

Contract

ref. [order number]/[cost centre]/[year]

[subject matter title]

BETWEEN

European Forest Institute, Yliopistokatu 6 B, 80100 Joensuu, Finland (“EFI”),

with contact details: [email]

on the one hand

AND

[Name in full], [Address in full] (“Contractor”)

with contact details: [email]

on the other hand

[for a consortium, all consortium members will be added, together with the statement that “The consortium members identified above are hereinafter collectively referred to as the ‘Contractor’ shall be jointly and severally liable towards EFI for the performance of this Contract”]

Contractor and EFI are together hereafter referred to as “Parties”, and individually as “Party”

SPECIAL CONDITIONS

Article 1 Subject

- 1.1. This Contract has been awarded following procurement process EFI Procurement reference number 4-15.2.2020-CLEARING HOUSE. The Tender specifications and the Invitation to tender are annexed as Annex 2. Contractor’s tender is annexed as Annex 3.
- 1.2. Contractor undertakes to perform the tasks/services and submit output/deliverables as specified in the Tender specifications (Annex 2). Unless otherwise stated in the Tender specifications (Annex 2) all deliverables will be in English.
- 1.3. Implementation period for this contract is:

| | |
|-------------------------------|---------------------------------------|
| Start date for implementation | End date for implementation |
| Entry into force of contract | Acceptance by EFI of all deliverables |

Article 2 Price

2.1. The maximum total amount to be paid by EFI under this Contract (“Contract price”) is:

| EUR (in numbers) | EUR (in letters) |
|------------------|------------------|
| [sum in numbers] | [sum in letters] |

2.2. The Contract price will cover the fee for performance of all tasks/services and all costs for travel needed to perform the tasks/services. Contractor will make all travel arrangements needed.

2.3. Contractor recognizes that EFI is exempt from value-added tax (VAT) in the European Union (other than for purchases from Finland) and may also otherwise be exempt from VAT. Contractor shall as applicable present all invoices excluding VAT.

2.4. EFI will execute payments of the Contract price in the following instalments:

| Instalment | Conditions for payment |
|-----------------------|--|
| 20% of Contract price | Upon entry into force of the contract |
| The remainder | Upon acceptance by EFI of all deliverables |

2.5. To allow for payment by EFI of an instalment, Contractor will submit an invoice stated in euro. Contractor will seek instructions from EFI on how to submit the invoice.

Article 3 Other conditions

3.1. The tasks under this contract are funded under Grant Agreement 821242 — CLEARING HOUSE – H2020-SC5-2018-2019-2020/H2020-SC5-2018-2 with the Executive Agency for Small and Medium-sized Enterprises (EASME) ('the Agency'), under powers delegated by the European Commission ('the Commission'). Contractor will ensure that the Agency, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 17, 22 and 23 of Grant Agreement 821242 also towards Contractor.

Article 4 Final provisions

4.1. This Contract consists of these Special conditions and its annexes. The following documents are annexed to these Special conditions and form an integral part of this Contract:

- Annex 1: General conditions
- Annex 2: Tender specifications and Invitation to tender
- Annex 3: Contractor’s tender

- Annex 4: Grant Agreement 821242 — CLEARING HOUSE – H2020-SC5-2018-2019-2020/H2020-SC5-2018-2, articles 17, 22, 23
- 4.2. In event of a conflict between the Special conditions and the annexes, or between the annexes, the following order of precedence will apply:
1. Special conditions
 2. Annex 4: Grant Agreement 821242 — CLEARING HOUSE – H2020-SC5-2018-2019-2020/H2020-SC5-2018-2, articles 17, 22, 23
 3. Annex 1: General conditions
 4. Annex 2: Tender specifications and Invitation to tender
 5. Annex 3: Contractor’s tender
- 4.3. Any modification to this Contract has to be in writing and be duly signed by the Parties to be valid.
- 4.4. This Contract shall enter into force on the date when the last of the Parties sign.

This Contract is made in two originals, one for each Party.

