

FPA/SGA Pass Through Terms for Recipients of Financial Support to Third Parties (Non-Prizes)

ARTICLE 28 - CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS - EXTENSION OF FINDINGS

28.1 Checks, reviews and audits by the EIT and the Commission

28.1.1 Right to carry out checks

The EIT will -during the implementation of a specific action or afterwards -check the proper implementation of the specific action and compliance with the obligations under the Framework Partnership Agreement and the Specific Agreement, including assessing deliverables and reports.

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

The EIT may also request additional information in accordance with Article 23. The EIT may request KIC Partners to provide such information to it directly.

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

28.1.2 Right to carry out reviews

The EIT may -during the implementation of a specific action or afterwards -carry out reviews on the proper implementation of the specific action (including assessment of deliverables and reports), compliance with the obligations under the Framework Partnership Agreement and the Specific Agreement.

Reviews may be started up to two years after the payment of the balance. They will be formally notified to the KIC LE or KIC Partner 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 15 to 22), the KIC Partner concerned must inform the third party.

The EIT may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the KIC LE or the KIC Partner 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 KIC LE or KIC Partner 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 KIC LE or KIC Partner concerned may be requested to participate in meetings, including with external experts.

For on-the-spot reviews, the KIC Partners 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 EIT will formally notify the review report to the KIC LE or KIC Partner concerned, which has 30 days to formally notify observations ('contradictory review procedure').

Reviews (including review reports) are in English.

28.1.3 Right to carry out audits

The EIT or the Commission may - during the implementation of a specific action or afterwards - carry out audits on the proper implementation of the specific action and compliance with the obligations under the Framework Partnership Agreement and the Specific Agreement.

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

If the audit is carried out on a third party (see Articles 15 to 22), the KIC Partner concerned must inform the third party.

The EIT 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 KIC LE or the KIC Partner 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 KIC LE or the KIC Partner concerned must provide - within the deadline requested -any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Framework Partnership Agreement and Specific Agreements. The EIT or the Commission may request KIC Partners to provide such information to it directly.

For on-the-spot audits, the KIC Partners 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 EIT or the Commission will formally notify the draft audit report to the KIC LE or the KIC Partner concerned, which has 30 days to formally notify observations ('contradictory audit procedure'). This period may be extended by the EIT or the Commission in justified cases.

The 'final audit report' will take into account observations by the KIC LE or KIC Partner concerned. The report will be formally notified to it.

Audits (including audit reports) are in English.

The EIT or the Commission may also access the KIC Partners' statutory records for the periodical assessment of unit costs, flat-rate amounts or lump sums.

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

Under Regulations No 883/2013¹ and No 2185/96² (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may -at any moment during implementation of a specific 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 under the Framework Partnership Agreement or Specific Agreement affecting the financial interests of the EU.

28.3 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 111 of the EIT Financial Regulation³, the European Court of Auditors (ECA) may -at any moment during implementation of a specific action or afterwards -carry out audits.

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

28.4 Checks, reviews, audits and investigations for international organisations

Not applicable

28.5 Consequences of findings in checks, reviews, audits and investigations -Extension of findings

28.5.1 Findings in a specific grant

Findings in checks, reviews, audits or investigations carried out in the context of a specific grant may lead to the rejection of ineligible costs (see Article 48), reduction of the specific grant (see Article 49), recovery of undue amounts (see Article 50) or to any of the other measures described in Section 5.

Rejection of costs or reduction of the specific grant after the payment of the balance will lead to a revised final grant amount (see Article 4 SGA).

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 to the Specific Agreement (see Article 61).

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

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

28.5.2 Findings in other grants

The EIT or the Commission may extend findings from other grants to a specific grant ('extension of findings from other grants to a specific grant'), if:

(a) the KIC Partner concerned is found, in other EIT, 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 the specific grant and

(b) those findings are formally notified to the KIC Partner concerned - together with the list of grants affected by the findings - no later than two years after the payment of the balance of the specific grant.

The extension of findings may lead to the rejection of costs (see Article 48) reduction of the specific grant (see Article 49), recovery of undue amounts (see Article 50), suspension of the action implementation (see Article 55) or termination of the specific grant (see Article 56).

28.5.3 Procedure

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

28.5.3.1 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 EIT or the Commission on the basis of the systemic or recurrent errors, to calculate the amounts to be rejected if the KIC Partner concerned:

(i) considers that the submission of revised financial statements is not possible or practicable or

(ii) does not submit revised financial statements.

The KIC Partner 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 EIT or the Commission in justified cases.

The amounts to be rejected will be determined on the basis of the revised financial statements, subject to their approval.

