

# **EN**

# **ANNEX**

## **FINANCIAL FRAMEWORK PARTNERSHIP AGREEMENT**

**between**

**the EUROPEAN COMMISSION**

**and**

**the European Bank for Reconstruction and Development**

**on Actions implemented by the European Bank for Reconstruction and Development  
and funded or co-funded by the European Union**

## **Preamble**

The European Bank for Reconstruction and Development (referred to as the “Organisation” or the “EBRD”) and the European Commission (referred to as the “Commission”), referred to individually as “Party” and collectively as “Parties”, acknowledge the need to define an enabling environment in order to facilitate effective cooperation within the legal and policy frameworks of each of the Parties and in full respect of the Regulation (EU, Euratom) 2018/1046<sup>1</sup> (the “EU Financial Regulation”), the Treaty on European Union, the Treaty on the Functioning of the European Union and the Agreement Establishing the European Bank for Reconstruction and Development dated 29 May 1990;

The Commission acts in its capacity to manage the general budget of the European Union (the “EU” or the “Union”) and the European Development Fund<sup>2</sup> and, under the EU Financial Regulation, may implement such EU funds directly or indirectly by entrusting the implementation of projects to the Organisation;

The Parties endeavour to increase transparency and promote data standardization and comparability when reporting their activities. For this purpose, they acknowledge that they are already Publishers in the International Aid Transparency Initiative (IATI);

The new European Consensus on Development<sup>3</sup> encourages the EU and like-minded partners to work better together;

In this context, the Parties confirm their commitment to working together better, to show coherent and consistent engagement and to enhance joint implementation through effective and coordinated EU support, when appropriate.

## **Title I**

### **Scope, Principles and Modalities of the Partnership**

#### *Article 1*

##### *Scope*

- 1.1 The Commission has developed standard contractual arrangements for non-repayable forms of support<sup>4</sup> (the “Contribution Agreement”) and standard contractual arrangements for financial instruments for external actions (the “Contribution Agreement for Financial Instruments in EU External Actions” hereinafter the “Contribution Agreement for Financial Instruments”), for the implementation of projects by pillar-assessed organisations. The Contribution Agreement and the Contribution Agreement for Financial Instruments purport to provide an enabling and long-term environment. This Financial Framework Partnership Agreement (the “FFPA”) aims at taking into account the specificities of the Organisation in the implementation of the standard provisions of

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<sup>1</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p.1.

<sup>2</sup> Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies, amended by Council Decision (EU) 2015/334 of 2 March 2015.

<sup>3</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission, The new European Consensus on Development: Our World, Our Dignity, Our Future (OJ C210, 30.06.2017 p. 1).

<sup>4</sup> Provided through indirect management or grants under Title VIII of the EU Financial Regulation (including under indirect management by a third country).

the Contribution Agreement and the Contribution Agreement for Financial Instruments, including for the purposes of simplifying the contractual negotiations.

- 1.2 For projects managed by the Organisation and financed or co-financed by the EU (the “Actions”), where the EU financing is exclusively a non-repayable form of support, the provisions of the Contribution Agreement shall be subject to the interpretative provisions set out in Article 11 of Title IV and include in the Special Conditions the provisions as set out in Article 7 of Title III and in Articles 9 and 10 of Title IV of this FFPA.

However, unless explicitly specified otherwise, Contribution Agreements concluded in the area of nuclear safety financed or co-financed by the EU (“Nuclear Safety Actions”) shall instead be subject to the interpretative provisions set out in Article 14 of Title V and include in the Special Conditions the provisions as set out in Article 7 of Title III and in Articles 12 and 13 of Title V of this FFPA. For the purpose of this FFPA Nuclear Safety Actions are: (i) Nuclear Safety Account; (ii) Ignalina International Decommissioning Support Fund; (iii) Bohunice International Decommissioning Support Fund; (iv) Kozluduy International Decommissioning Support Fund; (v) nuclear window of the Northern Dimension Environmental Partnership; (vi) Chernobyl Project Monitoring Account; (vii) Environmental Remediation Account for Central Asia and (viii) any other Fund/Account that may be managed by the Nuclear Safety Department of the Organisation.

- 1.3 For Actions where the EU financing involves financial instruments (loans, guarantees, equity or quasi-equity investments or other risk-sharing instruments (including non-speculative hedging instruments) and ancillary support, if any, the provisions of the Contribution Agreement for Financial Instruments shall be subject to the interpretative provisions set out in Article 17 of Title VI and shall include in the Special Conditions the provisions as set out in Article 7 of Title III and in Articles 15 and 16 of Title VI of this FFPA.
- 1.4 In addition to the Commission, Contribution Agreements may also be signed between contracting authorities from partner countries and the Organisation.
- 1.5 The provisions of this FFPA refer to the versions of the Contribution Agreement and Contribution Agreement for Financial Instruments templates applicable at the date of entry into force of this FFPA pursuant to Article 19.1 and shall be applied *mutatis mutandis* to any subsequent amendments of the Contribution Agreement and Contribution Agreement for Financial Instruments templates. The definitions set out in the Contribution Agreement and Contribution Agreement for Financial Instruments templates referred to above shall also apply for the purpose of this FFPA.
- 1.6 The Organisation shall be promptly informed in writing of amendments to the Contribution Agreement and Contribution Agreement for Financial Instruments templates by the Commission and the Organisation has the right to provide its observations. Where relevant, the Parties shall negotiate in good faith the necessary amendments to the FFPA.
- 1.7 In specific circumstances, when there are special requirements of individual EU programmes, the Commission and the Organisation may agree to include additional specific provisions in the Contribution Agreement and/or Contribution Agreement for Financial Instruments.

## *Article 2*

### *Principles*

- 2.1 Through the stable contractual terms of the cooperation provided by this FFPA, the Parties commit to contribute to the effective delivery of development assistance and economic, financial and technical assistance within the legal and policy frameworks of each of the Parties and in full respect of the EU Financial Regulation, as provided for in the relevant provisions of each Contribution Agreement or Contribution Agreement for Financial Instruments.

- 2.2 In line with the new European Consensus on Development, the Parties commit to promote implementation of the 2030 Agenda for Sustainable Development and support partner country efforts to achieve the Sustainable Development Goals (the “SDGs”). They are determined to support poverty eradication and sustainable development for all.
- 2.3 The Parties are fully committed to applying the principles of development effectiveness as adopted by the Global Partnership for Effective Development Cooperation in the Busan High Level Forum in 2011 and renewed at the Nairobi High Level Forum in 2016. Development effectiveness principles are key to achieving the SDGs; they comprise focus on results as well as country ownership, inclusive development partnerships, transparency and accountability.

### *Article 3* *Modalities*

- 3.1 The Parties are committed to working better together through greater coordination and coherence in support of effective implementation. They undertake to timely and regularly exchange on topics of mutual interest for the purposes of effective collaboration. They endeavour to collaborate on implementing innovative approaches and tools to enhance the achievement of the EU and EBRD policy objectives.
- 3.2 The Parties also commit themselves to cooperate in order to interpret and apply in a coherent and consistent manner these contractual arrangements while respecting the regulations and rules of the Parties and their status as international organisations.
- 3.3 The Parties are committed to work towards digital transformation of their organisations. To that end the Parties agree to accept the use of both electronic signatures and handwritten signatures for signing Contribution Agreements or Contribution Agreements for Financial Instruments and recognise the validity of electronic signatures as having equivalent legal effect of a handwritten signature. The Commission is currently developing a system for electronic management of Contribution Agreements and Contribution Agreements for Financial Instruments. Until both Parties start using the system for electronic management of Contribution Agreements and Contribution Agreements for Financial Instruments for their signing, the electronic signatures shall meet the requirements for qualified electronic signatures as laid down Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. After both Parties start using the system for electronic management of Contribution Agreements and Contribution Agreements for Financial Instruments for their signing, the Parties accept that electronic signatures may be other than qualified electronic signatures<sup>5</sup> provided there is sufficient guarantee about the identification of the signatory and the expression of their will in the signed documents.
- 3.4 The Parties shall agree on the progressive introduction of the individual components of the system for electronic management of Contribution Agreements and Contribution Agreements for Financial Instruments subject to their successful testing.