On behalf of EFI

Name: [name]
Position: [position]

Signature: _____

Date: _____

On behalf of Contractor

Name: [name]
Position: [position]

Signature: _____

Date: _____

Annex 1: General conditions

Article 1 Performance of tasks

- 1.1. The Contract shall be performed under the highest professional standards. Where one or more Experts have been identified in the Special conditions, the tasks/services will be exclusively performed by that or those Experts. Contractor will ensure that any person working under this Contract has the professional qualifications and experience necessary to carry out assigned tasks.
- 1.2. Neither Contractor nor any person performing tasks under the Contract shall represent EFI or behave in a way that would give such an impression.
- 1.3. Nothing in this Contract is intended to make, nor shall it make, EFI the employer of Contractor or of any person performing tasks under the Contract.
- 1.4. No change of Contractor's staff identified as an Expert performing tasks under this Contract can be made without the prior written consent of EFI. Should it become necessary to replace any person identified as an Expert performing tasks under this Contract, Contractor will ensure that the Expert is replaced with a person of equal or better qualifications and experience.
- 1.5. All communication between the Parties relating to administration of the Contract will be in English.
- 1.6. Contractor will make all travel arrangements needed for performance of the tasks.

Article 2 General payment terms

- 2.1. Payment shall be made by EFI within 30 calendar days from EFI approving the output, when such approval is a precondition for payment, and otherwise within 30 calendar days from EFI receiving the invoice.
- 2.2. The obligation for EFI to make payments under the Contract shall end eighteen (18) months after the end of the implementation period, unless the Contract is terminated before that in accordance with these General conditions.
- 2.3. The Parties shall bear their own costs for any service fees charged by banks or other financial institutions when payments under this Contract are sent or received. Contractor shall however bear all costs charged to EFI by banks and other financial institutions when EFI is unable to transmit payments to Contractor due to incomplete or incorrect banking details given by Contractor or for other reasons independent of EFI. EFI may deduct such costs from payments due to Contractor under this Contract.
- 2.4. Contractor undertakes to refund to EFI any amounts paid by EFI to Contractor for tasks to be performed and outputs to be delivered which at the date of termination of this Contract have not been performed or delivered ("amounts paid in advance"). Contractor undertakes to refund to EFI amounts paid in advance, within seven (7) days

of termination of this Contract. EFI may recover the balance of any amounts paid in advance not refunded as a debt due and payable by Contractor to EFI.

- 2.5. Contractor commits to respect applicable legislation with regard to any payment received from EFI, in particular regarding taxation, social security matters and working rights. EFI may inform any tax authority or other authority about any payment made under this Contract.
- 2.6. The Contractor shall keep full accurate and systematic records and accounts in respect of the services.
- 2.7. Contractor will until ten years after the end of the period for implementation keep records and other supporting documentation in order to prove the proper implementation of the tasks/services as well as the amounts claimed under the Contract.

EFI can – due to on-going checks, reviews, audits, investigations, litigation or other pursuits of claims – by written notification to Contractor extend the time records and other supporting documentation has to be kept by Contractor.

EFI has the right to audit or to appoint any third party to audit the Contractor's records (including making copies thereof) relating to amounts claimed under this Contract during its term and any extension, and thereafter until ten years after the end of the period for implementation.

The Contractor will especially grant all persons authorised by EFI or the appointed third party access to sites and premises and to all information needed to conduct the audit.

Article 3 Results and Intellectual Property Rights to Results

- 3.1. *Result* will mean any tangible or intangible output, whatever its form and whether or not it can be protected, that is generated under the contract.
- 3.2. Ownership to all *result*, and ownership to all intellectual property rights attached to it (other than rights addressed below in article 3.5.), will be vested in EFI.
- 3.3. Contractor represents and warrants that all *result* under this Contract is unique and original, is clear of any claims, and does not infringe upon the rights of any third parties.
- 3.4. Contractor furthermore represents and warrants that EFI's use of the *result* is not in any way restricted or subject to payments other than the Contract price.
- 3.5. Contractor licenses all intellectual property rights to material, documents, technology or know-how (other than commercial off-the-shelf products), needed to use *result*, to EFI on an unlimited, sub-licensable, royalty-free, worldwide, non-exclusive basis, for the duration of intellectual property rights protection. Contractor represents and warrants that this does not infringe upon the rights of any third parties.