If the EIT or the Commission 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, it will formally notify to the KIC Partner concerned the application of the initially notified correction rate for extrapolation.

If the EIT or the Commission accepts the alternative correction method proposed by the KIC Partner concerned, it will formally

¹ 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).

² 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).

³ Decision of the Governing Board of the European Institute of Innovation and Technology (EIT) of 27 December 2013 on adopting the financial regulation for the European Institute of Innovation and Technology

notify to the KIC Partner concerned the application of the accepted alternative correction method.

28.5.3.2 If the findings concern improper implementation or breach of other 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 EIT or the Commission intends to apply according to the principle of proportionality.

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

If the EIT or the Commission does not receive any observations or does not accept the observations or the proposed alternative flat-rate, it will formally notify to the KIC Partner concerned the application of the initially notified flat-rate.

If the EIT or the Commission accepts the alternative flat-rate proposed by the KIC Partner, it will formally notify the KIC Partner concerned the application of the accepted alternative flat-rate.

28.6 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, any insufficiently substantiated costs of specific actions will be ineligible (see Article 5 SGA) and will be rejected (see Article 48).

ARTICLE 29 - MONITORING AND EXTERNAL EVALUATION OF THE KIC

29.1 Right to monitor and evaluate the KIC

The EIT or the Commission may carry out interim and final evaluations of the output, results and impact of the KIC.

Evaluations may be started during implementation of a specific action and up to a period of five years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the KIC LE or KIC Partners.

The EIT 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 KIC LE and KIC Partners must provide any information requested to evaluate its impact, including information in electronic format.

29.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, the EIT may apply the measures described in Section 5.

ARTICLE 41 - CONFLICT OF INTERESTS

41.1 Obligation to avoid a conflict of interests

The KIC Partners must take all measures to prevent any situation where the impartial and objective implementation of the specific actions is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests').

They must formally notify to the EIT without delay any situation constituting or likely to lead to a conflict of interests and immediately take all the necessary steps to rectify this situation.

The EIT may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

41.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, the grant may be reduced (see Article 49) and the Specific Agreement or participation of the KIC Partner may be terminated (see Article 56).

Such breaches may also lead to any of the other measures described in Section 5.

ARTICLE 42 - CONFIDENTIALITY

42.1 General obligation to maintain confidentiality

During implementation of the specific action and for four years after the period set out in Article 3 of the Specific Agreement, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed ('confidential information').

If a KIC Partner requests, the EIT may agree to keep such information confidential for an additional period beyond the initial four years.

If information has been identified as confidential only orally, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

Unless otherwise agreed between the parties, they may use confidential information only to implement the Framework Partnership Agreement or Specific Agreement.

The KIC Partners may disclose confidential information to their personnel or third parties involved in the specific action only if they:

- (a) need to know to implement the Framework Partnership Agreement or Specific Agreements and
- (b) are bound by an obligation of confidentiality.

This does not change the security obligations in Article 43, which still apply.

The EIT may disclose confidential information to its staff, other EU institutions and bodies or third parties, if:

- (a) this is necessary to implement the Framework Partnership Agreement or Specific Agreement or safeguard the EIT's financial interests and
- (b) the recipients of the information are bound by an obligation of confidentiality.

The confidentiality obligations no longer apply if:

- (a) the disclosing party agrees to release the other party;
- (b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;
- (c) the recipient proves that the information was developed without the use of confidential information;
- (d) the information becomes generally and publicly available, without breaching any confidentiality obligation, or

(e) the disclosure of the information is required by EU or national law.

42.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, the specific grant may be reduced (see Article 49).

Such breaches may also lead to any of the other measures described in Section 5.

ARTICLE 44 - PROMOTING THE KIC -VISIBILITY OF THE EIT AND EU FUNDING

44.1 Communication activities by the KIC Partners

44.1.1 Obligation to promote the specific action and its results

The KIC Partners must promote the specific action and its results by providing targeted information to multiple audiences (including the media and the public) in a strategic and effective manner.

This does not change the specific dissemination obligations in Article 35, the confidentiality obligations in Article 42 or the security obligations in Article 43, all of which still apply.

Before engaging in a communication activity expected to have a major media impact, the KIC Partners must inform the EIT (see Article 58).

