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**ENPI
CBCMED**
CROSS-BORDER COOPERATION
IN THE MEDITERRANEAN

Project Implementation Manual

Contractual Obligations

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Introduction

A key element of success for projects is to implement them according to relevant rules. Many ENPI CBC project Beneficiaries and Partners have experience in implementing international cooperation projects, but the ENPI CBC Med Programme has a special partnership approach to be dealt with: organizations from outside the EU work on equal terms with their peers from Member States. As such, this Programme faces new challenges and has its own specific set of rules.

The **Grant Contract** is signed between the JMA and the Beneficiary (or Applicant) setting out the legal framework of the relationship between them. Under this contract, the Beneficiary takes the **overall responsibility** for the implementation of the project¹. However, **contract provisions** apply to the **whole project partnership** in particular those regarding **eligibility of costs, procurement procedures, visibility and recovery**. It is therefore very important that both the Beneficiary and all Partners are fully aware of the content of the:

- Grant Contract (including Special and General Conditions and Annexes)
- Partnership Agreement

How to read the Grant Contract

The Grant Contract consists of the **Special Conditions** and a series of annexes. All these documents, like all the procedures and templates under ENPI CBC, are based on the **Practical Guide to contract procedures for EC external actions (PraG)**² and relevant annexes, in force at the time of the launching of calls for proposals³. However, all programmes have adapted those templates to better reflect their particular requirements and the specific cross border scope of ENPI CBC projects. Hence, if the Beneficiary has a previous experience of using PraG as the Beneficiary of an EU grant, particular attention should be paid to **article 7** of the **Special Conditions** of its Grant Contract, where these adaptations are reflected.

Please remember that in the text of the contract all the references to the “**Contracting Authority**” refer to the “**Joint Managing Authority**” and the term “**Action**” is considered as “**Project**”: these amendments have been made in order to be consistent with the terminology adopted by the ENPI CBC Implementing Rules and by the Mediterranean Sea Basin Joint Operational Programme⁴.

Where to find the relevant contractual obligations

¹ Article 1 of the General Conditions.

² Available at http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/

³ As required under Regulation (EC) No 951/2007 of 9 August 2007) article 23, hereinafter the ENPI CBC Implementing Rules (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:210:0010:0025:EN:PDF>)

⁴ Article 7.1.1 and 7.1.2 of the Special Conditions.



First of all the structure of the Grant Contract should be analysed. Below an outline of the Contract articles is presented, with key elements emphasised in bold. The main legal provisions will be further explained in the relevant chapters of this manual.

CONTRACT OUTLINE	
SPECIAL CONDITIONS	Article 1 - Purpose Article 2 - Implementation period of the Action (= <u>project</u>) Article 3 - Financing the Action Article 4 - Narrative and financial reporting and payment arrangements Article 5 - Contact addresses Article 6 - Annexes Article 7 - Other specific conditions applying to the Action
ANNEX I: DESCRIPTION OF THE ACTION	<i>Part 2 of the Grant Application Form describing the project funded by the grant and the results the partnership commits to achieve</i>
ANNEX II: GENERAL CONDITIONS	Article 1 - General obligations Article 2 - Obligation to provide information and financial and narrative reports Article 3 - Liability Article 4 - Conflict of interests Article 5 - Confidentiality Article 6 - Visibility Article 7 - Ownership/use of results and assets Article 8 - Evaluation/monitoring of the Action Article 9 - Amendment of the Contract Article 10 - Assignment Article 11 - Implementation period of the Action, extension, suspension, force majeure and end date Article 12 - Termination of the contract Article 13 - Applicable law and dispute settlement Article 14 - Eligible costs Article 15 - Payment and interest on late payment Article 16 - Accounts and technical and financial checks Article 17 - Final amount of financing by the Contracting Authority Article 18 - Recovery
ANNEX III: BUDGET FOR THE ACTION	<i>The project budget, as agreed with the JMA at contract signature (please note that your project may be amended during project implementation - so the last budget agreed must be taken into account)</i>

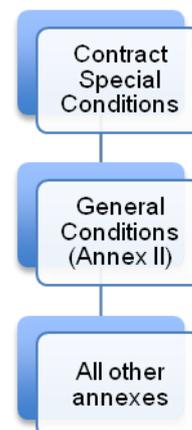


ANNEX IV: CONTRACT- AWARD PROCEDURES	Article 1 - General principle Article 2 - Eligibility for contracts Article 3 - Rules common to all tender procedures Article 4 - Rules applicable to service contracts Article 5 - Rules applicable to supply contracts Article 6 - Rules applicable to work contracts Article 7 - Use of the negotiated procedure Article 8 - Special cases
ANNEX V: REQUEST FOR PAYMENTS	<i>Compulsory template to be used by the Beneficiary to request pre-financing or payment of the balance</i>
ANNEX VI: MODEL REPORTS	<i>Templates to be used to prepare project narrative and financial reporting</i>
ANNEX VII: EXPENDITURE VERIFICATION	<i>Model Terms of Reference for the expenditure verification of the grant, list of procedures to be performed by the auditor and model report</i>
ANNEX VIII: MODEL FINANCIAL GUARANTEE	Financial Guarantee for the repayment of pre-financing (if required)
ANNEX IX: PARTNERSHIP AGREEMENT	Partnership Agreement

What comes first?