- 3.6. Contractor agrees to cooperate with EFI, at EFI's expense, in obtaining statutory protection for *result*.

Article 4 Conflict of interest

- 4.1. Contractor shall when performing the tasks act in the best interests of EFI, always safeguarding EFI's good reputation and reliability.
- 4.2. Contractor undertakes to take all necessary action to prevent, avoid and resolve any conflict of interest.
- 4.3. There is a conflict of interest where the impartial and objective exercise of the functions of Contractor is compromised for reasons of shared interest with a third party.
- 4.4. EFI shall without delay be informed of any situation constituting or being likely to lead to a conflict of interest.
- 4.5. EFI reserves the right to verify that the action taken by Contractor to prevent, avoid and resolve conflict of interest is adequate and may require additional action to be taken, within a time limit that it shall set.

Article 5 Code of conduct

- 5.1. The Contractor and its staff shall at all-time act impartially as well as with appropriate discretion, and shall refrain from making any public statements concerning the project or the services without the prior approval of EFI.
- 5.2. The Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the country where the services are rendered.
- 5.3. The Contractor shall respect environmental legislation applicable in the country where the services have to be rendered as well as internationally agreed core labour standards.
- 5.4. The Contractor or any of its staff shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The Contractor shall comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption.
- 5.5. The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.

- 5.6. Contractor confirms that it has not engaged in, nor will engage in, any corrupt, fraudulent, collusive, coercive, unethical or obstructive practices in entering into or implementing this Contract.
- 5.7. Contractor shall respect all applicable national legislation related to Contractor's activities.
- 5.8. Contractor will especially ensure that its obligations under this article also applies to any subcontractor.

Article 6 Visibility

- 6.1. Contractor shall follow any instructions given by EFI relating to visibility for the tasks and output under this Contract, including the use of specific disclaimers.
- 6.2. EFI will as needed provide the Contractor with logos, texts and emblems to be used for visibility. The Contractor may not use any other logos, texts and emblems without EFI's written approval.
- 6.3. Contractor may not use the name *European Forest Institute*, the abbreviation *EFI*, or the emblem of EFI (*the oak leaf with pine needles*) without EFI's written approval.

Article 7 Confidentiality

- 7.1. All information in whatever form or mode of transmission, which has been disclosed by EFI to Contractor in connection with the performance of this Contract and which has been explicitly indicated as confidential, or when disclosed orally, has been identified as confidential at the time of disclosure is "Confidential Information". All results under the Contract, in whatever form, are also "Confidential Information".
- 7.2. Contractor hereby undertakes to use Confidential Information only for the purpose of performance of tasks under this Contract. Contractor furthermore undertakes not to disclose Confidential Information to any third party without the prior written consent by EFI.
- 7.3. The above stated obligations shall not apply for disclosure or use of Confidential Information, if and in so far as the Contractor can show that:
 - EFI subsequently has released the Contractor its confidentiality obligations according to this article;
 - the Confidential Information has become publicly available by means other than a breach of the Contractor's confidentiality obligations;
 - the disclosure of Confidential Information is required in order to comply with applicable laws or regulations.

- 7.4. All Confidential Information must be stored and handled by Contractor so that no unauthorized person has access to it and must be returned to EFI upon completion of the tasks under this Contract or the termination of this Contract.
- 7.5. The Contractor shall be bound by the above stated confidentiality also after completion of the tasks under this Contract or termination of this Contract for a period of five (5) years from the time of such completion or termination.

Article 8 Liability

- 8.1. Contractor shall have sole responsibility for complying with any legal obligation incumbent on it.
- 8.2. EFI will not accept any responsibility or liability for any claims, debts, demands, damage or loss sustained by Contractor in performance of this Contract except in the event of wilful misconduct or gross negligence on the part of EFI.
- 8.3. Contractor undertakes to hold EFI harmless of all claims that any third party may present against EFI, including EFI's reasonable legal costs to defend against such claims, to the extent the presented claim relates to fault or negligence that is duly at the responsibility of Contractor.