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<sup>5</sup> Advanced electronic signatures as laid down Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

## **Title II**

### **Ex-ante Pillar Assessment**

#### *Article 4*

##### *Ex-ante Pillar Assessment*

- 4.1 This FFPA is based on an assessment of the Organisation's rules and procedures conducted on the basis of the terms of reference elaborated by the Commission in line with Article 154 of the EU Financial Regulation (the "Ex-ante Pillar Assessment"). This Ex-ante Pillar Assessment ensures that the entities to be entrusted by the Commission with budget implementation tasks under indirect management ensure a level of protection of the EU financial interests equivalent to that existing when the Commission implements the budget itself.
- 4.2 The Commission will fully rely on the Organisation's rules and procedures in the following areas: (i) internal control; (ii) accounting system; (iii) independent external audit; (iv) providing financing from EU funds through grants; (v) procurement; (vi) financial instruments (subject to 4.3 below as regards selection of Financial Intermediaries and Final Recipients); (vii) publication of information on recipients; (viii) protection of personal data. This is without prejudice to the obligation of the Organisation to inform the Commission without undue delay if any substantive changes are made to the above which may impact the reliability of the Ex-ante Pillar Assessment.
- 4.3 Additionally, the Commission will rely on the Organisation's rules and procedures in the following areas: (i) exclusion from access to funding; (ii) selection of Financial Intermediaries and Final Recipients and (iii) tax avoidance, non-cooperative jurisdictions, anti-money laundering and countering terrorism financing, which shall be supplemented with ad hoc measures set out in each Contribution Agreement and each Contribution Agreement for Financial Instruments in accordance with Articles 10.1, 13.1, 16.1 and 16.2 of this FFPA, as applicable.
- 4.4 The Commission and the Organisation may agree to have additional rules and procedures (such as its cost accounting practices) assessed to allow for further cross reliance and efficiency gains and the corresponding provisions in the Contribution Agreement and Contribution Agreement for Financial Instruments templates would cease to apply.

## **Title III**

### **Focus on Results, Evaluation and Sound Financial Management**

#### *Article 5*

##### *Focus on Results and Evaluation*

- 5.1 Submissions of proposals pertaining to Actions for which an EU Contribution will be provided will include objectives and Indicators of achievement to be agreed in Contribution Agreements and in Contribution Agreements for Financial Instruments. These will be monitored and reported throughout the implementation of individual Actions. Performance measures will be based on objectives that are specific, measurable, attainable, realistic and time-based. Indicators for the Contribution Agreements and Contribution Agreements for Financial Instruments may be linked to the more general Indicators relevant for the whole Action. Contribution Agreements and Contribution Agreements for Financial Instruments will include arrangements for the monitoring of the achievement of specific objectives.
- 5.2 The Parties will cooperate in monitoring missions and evaluation exercises in accordance with the provisions of the relevant Contribution Agreement or relevant Contribution Agreement for Financial Instruments.

## *Article 6*

### *Protection of EU financial interests and Principle of Sound Financial Management*

- 6.1 Without prejudice to Article 8.5, at the level of the Contribution Agreements and of the Contribution Agreements for Financial Instruments and in the manner stipulated therein, full cooperation in the protection of the financial interests of the EU shall be ensured.
- 6.2 The Organisation recognises the need for the Commission to report to competent EU bodies that the EU funds have been used for their intended purpose and according to the principle of Sound Financial Management based on the assurance that an adequate system of accountability is in place (e.g. accounting systems and procedures, control and procurement procedures, financial and results reporting, and the oversight mechanisms).

## *Article 7*

### *EU Restrictive Measures*

- 7.1 In this article:
- a. "EU Restrictive Measures" means restrictive measures adopted pursuant to the Treaty on European Union (TEU) or to the Treaty on the Functioning of the European Union (TFEU).
  - b. "Restricted Person" means any entities, individuals or groups of individuals designated by the EU as subject to the EU Restrictive Measures.<sup>6</sup>
- 7.2 In their contractual relationship the Parties recognise that under EU law no EU funds or economic resources are to be made available directly or indirectly to, or for the benefit of, Restricted Persons.
- 7.3 The following clause shall apply to all Contribution Agreements and Contribution Agreements for Financial Instruments and shall be replicated at the contractual level by including the applicable customised wording set out in Annex IV:
- 1. The EBRD shall ensure that no transaction subject to a verified hit against the EU sanctions list shall benefit directly or indirectly from EU funding. The EBRD commits to ensure this i) through screening for hits against EU sanctions before any direct contracts it concludes and ii) at subsequent levels through EBRD's risk based due diligence.

The EBRD will implement this obligation through the following measures:

- (A) For Contribution Agreements and Contribution Agreements for Financial Instruments (other than guarantees):
  - (i) EBRD shall screen for hits against the EU sanctions list, before entering into, and before making payments under, the relevant agreements, each Contractor, Grant Beneficiary, Financial Intermediary and Final Recipient with whom EBRD has or is expected to have a direct contractual relationship, so as to assess whether such recipient is a Restricted Person.
  - (ii) EBRD shall ensure, through screening or through other appropriate means (that may include an ex-post verification) on a risk based approach basis, that no entity that has or is expected to have a direct contractual relationship with a Grant Beneficiary or a Financial Intermediary in relation to the

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<sup>6</sup> Consolidated list (the "EU sanctions list") presently available at <https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions>. Note that the EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.

implementation of the Action and that would receive EU funding (“Indirect Recipient”), is a Restricted Person.

(B) For guarantees under Contribution Agreements for Financial Instruments:

- (i) EBRD shall screen for hits against the EU sanctions list, before entering into a relevant loan agreement or guarantee agreement (as applicable), the borrower and the guarantee beneficiary that is expected to receive a guarantee from EBRD and have a direct contractual relationship with EBRD (“EBRD Guarantee Counterparty”), so as to assess whether such EBRD Guarantee Counterparty is a Restricted Person.
  - (ii) In respect of any borrower or guarantee beneficiary that is expected to receive a guaranteed loan<sup>7</sup> or a guarantee from, and have a direct contractual relationship with, an EBRD Guarantee Counterparty in relation to the project benefiting from the EU funds (“Indirect Guarantee Counterparty”), the relevant provisions of subparagraph 4 under this Article 7.3 shall apply (without prejudice to subparagraphs 5 and 6) if it is established that it is or was a Restricted Person at the time of entering into a relevant loan agreement or guarantee agreement (as applicable).
2. In the event that EBRD assesses that any of the recipients of the EU funding referred to in subparagraph 1(A) or any borrower or guarantee beneficiary referred to in subparagraph 1(B) is a Restricted Person, and EBRD decides that the transaction should proceed notwithstanding a verified hit against EU sanctions, EBRD shall promptly inform the Commission. Should the Commission consider that the use of the EU funding in connection with the Contribution Agreement or the Contribution Agreement for Financial Instruments would result in a breach of the EU Restrictive Measures, the Commission shall notify EBRD within 25 calendar days of the date of the receipt of EBRD's notice pursuant to the immediately preceding sentence. If the Commission does not notify EBRD pursuant to this subparagraph, the Commission shall be deemed to have no objection.
3. If the Commission notifies EBRD pursuant to the immediately preceding subparagraph, the EBRD and the Commission shall promptly consult each other with a view to jointly determining remedial measures in accordance with their respective applicable legal frameworks. Subject to subparagraph 4 under this Article 7.3 that shall apply to guarantees (both funded and unfunded), these measures may include, but shall not be limited to: (A) the reallocation of the relevant portion of the EU funding net of any costs incurred by EBRD for undertaking any procurement or award procedure unless in case of EBRD gross negligence or willful misconduct; (B) recovery by the Commission from the EBRD of the amount of the EU funding provided directly or indirectly for the benefit of a recipient referred to in subparagraph 1(A) that is a Restricted Person under a Contribution Agreement or a Contribution Agreement for Financial Instruments. Where appropriate, a combination of remedial measures may be applied. Where remedial measures cannot be agreed or if EBRD nonetheless decides to proceed with a transaction, the corresponding amount shall not be charged (including through the application of the notional approach) to (i) the Action where the Action is exclusively financed by the EU, or in case the Action is Multi-Donor and the maximum EU Contribution is expressed as a percentage of total eligible costs of the Action; or (ii) to the EU Contribution in all other cases. This is without prejudice to any rights that the Commission may have to suspend or terminate this Agreement or to recover any EU funding contributed by the Commission to EBRD.

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<sup>7</sup> For the avoidance of doubt, an Indirect Guarantee Counterparty means only a borrower or a guarantee counterparty whose loan or guarantee is guaranteed by the EU funding. In other words, sub-loans not covered by the EU guarantee are excluded from this obligation.

