 33.2 Such checks may be initiated up to five years after the final payment as referred to in Article 28.4.
- 33.3 Such checks shall be carried out on a confidential basis.
- 33.4 Coordinating beneficiaries and associated beneficiaries shall provide appropriate assistance to the Commission or its authorised representatives.

### **Article 34 - State aid**

Any aid granted by the State or through State resources to the project covered by this agreement must comply with the rules laid down in Articles 87 and 88 of the EC Treaty.

### **Article 35 - Land/rights purchase, land lease**

- 35.1 Costs incurred for land/rights purchases, intrinsically connected with implementation of a LIFE+ Nature project and explicitly envisaged therein, shall be considered eligible in full provided that:
- purchase prices are based on market terms;
  - coordinating beneficiary and associated beneficiaries undertake to continue to assign the purchased assets definitively to nature conservation activities beyond the end of the project co-financed under LIFE+ Nature;
  - for land purchased as provided for in the project, the coordinating beneficiary shall ensure the entry in the land register includes a guarantee that the land will be assigned definitively to nature conservation. If in a given Member State the land register does not exist or it does not provide a sufficient legal guarantee, the coordinating beneficiary shall have a clause for the definitive assignment of the land to nature conservation included in the land sale contract. For countries where it would be illegal to include such a guarantee both in the land register and in the sale contract, the Commission may accept an equivalent guarantee, provided it offers the same legal level of protection in the long term and complies with the requirement contained in Annex I of the LIFE+ Regulation;
  - for land purchased by private organisations, the sales contract and/or its registration in the land register includes a guarantee that the land property will be transferred to a legal body primarily active in the field of nature protection, in case of dissolution of the private organisation or its incapacity to manage the land according to nature conservation requirements. For countries where it would be illegal to include such a guarantee in the land register or sales contract, the Commission may accept an equivalent guarantee provided it offers the same legal level of protection in the long term and complies with the requirement contained in Annex I of the LIFE+ Regulation;

- in case of land purchased to be exchanged at a later date, the exchange is carried out before the end of the project at the latest and the provisions of the present article shall apply to the lands received through the exchange. The land purchased to be exchanged shall be exempt, at the stage of the mid-term reporting, from the guarantee that the land will be assigned definitively to nature conservation.

35.2 The duration of a land lease shall either be restricted to the project duration or be at least of 20 years and shall be compatible with the needs of habitat and species protection. In the case of long-term lease of land, the lease contract shall clearly include all the provisions and commitments which will permit the achievement of its objectives in terms of habitat and species protection.