Article 9 Subcontracting and Assignment of rights and obligations

- 9.1. Other than as provided for in the Tender specifications (Annex 2), Contractor shall not without EFI's prior written consent subcontract any tasks under this Contract nor cause this Contract to be performed in fact by third parties.
- 9.2. Where EFI has approved subcontracting of tasks under this Contract, Contractor shall still be bound by the obligations of under this Contract. EFI will treat all contractual matters exclusively with Contractor, whether or not individual tasks are performed by a subcontractor. Contractor can under no circumstances avoid liability towards EFI on the grounds that the subcontractor is at fault.
- 9.3. Contractor shall ensure that the subcontracting of tasks under this Contract does not affect the rights and guarantees to which EFI is entitled by virtue of this Contract, and that the conditions applicable to it under this Contract also are applicable to any third party performing tasks under the Contract.
- 9.4. Contractor may not without the prior written consent of EFI assign or transfer any rights or obligations under this Contract. This shall also apply where Contractor's legal identity has changed as a result of a takeover, merger or for any other reason. Any unauthorized assignment of rights or obligations shall have no effect on EFI.

Article 10 Liquidated damages

- 10.1. If Contractor does not deliver output on time EFI is entitled to liquidated damages from the date on which delivery should have taken place.
- 10.2. The liquidated damages shall be payable in the amount of 0.5 % (zero point five percent) of the Contract price for each calendar day of delay.
- 10.3. The liquidated damages become due at EFI's written demand.
- 10.4. EFI may deduct liquidated damages that are due from any payment due to Contractor under this Contract.

Article 11 Termination and suspension

- 11.1. EFI may by written notice, with immediate effect, terminate the Contract if EFI determines that circumstances make it impossible or excessively difficult to continue implementation of the Contract.
- 11.2. If EFI determines that circumstances only temporarily make it impossible or excessively difficult to continue implementation of the Contract EFI may by written notice, with immediate effect, suspend performance under the Contract. Any such suspension shall be in force until EFI notifies otherwise and is without prejudice to EFI's rights according to the preceding article. The Contractor shall resume performance under the Contract when thus notified in writing by EFI. The Parties shall, before the Contractor resumes performance, negotiate on ways to implement the Contract, taking the impact of the suspension into consideration.
- 11.3. EFI may by written notice with immediate effect terminate this Contract where:
 - Contractor or any subcontractor is declared bankrupt, is having its affairs or person administered by the courts, has entered into arrangements with creditors or has suspended its business activities, or is the subject of proceedings concerning such matters;
 - Contractor is in breach of its obligations regarding Confidentiality or regarding Subcontracting and Assignment of Rights and Obligations;
 - Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after having been given the opportunity to remedy the failure, remains in breach of its contractual obligations;
 - any information given by the Contractor in its tender (Annex 3) proves to be false or any illegal or corrupt practices have been connected with negotiating, signing or executing this Contract, in which case EFI can also recover any funds paid to the Contractor; or
 - Contractor is in breach of its obligations regarding Code of conduct, in which case EFI can also recover any sums paid to the Contractor under the Contract.

- 11.4. No damages will be paid to the Contractor in case the Contract is terminated or suspended.
- 11.5. Termination shall not affect any accrued rights or liabilities of a Party at the time of termination.

Article 12 Applicable law and dispute settlement

- 12.1. This Contract shall be governed by Finnish law, excluding its rules on conflict of laws.
- 12.2. The Parties shall seek to settle amicably any differences of opinion and disputes arising from or related to the implementation of this Contract. Should this fail, any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or validity thereof shall be finally settled in accordance with the Arbitration Rules of the Finland Chamber of Commerce. Article 36 on Interim measures of protection shall not apply. The language of the proceedings shall be English. The place of arbitration shall be Helsinki, Finland.