4. This subparagraph applies solely in respect of guarantees (both funded and unfunded) granted by the Commission under a Contribution Agreement for Financial Instruments to guarantee EBRD loans or EBRD guarantees. In the event the EBRD identifies, via screening or other appropriate means that may include ex post checks on a risk based approach basis, an EBRD Guarantee Beneficiary or an Indirect Guarantee Counterparty that is a Restricted Person, the remedial measures available to the Commission may include, but not be limited to, the recovery of any payments made by the Commission to EBRD in respect of the relevant loan or relevant guarantee under this Agreement, the exclusion of the relevant loan or relevant guarantee from the Commission's guarantee cover or the termination of the Commission's guarantee. Where remedial measures cannot be agreed, EBRD shall procure that the Commission's guarantee does not cover the EBRD Guarantee Counterparty or the Indirect Guarantee Counterparty that is a Restricted Person.
  5. The determination of remedial measures will be made in accordance with the principle of proportionality. Remedial measures shall apply only to the EU funding or the EU guarantee (as applicable) made available to, or for the benefit of, a recipient referred to in subparagraph 1(A) or an EBRD Guarantee Counterparty or Indirect Guarantee Counterparty for the period during which it remained a Restricted Person.
  6. For the avoidance of doubt, the Parties acknowledge that if a recipient of the EU funding or the EU guarantee becomes a Restricted Person after the date on which such EU funding or the EU guarantee (as applicable) was made available to, or for the benefit of, such recipient, subparagraphs 2, 3 and 4 under this Article 7.3 shall not apply to the EU funding or the EU guarantee (as applicable) made available to, or for the benefit of, the Restricted Person before its listing.
  7. Article 7.3 is without prejudice to the exceptions contained in the EU Restrictive Measures.
- 7.4 The Commission will not intervene in EBRD's processes for selecting and engaging with recipients in full respect of EBRD's policies and procedures.

## *Article 8*

### *Assurance and Verifications*

- 8.1 Commission services, which are responsible for financing or co-financing Actions implemented by the Organisation, are required by the EU Financial Regulation to declare, except as otherwise specified in any reservations, that they have reasonable assurance that:
  - a. the resources made available for the Actions implemented by the Organisation were used for their intended purpose and in accordance with the principle of Sound Financial Management; and
  - b. the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.
- 8.2 The Commission acknowledges the mandated primacy of the Organisation's oversight and internal control systems, including the principle of exclusive or single audit, and, in keeping with internationally accepted practice in the discipline of financial oversight and control, will endeavour to build reliance on these systems.
- 8.3 The Organisation nevertheless recognises the need for the Commission, in accordance with Annex I and the applicable terms of the Contribution Agreement and the Contribution Agreement for Financial Instruments, and other competent bodies of the EU, in accordance with the applicable terms of the Contribution Agreement and the Contribution Agreement for Financial Instruments, to undertake verifications (including on the spot) concerning the activities financed by the Organisation using the EU funds, request all relevant financial information (drawn from accounts and records) pertaining to such activities, seek clarifications of information, and verify



underlying documents, in order to determine whether the use of the EU Contribution complies with the terms of the Contribution Agreement or the Contribution Agreement for Financial Instruments.

- 8.4 It is understood that this Article as well as any provisions related to verification agreed between the Parties, including Annex I or any additional pillars assessed shall not affect the powers of OLAF and the Organisation's obligations vis-a-vis OLAF.
- 8.5 The Organisation has concluded with OLAF an Administrative Cooperation Agreement on 1 June 2015, setting out, *inter alia*, the details and modalities of implementation of the provisions on investigations, including on the spot checks, information and access to documents by OLAF. It is understood that the Administrative Cooperation Agreement does not create any additional obligations under international law or EU law, modify any legal rules stated in other instruments or interfere with the legal frameworks governing the Parties.

## **Title IV**

### **Provisions related to the Contribution Agreement**

#### *Article 9*

#### *Supplementary provisions*

Each Contribution Agreement shall state:

*“7.1 The following shall supplement the General Conditions:*

*7.1.1 Prior to bringing legal proceedings for recovery of EU funds that have been unduly paid or incorrectly used by Contractors or Grant Beneficiaries, the Organisation shall consult the Contracting Authority on the cost-effectiveness of the legal actions and the covering of associated legal costs. If there is a disagreement between the Parties on the course of Action to be taken, the matter may be referred to the responsible Director of the European Commission, through the contact points specified in this Agreement, when the latter is the Contracting Authority.*

*7.1.2 Other than for failure to perform its obligations set forth in this Agreement, the European Commission shall not, under any circumstances or for any reason whatsoever, be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out, or as a consequence of the Action.*

*7.1.3 The European Commission, and the Contracting Authority (if other than the European Commission), and the Organisation shall agree in advance on the scope of participation of the European Commission and the Contracting Authority in the main monitoring mission and evaluation exercises related to the performance of the Action.*

*7.1.4 Any documents provided to the European Commission or Contracting Authority (if other than the European Commission) in the context of any monitoring mission or evaluation exercises they perform shall be provided pursuant to pertinent provisions of Section 2.2 of Annex I (Verification Clauses between the Commission and the EBRD for Contribution Agreements and Contribution Agreements for Financial Instruments) to the Financial Framework Partnership Agreement referred to in this Agreement and shall be subject to the confidentiality obligations applicable between the Parties.*

*7.1.5 Consistent with Article 46 of the Agreement Establishing the European Bank for Reconstruction and Development and with respect to the arbitration clause contained in dispute settlement provisions, the Parties agree that, for the purposes of Article 26 of the 2012 Permanent Court of Arbitration Rules for Arbitration, neither Party shall seek any interim measures or pre-award relief against the other Party.*

*7.1.6 Currency exchange losses arising from any conversion into local currency for local transactions or into any other currency required for transactions and from conversion of such local or other currency back into the Currency of the Agreement at the relevant currency exchange rate shall be considered as eligible direct costs of the Action subject to the compliance with criteria for eligibility of costs and provided that the need to use local or any other currency is described in the Description of the Action. In case of currency exchange gains, the relevant amounts shall be first used to cover any currency exchange losses, and any outstanding amount shall be due to the Contracting Authority.”*

## *Article 10*

### *Derogatory provisions<sup>8</sup>*

10.1 Each Contribution Agreement shall derogate from the Special Conditions and shall state:

*“1.3 (...) In the performance of the activities, the Organisation shall:*

*a) apply its own rules and procedures for the award and management of Procurement Contracts which have been assessed in the Ex-ante Pillar Assessment;*

*b) apply its own rules and procedures for the award and management of Grants which have been assessed in the Ex-ante Pillar Assessment;*

*c) apply its own rules and procedures for exclusion from access to funding, which have been assessed in the Ex-ante Pillar Assessment as supplemented with the following ad hoc measures:*

- (i) the Organisation shall refrain from financing a project when such project does not comply with the requirements in respect of child labour or trafficking in human beings as laid down in its Environmental and Social Policy, in particular in its Performance Requirement 2: Labour and Working Conditions;*
- (ii) the Organisation shall also ensure that, prior to, or at the time of entering into direct contractual relationship with Contractors or Grant Beneficiaries (other than a Contractor or a Grant Beneficiary that is state or an entity representing a state), no such potential Contractor or Grant Beneficiary, has been the subject of a final judgement (a judgement that has the force of res judicata) or of a final administrative decision (a decision of an administrative authority having final and binding effect in accordance with the applicable law) establishing that: (i) it has created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business; or (ii) it has been created with the intention described in (i).”*

10.2 Each Contribution Agreement shall derogate from the General Conditions and shall state:

*“7.2 The following derogations from the General Conditions shall apply:*

*7.2.1 Negative remuneration generated on pre-financing shall be borne by the EU Contribution and constitute eligible costs, including if incurred after the Implementation Period of the Action and until the Organisation repays any amount due to the Contracting Authority, for the purpose of provisions on eligibility of costs and in accordance with the following donor fund management guidelines:*

*The Organisation shall manage the EU Contribution as prudently as its own funds. In practice, this means that a best effort is made, where applicable, to apply the same risk management*

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<sup>8</sup> Derogatory provisions set out in Article 10.1 and 10.3.1 replace certain provisions of the Special Conditions and apply instead of those provisions and derogatory provisions set out in Article 10.2 and Article 10.3.2 replace certain provisions of the General Conditions and apply instead of those provisions.