In order to correctly understand the obligations, please be aware of the hierarchy of the contract components (shown on the right):

- The Special Conditions of the Grant Contract take precedence over all annexes.
- Article 7 of the Special Conditions recapitulates all modifications and derogations to the other annexes and must be read carefully
- Annex II: General Conditions take precedence over the other annexes.



Obligations of the partnership: highlights



Partners have to be fully aware of the contract conditions	
Article 1.3 of the General Conditions	Partners take part in the implementation of the Action, and the costs they incur are eligible in the same way as those incurred by the Beneficiary.
Article 1.3 of the General Conditions (as modified by article 7.4.1)	The Beneficiary (...) shall undertake that the conditions applicable to it under articles 1, 3, 4, 5, 6, 7, 8, 9.2, 10, 11.2, 14, 15.5, 15.6, 16, 17 and 18.4 shall also apply to its Partners, and those applicable under Articles 1, 3, 4, 5, 6, 7, 8, 10 and 16 to all its contractors. It shall include provisions to that effect, as appropriate, in its contracts with them. In particular, the Beneficiary should undertake that the conditions applicable to it under article 18.6 (according to the text introduced by paragraph 7.4.5 of these Special Conditions) on the recovery procedure by the EU Member States and the Commission shall also apply to its Partners. It shall include provisions to that effect as appropriate in its contracts with them.
Article 7 of the Special Conditions.	Article 7 sets out all ENPI CBC MED programme specific provisions regarding Partner obligations

The provisions mentioned in article 7.4.1 of the Special Conditions concern the following articles of the General Conditions:

- Article 1 - General obligations,
- Article 3 – Liability,
- Article 4 - Conflict of interests
- Article 5 - Confidentiality
- Article 6 - Visibility
- Article 7 - Ownership/use of results and equipment
- Article 8 – Evaluation/monitoring of the Action
- Article 9 - Amendment of the Contract
- Article 10 - Assignment
- Article 11 - Implementation period of the Action, extension, suspension, force majeure and end date,
- Article 14 - Eligible costs
- Article 15 - Payment and interest on late payment,
- Article 16 - Accounts and technical and financial checks
- Article 17 - Final amount of financing by the Contracting Authority
- Article 18 – Recovery

Under article 7.3.4 and 7.4.5 of the Special Conditions, a derogation to article 8.2 and 8.3 of Annex IV is provided for EU Public Administrations and International Organisations,

Where the Beneficiary or a Partner is a contracting authority and/or a contracting entity within the meaning of the EC directives applicable to procurement procedures (this means basically an **EU Public Administration and bodies governed by public law**), it must apply the



relevant provisions of those texts and relevant national procurement rules, in preference to the rules set out in articles from 3 to 7 of Annex IV.

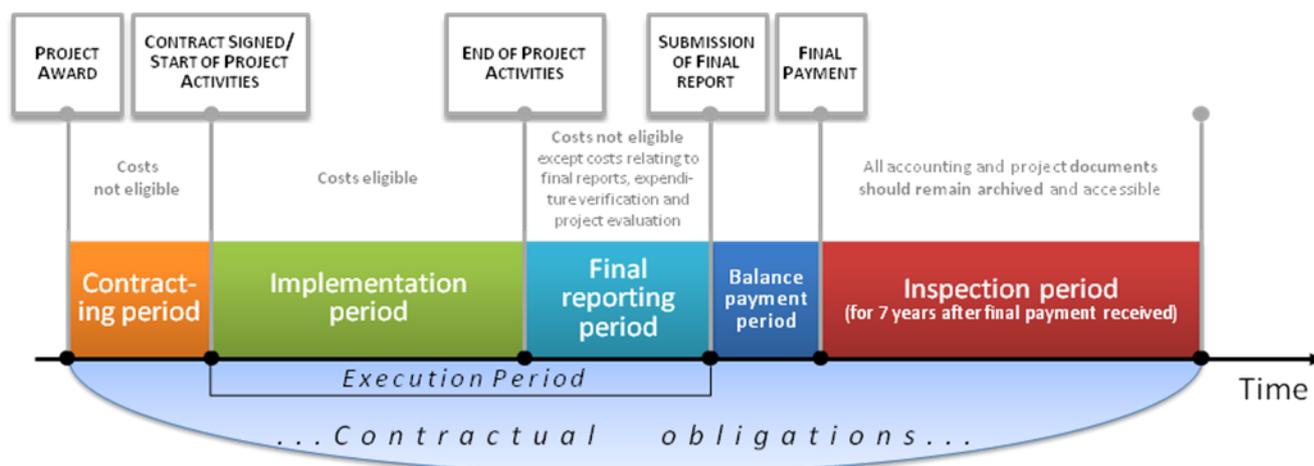
Where the Beneficiary or a Partner is an **International Organisation**, it applies its own procurement rules if they offer guarantees equivalent to internationally accepted standards. If they do not or in specific cases, the Contracting Authority and the Beneficiary or Partner agree on the use of other procurement procedures which offer such guarantees.