Article 13 Privileges and immunities

- 13.1. Nothing in this Contract or in any document or arrangement relating thereto shall be construed as conferring any privileges or immunities of, or relating to, EFI on Contractor or any person performing tasks under the Contract.
- 13.2. Nothing in the Contract may be interpreted as a waiver of any privileges or immunities accorded to EFI by its constituent documents or international law.

Annex 2: Tender Specifications and Invitation to tender

[to be inserted]

Annex 3: Contractor's tender

[to be inserted]

Annex 4: Grant Agreement 821242 — CLEARING HOUSE – H2020-SC5-2018-2019-2020/H2020-SC5-2018-2, articles 17, 22, 23

ARTICLE 17 — GENERAL OBLIGATION TO INFORM

17.1 General obligation to provide information upon request

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The beneficiaries must provide — during implementation of the action or afterwards and in accordance with Article 41.2 — any information requested in order to verify eligibility of the costs, proper implementation of the action and compliance with any other obligation under the Agreement.

17.2 Obligation to keep information up to date and to inform about events and circumstances likely to affect the Agreement

Each beneficiary must keep information stored in the Participant Portal Beneficiary Register (via the electronic exchange system; see Article 52) up to date, in particular, its name, address, legal representatives, legal form and organisation type.

Each beneficiary must immediately inform the coordinator — which must immediately inform the Agency and the other beneficiaries — of any of the following:

- (a) **events** which are likely to affect significantly or delay the implementation of the action or the EU's financial interests, in particular:
 - (i) changes in its legal, financial, technical, organisational or ownership situation
- (b) **circumstances** affecting:
 - (i) the decision to award the grant or
 - (ii) compliance with requirements under the Agreement.

17.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS

22.1 Checks, reviews and audits by the Agency and the Commission

22.1.1 Right to carry out checks

The Agency or the Commission will — during the implementation of the action or afterwards — check the proper implementation of the action and compliance with the obligations under the Agreement, including assessing deliverables and reports.

For this purpose the Agency or the Commission may be assisted by external persons or bodies.

The Agency or the Commission may also request additional information in accordance with Article 17. The Agency or the Commission may request beneficiaries to provide such information to it directly.

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Information provided must be accurate, precise and complete and in the format requested, including electronic format.

22.1.2 Right to carry out reviews

The Agency or the Commission may — during the implementation of the action or afterwards — carry out reviews on the proper implementation of the action (including assessment of deliverables and reports), compliance with the obligations under the Agreement and continued scientific or technological relevance of the action.

Reviews may be started up to two years after the payment of the balance. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the review is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The Agency or the Commission may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). The Agency or the Commission may request beneficiaries to provide such information to it directly.

The coordinator or beneficiary concerned may be requested to participate in meetings, including with external experts.

For **on-the-spot** reviews, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the review findings, a ‘**review report**’ will be drawn up.

The Agency or the Commission will formally notify the review report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations (‘**contradictory review procedure**’).

Reviews (including review reports) are in the language of the Agreement.

22.1.3 Right to carry out audits

The Agency or the Commission may — during the implementation of the action or afterwards — carry out audits on the proper implementation of the action and compliance with the obligations under the Agreement.

Audits may be started up to two years after the payment of the balance. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

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If the audit is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The Agency or the Commission may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement. The Agency or the Commission may request beneficiaries to provide such information to it directly.

For **on-the-spot** audits, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the audit findings, a **'draft audit report'** will be drawn up.

The Agency or the Commission will formally notify the draft audit report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations (**'contradictory audit procedure'**). This period may be extended by the Agency or the Commission in justified cases.

The **'final audit report'** will take into account observations by the coordinator or beneficiary concerned. The report will be formally notified to it.

Audits (including audit reports) are in the language of the Agreement.

The Agency or the Commission may also access the beneficiaries' statutory records for the periodical assessment of unit costs or flat-rate amounts.

22.2 Investigations by the European Anti-Fraud Office (OLAF)

Under Regulations No 883/2013¹⁶ and No 2185/96¹⁷ (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

22.3 Checks and audits by the European Court of Auditors (ECA)

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161

¹⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.09.2013, p. 1).