*principles and framework to the EU Contribution as those applied to the Organisation's own treasury funds, and with due regard to the nature and purpose of the EU Contribution.*

*Without prejudice to the prudential management of the EU Contribution (including risk management), the Organisation shall use its best efforts, on the basis of this Agreement and subject to the donor fund management guidelines above, to avoid negative remuneration on the cash balance kept in the bank account dedicated to the Action and on the related sub-accounts. In this regard, the Organisation shall endeavour to shorten the submission period of the final report and to reduce payment deadlines to its Contractors and Grant Beneficiaries.*

*By 15 August and 15 February each year, should it become apparent that negative remuneration cannot reasonably be avoided during the following six (6) months, the Organisation shall inform the Contracting Authority, and the European Commission where the latter is not the Contracting Authority of:*

- (i) the estimated negative remuneration, if any, for the following six (6) months, including as percentage of the maximum EU Contribution;*
- (ii) the negative remuneration accrued in two preceding six (6) -month periods, including as percentage of the maximum EU Contribution;*
- (iii) the total negative remuneration accrued as percentage of the maximum EU Contribution.*

*In addition, it shall also:*

- (i) provide a list of bank accounts, and the related sub-accounts, to be impacted, and*
- (ii) demonstrate that no reasonable better alternative is available and explain the strategy in place to minimise the impact. In exceptional circumstances where the impact of negative remuneration is likely to negatively affect the purpose of the Action, the Parties may consult with a view to finding a mutually acceptable strategy to address such situation.*

*Should any occurrence materially affect the reliability of such latest estimate provided by the Organisation, the Organisation shall inform the Contracting Authority and the European Commission where the latter is not the Contracting Authority without delay.*

*7.2.2 By derogation from the provisions on payment of the first pre-financing instalment and subject to the paragraph below, the Contracting Authority shall provide a first pre-financing instalment as set out in the Special Conditions upon signing of this Agreement by both Parties and within thirty (30) Days of receiving a payment request from the Organisation.*

*Notwithstanding the provisions of the Special Conditions setting out arrangements on the payment of the first and further pre-financing instalments, the Organisation may, in its sole discretion and on a case-by-case basis, decide to request the Contracting Authority to pay each of the first and/or any further pre-financing instalment(s) to the Organisation in two or more, as applicable, separate tranches. In the event the Organisation decides to exercise the foregoing option, the Parties agree as follows:*

- (i) the Contracting Authority shall pay the second and subsequent tranches of each of the pre-financing instalment(s) to the Organisation in the amount corresponding to the outstanding balance of each such first or further pre-financing instalment(s) set out, as applicable, in the Special Conditions or in the forecast budget pertaining to the relevant further pre-financing instalment(s);*
- (ii) where the Organisation requests the Contracting Authority to pay the first and/or any further pre-financing instalment(s) in two tranches, the Contracting Authority shall pay the second tranche of each of the pre-financing instalments within thirty (30) Days of receiving a request from the Organisation for the payment of such relevant second tranche;*

- (iii) *where the Organisation requests the Contracting Authority to pay the first and/or any pre-financing instalment(s) in more than two tranches, the deadline shall be fifteen (15) Days of receiving a request from the Organisation of such relevant second and subsequent tranches;*
- (iv) *the Organisation shall not be required to submit to the Contracting Authority any form of reporting or justification in connection with its request for the payment of the second and any subsequent tranches of each of the first and/or further pre-financing instalment(s); and*
- (v) *this derogation is without prejudice to the payment obligations of the Contracting Authority under this Agreement, including its obligation to pay to the Organisation the entire amount of each of the first and/or any further pre-financing instalment(s) as set out in the Special Conditions in single respective tranche if so requested by the Organisation. ”*

10.3 Each Contribution Agreement concluded outside a blending facility or platform and multi-donor facilities administered by the Organisation shall also be subject to the following:

10.3.1 The Special Conditions shall be modified as follows:

*"3.2 The remuneration of the Organisation by the Contracting Authority for the implementation of the activities to be implemented under this Agreement shall be <enter a percentage calculated in accordance with Article 7.2.3 > of the maximum EU Contribution."*

10.3.2 The Special Conditions shall also state the following derogatory conditions:

*"7.2.3 The remuneration of the Organisation for the implementation of the Action shall be a flat-rate contribution specified in the Special Conditions as a percentage of the maximum EU Contribution, to be deducted by the Organisation up-front from each pre-financing instalment provided to the Organisation and to be calculated within the maximum EU Contribution.*

*The remuneration does not need to be supported by accounting documents.*

*In no circumstances may the remuneration exceed 5.3% of the total eligible direct costs to be reimbursed by the Contracting Authority.*

*Where the Agreement is terminated by either Party because the purpose of the Agreement can no longer be effectively or appropriately performed on grounds beyond the Organisation's control, the latter shall be entitled to remuneration that shall be:*

*a) in case of no direct costs eligible for EU financing, an amount justified by the activities carried out by the Organisation until the termination takes effect up to the limit of 30% of the maximum remuneration indicated in the Special Conditions;*

*b) in case there are direct costs eligible for EU financing: the lower of (i) the amount justified by the activities carried out by the Organisation until the termination takes effect; or (ii) 5.3% of the total eligible direct costs to be reimbursed by the Contracting Authority. ”*

## Article 11

### Interpretative provisions

The Parties agree to interpret the Contribution Agreement according to the following:

- 11.1 Each Contribution Agreement defines the relations between the Organisation and the Contracting Authority only for the purposes of implementing the Action.
- 11.2 The responsibility of the Organisation for the implementation of the Action means that the Organisation is responsible for the performance of its obligations under each Contribution Agreement including its obligations to any Contractor, Grant Beneficiary, non-pillar assessed Partner and Affiliated Entity.

- 11.3 The Organisation shall be deemed to have applied a due professional degree of care and diligence if the Organisation has followed its Regulations and Rules in the performance of its obligations under each Contribution Agreement. This provision is without prejudice to the due diligence obligations set out in Article 7 and Article 11.9.
- 11.4 With reference to obligation of the Organisation to respect principles of Sound Financial Management, transparency, non-discrimination and visibility of the EU in implementing the Action, it is understood that such principles shall be applied in accordance with Organisation's Regulations and Rules and as expressly regulated in each Contribution Agreement.
- 11.5 Without prejudice to any other provisions of the Contribution Agreement and this FFPA, where the Organisation is obliged to take any measures to prevent, detect and correct irregularities and fraud when implementing the Action under this Agreement, the Organisation shall apply its rules and procedures assessed in the Ex-ante Pillar Assessment as referred to in Title II of this FFPA.
- 11.6 The term "full financial responsibility" of the Organisation towards the Contracting Authority, as used in each Contribution Agreement, means taking proportionate measures in accordance with its Regulations and Rules to recover the contributed funds unduly paid to or incorrectly used by Contractors, Grant Beneficiaries, non-pillar assessed Partners and Affiliated Entities, as applicable, and/or repaying funds which the Organisation used in a manner inconsistent with the terms of a relevant Contribution Agreement.
- 11.7 It is understood that the Organisation's obligation to notify the Contracting Authority and the European Commission of any substantial change in the rules, procedures and systems applied by the Organisation in the implementation of an Action shall apply to:
- i. substantial changes to the rules, procedures and systems of the Organisation that were the subject of the Ex-ante Pillar Assessment; or
  - ii. changes to the rules, procedures and systems of the Organisation that may affect the conditions of eligibility of the Organisation provided for in the applicable legal instrument of the EU.

As regards the Organisation's obligation to notify the Contracting Authority and the European Commission of any substantial change in the rules, procedures and systems applied by the Organisation in the implementation of an Action, where, in the opinion of the EU, changes to applicable legal instruments of the EU may affect the conditions of eligibility of the Organisation provided for in the applicable legal instrument of the EU, the EU shall first notify the Organisation of such changes.