In all cases the general principles and rules on nationality and origin set out in articles 1 and 2 of Annex IV still apply.

Timeline

Contract execution, project implementation and duration of obligations: when do they start and end?

The image below shows the timing and the contractual obligations. Further explanation is given in the following text.



It is necessary that the Beneficiary and all Partners understand the duration of contractual obligations and distinguish between:

- **When the Grant Contract takes effect** = The date of the last signature of the Grant Contract.
- **When the implementation period starts and costs are eligible** = The “implementation period” as described under article 2 of the Special Conditions of the Grant Contract starts on “the day following that on which the last of the two Parties signs” the Grant Contract or on “a later date”. Note that procedures to award sub-contracts for goods, services or works may be initiated before the implementation period (provided Annex IV of the Grant Contract is respected), but sub-contracts may not be concluded (i.e. signed) by the Beneficiary or Partners before the implementation starting date. Costs are eligible only during the implementation period.



An exception is made for costs relating to final reports, expenditure verification and evaluation of the project which can be incurred after the implementation period but within the execution period of the Grant Contract.

- **When the execution period of the Grant contract ends** = When final payment is made or at the latest, 18 months after the implementation period. The execution period is defined in article 2.3 of the Special Conditions as the period starting with the contract signature and ending “at the moment when final payment is paid by the Contracting authority and in any case at the latest 18 months from the end of the implementation period” (article 2 of the Special Conditions). Project activities take place during the implementation period.
- **When all contractual obligations end** = 7 years after final payment⁵. During this period the Beneficiary and Partners may be subject to verifications, including on-the-spot checks and a full audit, by EC relevant bodies or auditors authorized by the JMA. Therefore all project documents have to be archived in a way that they are easily accessible. Originals of supporting documents have to be kept by each Partner organisation, but copies (either scanned or physical) should be easily available from the Beneficiary in order to facilitate financial controls by authorized bodies. A web-based document repository shared by all Partners may be very useful for this purpose.
- The timeline has to be compliant with the provisions of Regulation (EC) No 951/2007 (hereinafter “Implementing Rules”), according to which:
- all activities of projects financed by the Programme shall end by **31 December 2015 at the latest**⁶;
- the time provided for the closure of the Programme remains, according to article 43 of the Implementing Rules, **one year** (i.e. up to **31 December 2016**) after this revised project implementation deadline.
- By consequence, the **period of execution of the contract**, set up to a maximum of 18 months after the implementation period, could be sensibly reduced in order not to exceed the closure of the programme on 31 December 2016.

This will permit the JMA to spare some time to carry out the financial closure of all contracts concluded as part of the Programme, the ex post evaluation of the Programme, the submission of the final report and the final payment or final recovery by the Commission. All these activities **cannot take place after the programme financial closure deadline set on 31 December 2016**.

Final Remarks

The Beneficiary has the duty to provide its Partners with a copy of the Grant Contract including all its annexes (and any amendment) and to make sure that obligations and requirements are understood from the start of the project.

⁵ Article 16 of the General Conditions.

⁶ See article 43(2) of Regulation (EC) No 951/2007, subparagraph (b) of the Commission laying down implementing rules for Cross-Border Cooperation Programmes as modified by Commission implementing regulation (EU) No 435/2011 of 5 May 2011(OJ L 118 del 6.05.2011, pag. 1).



All Partners take part in the implementation of the projects and the costs they incur are eligible in the same way as those incurred by the Beneficiary.

Beneficiary and all Partners share the obligation to implement the project⁷:

- in compliance with the Grant Contract;
- according to the “Description of the Project” (Annex I)⁸ in view to achieving its objectives;
- with the required **care, efficiency, transparency** and **diligence**, in line with **best practices** in the field concerned;
- mobilising all the financial, human and material resources required for full implementation of the project as specified in the “Description of the Project”;
- using subcontracting only for a limited portion of the project: the bulk of the Action must be undertaken by the Beneficiary and his Partners. In case of subcontracting the Beneficiary and the Partners shall respect the contract-award procedures and rules of nationality and origin set out in Annex IV of the Grant Contract.

Useful contacts

This document has been drawn up by the JTS officers. For further information, the Beneficiaries can contact the following officer, preferably by email:

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⁷ Article 1 of the General Conditions.

⁸ Part 2 of the Grant Application Form, possibly revised during the negotiation process.