¹⁷ Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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of the Financial Regulation No 966/2012¹⁸, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

The ECA has the right of access for the purpose of checks and audits.

22.4 Checks, reviews, audits and investigations for international organisations

In conformity with its financial regulations, the European Union, including the European Anti-Fraud Office (OLAF) and the European Court of Auditors (ECA), may undertake, including on the spot, checks, reviews, audits and investigations.

This Article will be applied in accordance with any specific agreement concluded in this respect by the international organisation and the European Union.

22.5 Consequences of findings in checks, reviews, audits and investigations — Extension of findings

22.5.1 Findings in this grant

Findings in checks, reviews, audits or investigations carried out in the context of this grant may lead to the rejection of ineligible costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44) or to any of the other measures described in Chapter 6.

Rejection of costs or reduction of the grant after the payment of the balance will lead to a revised final grant amount (see Article 5.4).

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 (see Article 55).

Checks, reviews, audits or investigations that find systemic or recurrent errors, irregularities, fraud or breach of obligations may also lead to consequences in other EU or Euratom grants awarded under similar conditions (**‘extension of findings from this grant to other grants’**).

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

22.5.2 Findings in other grants

The Agency or the Commission may extend findings from other grants to this grant (**‘extension of findings from other grants to this grant’**), if:

- (a) the beneficiary concerned is found, in other EU or Euratom grants awarded under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant and
- (b) those findings are formally notified to the beneficiary concerned — together with the list of grants affected by the findings — no later than two years after the payment of the balance of this grant.

¹⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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The extension of findings may lead to the rejection of costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44), suspension of payments (see Article 48), suspension of the action implementation (see Article 49) or termination (see Article 50).

22.5.3 Procedure

The Agency or the Commission will formally notify the beneficiary concerned the systemic or recurrent errors and its intention to extend these audit findings, together with the list of grants affected.

22.5.3.1 If the findings concern **eligibility of costs**: the formal notification will include:

- (a) an invitation to submit observations on the list of grants affected by the findings;
- (b) the request to submit **revised financial statements** for all grants affected;
- (c) the **correction rate for extrapolation** established by the Agency or the Commission on the basis of the systemic or recurrent errors, to calculate the amounts to be rejected if the beneficiary concerned:
 - (i) considers that the submission of revised financial statements is not possible or practicable or
 - (ii) does not submit revised financial statements.

The beneficiary concerned has 90 days from receiving notification to submit observations, revised financial statements or to propose a duly substantiated **alternative correction method**. This period may be extended by the Agency or the Commission in justified cases.

The Agency or the Commission may then start a rejection procedure in accordance with Article 42, on the basis of:

- the revised financial statements, if approved;
 - the proposed alternative correction method, if accepted
- or
- the initially notified correction rate for extrapolation, if it does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial statements.

22.5.3.2 If the findings concern **substantial errors, irregularities or fraud or serious breach of obligations**: the formal notification will include:

- (a) an invitation to submit observations on the list of grants affected by the findings and
- (b) the flat-rate the Agency or the Commission intends to apply according to the principle of proportionality.

The beneficiary concerned has 90 days from receiving notification to submit observations or to propose a duly substantiated alternative flat-rate.

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The Agency or the Commission may then start a reduction procedure in accordance with Article 43, on the basis of:

- the proposed alternative flat-rate, if accepted
- or
- the initially notified flat-rate, if it does not receive any observations or does not accept the observations or the proposed alternative flat-rate.

22.6 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, any insufficiently substantiated costs will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION

23.1 Right to evaluate the impact of the action

The Agency or the Commission may carry out interim and final evaluations of the impact of the action measured against the objective of the EU programme.

Evaluations may be started during implementation of the action and up to five years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the coordinator or beneficiaries.

The Agency or the Commission may make these evaluations directly (using its own staff) or indirectly (using external bodies or persons it has authorised to do so).

The coordinator or beneficiaries must provide any information relevant to evaluate the impact of the action, including information in electronic format.

23.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the Agency may apply the measures described in Chapter 6.