- 11.8 The Organisation shall be deemed to have fulfilled the requirement to promote respect of human rights and respect applicable environmental legislation, including multilateral environmental agreements, as well as internationally agreed core labour standards, including for the purposes of applicability of such provisions to Contractors and Grant Beneficiaries, by following its Environmental and Social Policy, as this may apply in accordance with its Regulations and Rules.
- 11.9 With reference to the obligation of the Organisation not to support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion, and the related exclusion criteria obligations agreed as ad hoc measures, it is understood that:
- (a) such obligations only apply in respect of the activities financed by the EU Contribution; and
  - (b) the Organisation shall be deemed to have complied with those obligations, including for the purposes of applicability of such provisions to Contractors and Grant Beneficiaries, by following its integrity guidelines and relevant procedures, as such may apply in accordance with its Regulations and Rules and by applying the relevant ad hoc measures regarding exclusion from funding as follows:

- (i) for the purposes of determining that a potential Contractor or Grant Beneficiary (other than a Contractor or a Grant Beneficiary that is state or an entity representing a state) which it has selected following its procurement and award procedure is not in any of these two situations of exclusion the Organisation shall, in addition to applicable due diligence and integrity checks that it is required to undertake pursuant to its own Regulations and Rules and prior to or at the time of signing underlying contracts with such potential Contractor or Grant Beneficiary:
    - require potential Contractor or Grant Beneficiary concerned to provide the Organisation with declarations signed by each such relevant Contractor or Grant Beneficiary self-certifying that it has not, in the past five (5) years, fallen into any of these two situations of exclusion;
    - check the Early Detection and Exclusion System if it contains information indicating that such relevant potential Contractor or Grant Beneficiary is in any of these two situations of exclusion, subject to the Contracting Authority providing the Organisation with such appropriate access to the Early Detection and Exclusion System.
  - (ii) In determining that the potential Contractors or Grant Beneficiaries are not in any of these two situations of exclusion, the Organisation shall rely on the declarations so procured from such relevant potential Contractors and Grant Beneficiaries, provided that, on the date of access by the Organisation, the Early Detection and Exclusion System does not contain information indicating that such Contractor or Grant Beneficiary is in any of these two situations of exclusion.
  - (iii) In the event the Organisation becomes aware (including on the basis of information obtained from the Early Detection and Exclusion System) of information which it believes contradicts the statements made by relevant potential Contractor or Grant Beneficiary in their signed declaration, the Organisation shall request such Contractors or Grant Beneficiaries to provide the Organisation with appropriate documentary evidence, in the form and substance satisfactory to the Organisation, to support their declarations that they are not in any of the two situations of exclusion.
- 11.10 Without prejudice to the definition of conflict of interest provided in each Contribution Agreement, the decision by the Organisation to finance any project identified in the course, or as a result, of the implementation of the Action shall not constitute a conflict of interest provided that such financing is compliant with the Organisation's Regulations and Rules.
- 11.11 It is understood that when the Organisation reports on total costs incurred, it reports on costs based on the invoices authorised, but which may not yet have been paid by the Organisation as of the date of relevant progress report.
- 11.12 On the content of progress reports requiring submission of a summary of controls carried out, it is understood that the said provisions do not impose an obligation on the Organisation to carry out controls and that such summary or information will be included by the Organisation into the progress reports only in the event any such controls had in fact been carried out by the Organisation as required by its Regulations and Rules.
- 11.13 It is understood that where according to a Contribution Agreement, communications are required to be accompanied by a translation or a summary in English or French, this does not imply any obligation on the Organisation to provide English or French translations, or English or French summaries, of documents submitted to the Contracting Authority in support of reports submitted in accordance with the provisions of that Contribution Agreement.
- 11.14 It is accepted that the Organisation provides the Commission, on an annual basis, with a global management declaration covering all Contribution Agreements for the respective year to which such management declaration pertains, independently from the progress or final reports provided

pursuant to each Contribution Agreement. For the avoidance of doubt, this management declaration may cover all Contribution Agreements and Contribution Agreements for Financial Instruments.

11.15 With regard to the provision on communication and visibility, and particularly the Communication and Visibility Requirements for EU External Action (the “Requirements”), it is understood that:

- (i) Visibility and/or publicity measure is to be understood as a requirement for displaying the EU emblem and short statement acknowledging the support received from the EU. This is required in all cases, except for the instances mentioned in (ii), second sentence of (iii), (iv), (v) and (vi) or otherwise agreed with the Contracting Authority.
- (ii) For some Actions, it may not be appropriate or possible for any visibility and/or publicity measures to be undertaken under this provision, in which case the Parties’ agreement that no visibility and/or publicity measures will be undertaken shall be indicated in the Contribution Agreement. For instance, factors such as security or local sensitivities may curtail information activities in some crisis zones and, in extreme cases, it may be necessary to avoid visibility altogether. In addition, some Actions might require a high level of neutrality. In these cases, the target audience and visibility tools will be chosen by the Organisation in relation to what is appropriate. When visibility activities are not possible due to security considerations and/or local political sensitivities, the steps taken by the Organisation at country level will be agreed between the Organisation and the Contracting Authority on a case-by-case basis.
- (iii) Publications and documents, either in print or online form, such as reports, newsletter and similar material, as well as websites and social media accounts, all of which are part of the general communication activities of the Organisation, and that directly pertain to the implementation of the relevant Action, must prominently feature the EU emblem, where applicable accompanied by text acknowledging the support of the EU, as well as the disclaimer laid down in the Contribution Agreement. For the avoidance of doubt, the requirement to display the EU emblem specifically excludes individual webpages, social media messages or posts on the Organisation’s own website and social media channels, which are funded by Organisation’s own budget. The disclaimer is reserved for documents with ISBN or substantial public disclosure documents expressing opinions and recommendations, excluding marketing material such as posters, fliers, brochures.
- (iv) In some cases which do not pertain to the implementation of an Action, where reference to such Action is made by listing it among other projects implemented by the Organisation which have not received funding from the EU, the Organisation shall not be required to acknowledge that the Action was carried out with funding from the EU and or to display the EU emblem.
- (v) In certain unforeseen circumstances, beyond the control of the Organisation, it may not be possible or appropriate for visibility measures to be carried out in accordance with the Requirements. Should this be the case, the Organisation shall notify the Contracting Authority, as soon as practicable and in written form, of any adjustments it has made to the provisions set out in the Requirements, specifying the reasons necessitating such adjustments.
- (vi) Notwithstanding any provisions of this Article 11.15, visibility activities related to Multi-Donor Actions shall take into account the multi-donor nature of such actions and where it is not reasonably possible or appropriate to identify the activities financed by the EU, adequate visibility for its contribution will be provided within the context of broader visibility and designed for the overall Action.
- (vii) If applicable and agreed between the European Commission and the Organisation (e.g. exceptionally in Contribution Agreements for external actions, where additional

communication activities are of importance and where they can amplify the outreach to specific target audiences or the general public), the Organisation shall implement communication measures, in addition to its usual activities to promote the Action. In such a case, the Description of the Action of the Contribution Agreement shall describe these communication measures and a separate budget line for them shall be included in the Budget of the Action. Visibility and/or publicity obligations in relation to these communication measures shall be subject to the provisions of this Article 11.15. In any other case, EU funding shall be limited to the costs associated with ensuring the display of the EU emblem and funding statement. In this regard specific visibility actions (including but not limited to actions such as stickers, commemorative plaques or sign boards) can always be included in the Budget of the Action as visibility costs.

- (viii) In cases where particular requirements set out in the Requirements contradict to or deviate from the provisions of the Contribution Agreement on communication and visibility, the relevant provisions of the Contribution Agreement, as governed by this FFPA, shall take precedence.
- 11.16 It is understood that penalties are foreseen in the EU Financial Regulation if the Organisation finds itself in an exclusion situation and that such penalties are without prejudice to privileges, immunities and exemptions of the Organisation.
- 11.17 It is understood that the Contracting Authority or the Commission shall consult the Organisation before proceeding with offsetting of amounts to be recovered from the Organisation.
- 11.18 For the purposes of the provisions on eligibility of costs, the Organisation shall be deemed to have met the Sound Financial Management principle, if the EU Contribution has been managed and administered by the Organisation in accordance with rules and procedures referred to in Title II of this FFPA.
- 11.19 It is understood that costs related to currency exchange losses are embedded in each of the relevant budget headings.
- 11.20 It is understood that performance-based compensation (PBC) payments to the Organisation's staff working for an Action may be eligible provided: (i) these are paid independently of the participation of the staff member in the Action, and as part of the usual remuneration practices of the Organisation; (ii) not based on commercial targets or fund raising targets; (iii) based on objective conditions.
- 11.21 It is understood that bank account fees charged to the Organisation and bank charges incurred by the Organisation for transfers to third parties in the implementation of the Action are paid by the Organisation from the amounts of the remuneration.
- 11.22 With respect to the provisions pertaining to scrutiny by the Court of Auditors, the wording "Organisation agrees" shall be understood as the "Organisation acknowledges", considering that the scrutiny by the Court of Auditors of the execution of each Contribution Agreement is not subject to an agreement by the Organisation. It is also understood that the performance of the duties of the Court of Auditors refers to the performance of only those duties of the Court as relating to the financing of the Action.
- 11.23 Due to the Organisations' mandate, it is understood that it may not enter into performance based financing.
- 11.24 It is understood that, except for Performance-based financing and without prejudice to more detailed provisions in a Contribution Agreement, Indicators described in each Contribution Agreement are indicative and are for reporting, monitoring and evaluation purposes without prejudice to the right of the Parties to amend the relevant Contribution Agreement.
- 11.25 In case of multi-donor accounts, it is understood that the End Date refers to the final report for the Action and not for the overall action.