44.1.2 Information on EIT and EU funding -Obligation and right to use the EIT KIC logo and the EU emblem

Unless the EIT requests or agrees otherwise or unless it is impossible, any communication activity related to the specific action (including in electronic form, via social media, etc.) as well as any infrastructure, equipment and major results funded by the specific grants must:

- (a) display the EIT KIC logo as adopted by the EIT;
- (b) display the EU emblem;
- (c) follow the brand guidelines outlined in the EIT Community Brand Book as adopted by the EIT; and
- (d) include the following text:

For communication activities: 'This activity has received funding from the European Institute of Innovation and Technology (EIT). This body of the European Union receives support from the European Union's Horizon 2020 research and innovation programme.'

For infrastructure, equipment and major results: 'This [infrastructure]

[equipment] [insert type of result] is part of an activity that has received funding from the European Institute of Innovation and Technology (EIT). This body of the European Union receives support from the European Union's Horizon 2020 research and innovation programme.'

When displayed together with another logo, the EIT KIC logo and the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the KIC Partners may use the EIT KIC logo and the EU emblem without prior approval from the EIT.

This does not, however, give them the right to exclusive use.

Moreover, they may not appropriate the EIT KIC logo or the EU emblem (or any similar trademark or logo), either by registration or by any other means.

44.1.3 Disclaimer excluding EIT responsibility

Any communication activity related to the specific action must indicate that it reflects only the author's view and that the EIT is not responsible for any use that may be made of the information it contains.

44.2 Communication activities by the EIT

44.2.1 Right to use KIC's materials, documents or information

The EIT may use, for its communication and dissemination activities, information relating to the specific action, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material that it receives from any KIC Partner (including in electronic form).

This does not change the confidentiality obligations in Article 42 and the security obligations in Article 43, all of which still apply.

However, if the EIT's use of these materials, documents or information would risk compromising legitimate interests, the KIC Partner concerned may request the EIT not to use it (see Article 58).

The right to use a KIC Partner's materials, documents and information includes:

- (a) use for its own purposes (in particular, making them available to persons working for the EIT or any other EU institution, agency or body, or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);
- (b) distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);
- (c) editing or redrafting for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);
- (d) translation;
- (e) giving access in response to individual requests under Regulation No 1049/2001, without the right to reproduce or exploit;
- (f) storage in paper, electronic or other form;
- (g) archiving, in line with applicable document-management rules, and
- (h) the right to authorise third parties to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties, if needed for the communication and publicising activities of the EIT.

If the right of use is subject to rights of a third party (including personnel of the KIC Partner), the KIC Partner must ensure that it complies with its obligations under the Framework Partnership

Agreement and the Specific Agreement (in particular, by obtaining the necessary approval from the third parties concerned).

Where applicable (and if provided by the KIC Partners), the EIT will insert the following information:

"© - [year] - [name of the copyright owner]. All rights reserved. Licensed to the European Institute of Innovation and Technology (EIT) under conditions."

44.3 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, the specific grant may be reduced (see Article 49).

Such breaches may also lead to any of the other measures described in Section 5.

ARTICLE 52 -LIABILITY FOR DAMAGES

52.1 Liability of the EIT

The EIT cannot be held liable for any damage caused to the KIC Partners or to third parties as a consequence of implementing the Framework Partnership Agreement or a Specific Agreement, including for gross negligence.

The EIT cannot be held liable for any damage caused by any of the KIC Partners or third parties involved in the specific action, as a consequence of implementing the Framework Partnership Agreement or a Specific Agreement.

52.2 Liability of the KIC Partners

52.2.1 Conditions

Except in case of force majeure (see Article 57), the KIC Partners must compensate the EIT for any damage the EIT sustains as a result of the implementation of a specific action or because a specific action was not implemented in full compliance with the Framework Partnership Agreement or a Specific Agreement.

Each KIC Partner is responsible for paying the damages claimed from it.

52.2.2 Amount of damages -Calculation

The amount the EIT can claim from a KIC Partner will correspond to the damage caused by that KIC Partner.

52.2.3 Procedure

Before claiming damages, the EIT will formally notify the KIC Partner concerned:

- informing it of its intention to claim damages, the amount and the reasons why and
- inviting it to submit observations within 30 days.

If the EIT does not receive any observations or decides to claim damages despite the observations it has received, it will formally notify confirmation of the claim for damages and a debit note, specifying the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the EIT may recover the amount:

- (a) by offsetting it -without the KIC Partner's consent - against any amounts owed to the KIC Partner concerned by the EIT. In exceptional circumstances, to safeguard its financial interests, the EIT may offset before the payment date in the debit note;
- (b) by taking legal action (see Article 63).

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by late-payment interest at the rate set out in Article 17 SGA, from the day following the payment date in the debit note, up to and including the date the EIT receives full payment of the amount.

Partial payments will be first credited against expenses; charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the KIC Partner, unless Directive 2007 /64/EC applies.