- 11.26 It is understood that the Organisation promotes the use of local contractors when implementing the Action by systematically promoting the dedicated page of its electronic procurement SMART by EBRD Client E-Procurement Portal in its outreach activities with consultancy industry and development aid interest groups, including in its countries of operations.
- 11.27 In case of Multi-Partner Contribution Agreements it is understood that the possibility for the Organisation to propose the termination of the participation of a Partner in duly justified cases includes cases where the Organisation is required to terminate the participation of a Partner in line with the Organisation's Regulations and Rules.
- 11.28 Due to the nature of the Organisation and its mandate it does not have any Affiliated Entities.
- 11.29 In respect of Contribution Agreements concluded in the context of blending facilities or platforms it is accepted that the leverage effect is described in the Description of the Action.
- 11.30 It is understood that the justification the Organisation needs to provide in the context of the minimum remuneration it is entitled in respect of Contribution Agreements concluded outside a blending facility or platform and multi-donor facilities administered by the Organisation is limited to relevant explanation to be provided by the Organisation to the Contracting Authority in respect of the type of activities it has undertaken and the Organisation will not be required to produce supporting documents in this regard.
- 11.31 It is understood that interest generated on pre-financing shall be due.
- 11.32 In respect of payment arrangements of the EU Contribution laid down in the Contribution Agreement it is understood that:
- (i) the Contracting Authority agrees in principle to pre-finance 100% of each instalment of the EU Contribution provided that full pre-financing is essential for the Action to be carried out and the relevant governance rules of the Organisation require that funds necessary to cover a legal commitment are made available to the Organisation before it enters into the legal commitment. Notwithstanding, the payment of any given pre-financing instalment is subject to EU Budget availability. In case of shortage of EU Budget funds, the Contracting Authority will promptly inform the Organisation. As stipulated in Article 10.2 of this FFPA, the Organisation shall take all necessary measures to avoid negative remuneration on the cash balance kept in its bank accounts dedicated to the Action;
  - (ii) only the first pre-financing instalment shall be indicated in the payments arrangements section of the Special Conditions, and each further pre-financing instalment(s), if any, shall correspond to the Contracting Authority's part of the forecast budget for the subsequent period.
- 11.33 The Organisation is required to implement measures aimed at minimising accrual of negative remuneration. These measures include the shortening of the submission period of the final report and the reduction of payment deadlines to its Contractors and Grant Beneficiaries, as well as the splitting of pre-financing instalments into two or more separate tranches. It is understood that while the Special Conditions will lay down these measures, they will only apply during periods when negative interest rates apply to cash balances holding EU Contributions.

## **Title V**

### **Provisions related to the Contribution Agreement for Nuclear Safety Actions**

#### *Article 12*

#### *Supplementary provisions*

- 12.1 Each Contribution Agreement shall state:

*"7.1 The following shall supplement the General Conditions:*

*7.1.1 The Contracting Authority adheres to the Rules of the Fund [Account].*

*7.1.2 Prior to bringing legal proceedings for recovery of EU funds that have been unduly paid or incorrectly used by Contractors or Grant Beneficiaries, the Organisation shall consult the Contracting Authority on the cost-effectiveness of the legal actions and the covering of associated legal costs. If there is a disagreement between the Parties on the course of Action to be taken, the matter may be referred to the responsible Director of the European Commission, through the contact points specified in this Agreement, when the latter is the Contracting Authority.*

*7.1.3 Other than for failure to perform its obligations set forth in this Agreement, the European Commission shall not, under any circumstances or for any reason whatsoever, be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out, or as a consequence of the Action.*

*7.1.4 The European Commission, and the Contracting Authority (if other than the European Commission), and the Organisation shall agree in advance on the scope of participation of the European Commission and the Contracting Authority in the main monitoring mission and evaluation exercises related to the performance of the Action.*

*7.1.5 Any documents provided to the European Commission or Contracting Authority in the context of any monitoring mission or evaluation exercises they perform shall be provided pursuant to pertinent provisions of Section 2.2 of Annex I (Verification Clauses between the Commission and the EBRD for Contribution Agreements and Contribution Agreements for Financial Instruments) to the Financial Framework Partnership Agreement referred to in this Agreement and shall be subject to the confidentiality obligations applicable between the Parties.*

*7.1.6 Consistent with Article 46 of the Agreement Establishing the European Bank for Reconstruction and Development and with respect to the arbitration clause contained in dispute settlement provisions, the Parties agree that, for the purposes of Article 26 of the 2012 Permanent Court of Arbitration Rules for Arbitration, neither Party shall seek any interim measures or pre-award relief against the other Party.*

*7.1.7 Currency exchange losses incurred by exchanging pre-financing into other currencies shall be borne by the EU Contribution and shall constitute eligible direct costs in accordance with the provisions of the Agreement.”*

12.2 For multi-donor accounts, the Contribution Agreement shall also include the following supplementary provision:

*“7.1.8 The Organisation shall submit the final report issued for the relevant Nuclear Safety Fund/Account to which the Contracting Authority has contributed, as and when such Fund/Account is terminated in accordance with terms and conditions governing its management and administration. In the event of a final surplus balance of total financing over expenditures remaining after such Fund/Account is terminated in accordance with terms and conditions governing its management and administration, the Organisation shall specify in the final report issued for the relevant Nuclear Safety Fund/Account the amount of the surplus balance and the proportion of such balance that shall be refunded to the Contracting Authority. To this end, after receiving the final report, the Contracting Authority shall issue a recovery order in accordance with the provisions on recovery.”*

### Article 13

#### *Derogatory provisions<sup>9</sup>*

13.1 Each Contribution Agreement shall derogate from the Special Conditions and shall state:

*“1.3 (...) In the performance of the activities, the Organisation shall:*

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<sup>9</sup> Derogatory provisions set out in Article 13.1 replace certain provisions of the Special Conditions and apply instead of those provisions and derogatory provisions set out in Article 13.2 replace certain provisions of the General Conditions and apply instead of those provisions.

*a) apply its own rules and procedures for the award and management of Procurement Contracts which have been assessed in the Ex-ante Pillar Assessment;;*

*b) apply its own rules and procedures for the award and management of Investment Grants which have been assessed in the Ex-ante Pillar Assessment;*

*c) apply its own rules and procedures for exclusion from access to funding, which have been assessed in the Ex-ante Pillar Assessment as supplemented with the following measures:*

- (i) the Organisation shall refrain from financing a project when such project does not comply with the requirements in respect of child labour or trafficking in human beings as laid down in its Environmental and Social Policy, in particular in its Performance Requirement 2: Labour and Working Conditions;*
- (ii) the Organisation shall also ensure that, prior to, or at the time of entering into direct contractual relationship with Contractors or Grant Beneficiaries (other than a Contractor or a Grant Beneficiary that is state or an entity representing a state), no such potential Contractor or Grant Beneficiary, has been the subject of a final judgement (a judgment that has the force of res judicata) or of a final administrative decision (a decision of an administrative authority having final and binding effect in accordance with the applicable law) establishing that: (i) it has created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business; or (ii) it has been created with the intention described in (i). “*

### *“3.1 Remuneration*

*The remuneration of the Organisation by the Contracting Authority for the implementation of the activities entrusted under this Agreement shall be based on annual administrative budgets approved by the Assembly of Contributors of the Fund/Account and shall be <enter percentage % > of the maximum EU Contribution set out in the Special Conditions. In the event that the amount of the remuneration in percentage terms charged to the other contributors of the Fund/Account is lower than the remuneration specified above in this Article, then the remuneration charged by the Organisation to the Contracting Authority as specified above shall be reduced, accordingly.*

*In the event that the percentage stated in the Special Conditions exceeds 5.5% of the maximum EU Contribution set out in the Special Conditions, the following justification is to be included as well.*

*The percentages referred to in the Special Conditions may be exceeded on an exceptional basis, where the participation of the Commission is critical to achieve EU policy objectives. The percentages may also be exceeded to reimburse administration costs which while incurred during the period of implementation relate to projects committed before. In the past, the appropriations included in the agreements only covered the annual administrative budget and not the running costs for the entire life of the projects financed by the Fund. In no circumstances may, the remuneration over the life of the Fund/Account, exceed 5.5% of the final EU Contribution over the life of the Fund.”*

### **13.2 Each Contribution Agreement shall derogate from the General Conditions and shall state:**

*“7.2 The following derogations from the General Conditions shall apply:*

*7.2.1 Negative remuneration generated on pre-financing shall be borne by the EU Contribution and constitute eligible costs, including if incurred after the Implementation Period of the Action and until the Organisation repays any amount due to the Contracting Authority, for the purpose of provisions on eligibility of costs and in accordance with the following:*

*Funds shall be managed by the Organisation pursuant to, if applicable, the guidelines for the management of liquid assets approved by the Assembly of Contributors for each Nuclear Safety Fund/Account in line with the Rules of a Nuclear Safety Fund/Account and always pursuant to the following donor fund management guidelines: The Organisation shall manage the EU Contribution as prudently as its own funds. In practice, this means that a best effort is made, where applicable, to apply the same risk management principles and framework to the EU Contribution as those applied to the Organisation's own treasury funds, and with due regard to the nature and purpose of the EU Contribution.*

*Without prejudice to the prudential management of the EU Contribution (including risk management), the Organisation shall use its best efforts, on the basis of this Agreement and subject to the donor fund management guidelines above, to avoid negative remuneration on the cash balance kept in the bank account dedicated to the Action and on the related sub-accounts. In this regard, the Organisation shall endeavour to shorten the submission period of the final report.*

*By 15 August and 15 February each year, should it become apparent that negative remuneration cannot reasonably be avoided during the following six (6) months, the Organisation shall inform the Contracting Authority of:*

- (i) the estimated negative remuneration, if any, for the following six (6) months, including as percentage of the maximum EU Contribution;*
- (ii) the negative remuneration accrued in two preceding six (6) - month periods, including as percentage of the maximum EU Contribution;*
- (iii) the total negative remuneration accrued as percentage of the maximum EU Contribution.*

*In addition, it shall also:*

- (i) provide a list of bank accounts, and the related sub-accounts, to be impacted, and*
- (ii) as part of its regular reporting, provide relevant information to the Assembly of Contributors enabling the Assembly to make informed decisions on possible amendments to the guidelines for the management of liquid assets for a Nuclear Safety Fund/Account with the aim to minimise or avoid losses generated by negative remuneration. Once the Assembly of Contributors has taken a decision, the Organisation shall inform the Commission including a justification on why no reasonable better alternative is available and an explanation on a strategy intending to minimise the impact of negative remuneration.*

*Should any occurrence materially affect the reliability of such latest estimate provided by the Organisation, the Organisation shall inform the Contracting Authority and the European Commission where the latter is not the Contracting Authority without delay.*

*7.2.2 By derogation from the provisions on the right to use results and transfer equipment, the Commission shall be granted the right to use intellectual property and industrial property rights, including any pre-existing and third party rights in any result of the Action including the reports and other documents relating to it, developed by the Organisation or that it has acquired from its Grant Beneficiaries, insofar as the Organisation has such rights. The Commission shall have such rights for purposes limited to the development, implementation and monitoring of EU policies and programmes, including by making them available to EU institutions, bodies, offices, agencies or bodies and institutions of EU Member States, distribution to the public, translations, storage or archive. This right shall not affect proprietary rights and confidentiality obligations under the Contribution Agreement.*

*7.2.3 By derogation from the provisions on amendments that do not affect the main purpose of the Action, the 25% threshold for transfers between headings of the indicative budget and the corresponding reporting requirements shall not apply.*

*7.2.4 By derogation from the provisions on payment of the first pre-financing instalment and subject to the paragraph below, the Contracting Authority shall provide a first pre-financing instalment as set out in the Special Conditions upon signing of this Agreement by both Parties and within thirty (30) Days of receiving a payment request from the Organisation.*

*Notwithstanding the provisions of the Special Conditions setting out arrangements on the payment of the first and further pre-financing instalments, the Organisation may, in its sole discretion and on a case-by-case basis, decide to request the Contracting Authority to pay each of the first and/or any further pre-financing instalment(s) to the Organisation in two or more, as applicable, separate tranches. In the event the Organisation decides to exercise the foregoing option, the Parties agree as follows:*

- (i) the Contracting Authority shall pay the second and subsequent tranches of each of the pre-financing instalment(s) to the Organisation in the amount corresponding to the outstanding balance of each such first or further pre-financing instalment(s) set out, as applicable, in the Special Conditions or in the forecast budget pertaining to the relevant further pre-financing instalment(s);*
- (ii) where the Organisation requests the Contracting Authority to pay the first and/or any further pre-financing instalment(s) in two tranches, the Contracting Authority shall pay the second tranche of each of the pre-financing instalments within thirty (30) Days of receiving a request from the Organisation for the payment of such relevant second tranche;*
- (iii) where the Organisation requests the Contracting Authority to pay the first and/or any pre-financing instalment(s) in more than two tranches, the deadline shall be fifteen (15) Days of receiving a request from the Organisation of such relevant second and subsequent tranches;*
- (iv) the Organisation shall not be required to submit to the Contracting Authority any form of reporting or justification in connection with its request for the payment of the second and any subsequent tranches of each of the first and/or further pre-financing instalment(s); and*
- (v) this derogation is without prejudice to the payment obligations of the Contracting Authority under this Agreement, including its obligation to pay to the Organisation the entire amount of each of the first and/or any further pre-financing instalment(s) as set out in the Special Conditions in single respective tranche if so requested by the Organisation.”*

## *Article 14*

### *Interpretative provisions*

The Parties agree to interpret the Contribution Agreement according to the following:

- 14.1 It is understood that the Budget of the Action is indicative.
- 14.2 It is understood that the flat-rate for remuneration shall be an estimation of the administrative costs over the life of the agreement to implement the activities foreseen. The amounts withdrawn from the pre-financing instalments as remuneration shall be based on the yearly administrative budget as approved by the Assembly of Contributors.
- 14.3 It is understood that interest on pre-financing shall not be due and shall be reused for the Action.
- 14.4 It is understood that the consultations prior to the launch of legal proceedings for recovery of EU funds by the Organisation will take place in the framework of the Assembly of Contributors.
- 14.5 It is understood that by submitting to the Commission regular progress reports and a final report in line with formats and content agreed by the Assembly of Contributors, the Organisation would

have fulfilled its reporting obligations under the Contribution Agreement. It is further understood that the final report for any Nuclear Safety Action, required under the Contribution Agreement to be submitted within six (6) months shall be the first regular report submitted by the Organisation to the Assembly of Contributors immediately after the end of the implementation period. The Organisation shall also submit to the Contracting Authority the final report issued for the relevant Nuclear Safety Fund/Account to which the Contracting Authority has contributed, as and when such Fund/Account is terminated in accordance with terms and conditions governing its management and administration.

- 14.6 It is understood that the classification of any document, information or other material as confidential shall not prevent circulation of such document, information or material to the Assembly of Contributors of the Fund/Account in accordance with the Rules of the Fund/Account. Any public disclosure of confidential documents shall be subject to the approval of the Assembly of Contributors of the Fund/Account.
- 14.7 It is understood that the ownership, industrial and intellectual property rights resulting from the Action will be typically vested in Grant Beneficiaries.
- 14.8 It is understood that evaluation and monitoring missions shall be planned in a collaborative manner, including with the Assembly of Contributors.
- 14.9 It is understood that the European Commission shall also inform the Assembly of Contributors of planned on-the-spot missions.
- 14.10 For the avoidance of doubt, all of the Interpretative provisions in Article 11 of Title IV of the FFPA, with the exception of paragraph 11.31 regarding interest on pre-financing, will additionally apply to, and complement, the Contribution Agreements concluded for Nuclear Safety Action.

## Title VI

### Provisions related to the Contribution Agreement for Financial Instruments

#### *Article 15*

#### *Supplementary provisions*

- 15.1 Each Contribution Agreement for Financial Instruments (funded or unfunded) shall state:

*“8.1/8.2 The following shall supplement the General Conditions:*

*8.1.1/8.2.2 Prior to or around the time of bringing legal proceedings for recovery of EU funds that have been unduly paid or incorrectly used by Contractors or Grant Beneficiaries, the Organisation shall inform the Commission on the planned legal proceedings and provide the Commission with an estimate of expected external costs and expenses, if any, and of amounts that are likely to be recovered (such notification being a “Recovery Notice”). The Commission shall have the right to object in writing to the eligibility of those costs within 5 working days following receipt of this Recovery Notice (this objection being the “Objection Notice”). Notwithstanding the foregoing, the Organisation shall have the right to decide at its sole discretion whether to bring legal proceedings for recovery of EU funds in relation to a Financial Instrument (including those unduly paid or incorrectly used by Financial Intermediaries or Final Recipients), in accordance with its Regulations and Rules. Any recoveries received by the Organisation following such legal proceedings shall be applied first towards the cost associated with the legal proceedings and subsequently distributed between the Commission and the Organisation in accordance with the respective seniority and pro-rata with the percentages of their funding used in the Action.*

*8.1.2/8.2.3 Other than for failure to perform its obligations set forth in this Agreement, the Commission shall not, under any circumstances or for any reason whatsoever, be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out, or as a consequence of the Action.*

*8.1.3/8.2.4 The Commission and the Organisation shall agree in advance on the scope of participation of the Commission in the main monitoring mission and evaluation exercises related to the performance of the Action.*

*8.1.4/8.2.5 Any documents provided to the Commission in the context of any monitoring mission or evaluation exercises it performs shall be provided pursuant to pertinent provisions of Section 2.2 of Annex A (Verification Clauses between the Commission and the EBRD for Contribution Agreements and Contribution Agreements for Financial Instruments) to the Financial Framework Partnership Agreement referred to in this Agreement and shall be subject to the confidentiality obligations applicable between the Parties.*

*8.1.5/8.2.6 Consistent with Article 46 of the Agreement Establishing the European Bank for Reconstruction and Development and with respect to the arbitration clause contained in dispute settlement provisions, the Parties agree that, for the purposes of Article 26 of the 2012 Permanent Court of Arbitration Rules for Arbitration, neither Party shall seek any interim measures or pre-award relief against the other Party.*

*8.1.6/8.2.7 It is understood that notwithstanding the provisions on arrangements for payment of the further payments and balance, the Special Conditions may provide different time limits for proceeding with the payment requests, depending on the nature of the Action, as agreed between the Parties.”*

- 15.2 Each Contribution Agreement for Financial Instruments of a funded nature shall also state the following supplementary conditions:

*“8.1.7 The Action Account shall be debited with negative remuneration subject to the asset management guidelines laid down in Article [8.2.8], including if incurred after the Implementation Period of the Action and until the Organisation repays any amount due to the Commission, for the purpose of provisions on eligibility of costs.*

*8.1.8 The amounts of the EU Contribution committed for Operations by the Organisation shall not be taken into account for the purposes of determining whether there are excessive balances on the Action Account.”*

- 15.3 Each Contribution Agreement for Financial Instruments of an unfunded nature, which includes Ancillary Support and/or an Other Activities component, shall also state the following supplementary conditions:

*“8.2.8 Negative remuneration generated on pre-financing shall be borne by the EU Contribution and constitute eligible costs, including if incurred after the Implementation Period of the Action and until the Organisation repays any amount due to the Commission, for the purpose of provisions on eligibility of costs and in accordance with the following donor fund management guidelines.*

*The Organisation shall manage the EU Contribution as prudently as its own funds. In practice this means that a best effort is made, where applicable, to apply the same risk management principles and framework to the EU Contribution as those applied to the Organisation’s own treasury funds, and with due regard to the nature and purpose of the EU Contribution.*

*Without prejudice to the prudential management of the EU Contribution (including risk management), the Organisation shall use its best efforts, on the basis of this Agreement and subject to the donor fund management guidelines above, to avoid negative remuneration on the cash balance kept in the in the bank account dedicated to the Action and on the related sub-accounts. In this regard, the Organisation shall endeavour to shorten the submission period of*

*the final report and to reduce the payment deadlines to its Contractors and Grant Beneficiaries. By 15 August and 15 February each year, should it become apparent that negative remuneration cannot reasonably be avoided during the following six (6) months, the Organisation shall inform the Commission of:*

- (i) the estimated negative remuneration, if any, for the following six (6) months, including as percentage of the maximum EU Contribution;*
- (ii) the negative remuneration accrued in two preceding six (6) -month periods, including as percentage of the maximum EU Contribution;*
- (iii) total negative remuneration accrued as percentage of the maximum EU Contribution.*

*In addition, it shall also:*

- (i) provide a list of bank accounts, and the related sub-accounts, to be impacted, and*
- (ii) demonstrate that no reasonable better alternative is available and explain the strategy in place to minimise the impact. In exceptional circumstances, where the impact of negative remuneration is likely to negatively affect the purpose of the Action, the Parties may consult with a view to find a mutually acceptable strategy to address such situation.*

*Should an occurrence materially affect the reliability of such latest estimate provided by the Organisation, the Organisation shall inform the Commission without delay.*

*8.2.9 Currency exchange losses arising from any conversion into local currency for local transactions or into any other currency required for transactions and from conversion of such local currency or other currency back into the Currency of the Agreement at the relevant currency exchange rate shall be considered as eligible direct costs of the Action for the Ancillary Support and Other Activities subject to the compliance with criteria for eligibility of costs and provided that the need to use local currency or any other currency is described in the Description of the Action. In case of currency exchange gains, the relevant amounts shall be first used to cover any currency exchange losses, and any outstanding amount shall be due to the Commission.”*

## *Article 16*

### *Derogatory provisions<sup>10</sup>*

- 16.1 Each Contribution Agreement for Financial Instruments (funded or unfunded) shall derogate from the Special Conditions and shall state:

*“1.2 The Organisation declares that no substantial changes, which have not already been communicated to the Commission, affect the rules and procedures which have been subject to the Ex-ante Pillar Assessment.*

*In the performance of the activities the Organisation shall:*

*- apply its own rules and procedures for financial instruments, which have been subject to the Ex-ante Pillar Assessment, subject to the provisions referred to in Article [8.2.1/8.3.1]<sup>11</sup> as regards tax avoidance, non-cooperative jurisdictions anti-money laundering and counteracting financing of terrorism and complemented with the following ad hoc measures: when selecting Financial Intermediaries the Organisation shall document the selection process, in particular, the Organisation’s criteria considered for the selection of a particular Financial Intermediary*

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<sup>10</sup> Derogatory provisions set out in Article 16.1 and Article 16.4.1 replace certain provisions of the Special Conditions and apply instead of those provisions and derogatory provisions set out in Article 16.2, Article 16.3 and 16.4.2 replace certain provisions of the General Conditions and apply instead of those provisions.

<sup>11</sup> Please select as relevant.



*(including the nature of the concerned Operations, experience, capacity, contribution to the Action, added value, sound banking).*

*- apply its own rules and procedures for the award and management of Procurement Contracts which have been subject to the Ex-ante Pillar Assessment;*

*- apply its own rules and procedures for award and management of Investment Grants which have been subject to the Ex-ante Pillar Assessment;*

*- apply its own rules and procedures for exclusion from access to funding, which have been subject to the Ex-ante Pillar Assessment complemented with the following ad hoc measures:*

*(i) the Organisation shall refrain from financing a project when such project does not comply with the requirements in respect of child labour or trafficking in human beings as laid down in its Environmental and Social Policy, in particular in its Performance Requirement 2: Labour and Working Conditions;*

*(ii) the Organisation shall ensure that, prior to, or at the time of entering into direct contractual relationship with Financial Intermediaries, Final Recipients, Contractors or Grant Beneficiaries (other than a Financial Intermediary or a Final Recipient or a Contractor or a Grant Beneficiary that is state or an entity representing a state) no such potential Financial Intermediary, Final Recipient Contractor or Grant Beneficiary has been the subject of a final judgement (judgment which has the force of res judicata) or of a final administrative decision (a decision of an administrative authority having final and binding effect in accordance with the applicable law) establishing that: (i) it has created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business; or (ii) it has been created with the intention described in (i)."*

16.2 Each Contribution Agreement for Financial Instruments (funded or unfunded) shall derogate from the General Conditions and shall state:

*"8.2/8.3 The following derogations from the General Conditions shall apply:*

*8.2.1/8.3.1 By derogation from the provisions on excluded activities, tax avoidance, non-cooperative jurisdictions, anti-money laundering and counteracting financing of terrorism, the Organisation shall:*

- 1. When implementing Financial Instruments, the Organisation shall comply with applicable Union law and agreed international and Union standards and, therefore, not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.*
- 2. When implementing Financial Instruments, the Organisation shall not enter into new or renewed Operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions (the 'EU NCJ List')<sup>12</sup> or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 (the 'EU AML List')<sup>13</sup>.*

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<sup>12</sup> Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, published in the Official Journal of the EU on 24 February 2022, as may be amended from time to time. Published at <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>. The EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.

<sup>13</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73–117. List published at [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries_en). The EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.

*The Organisation may derogate from the first subparagraph of this paragraph 2 only if the action is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in paragraph 1.*

*When concluding agreements with Financial Intermediaries with respect to the implementation of Financial Instruments, the Organisation shall transpose the requirements referred to in paragraphs 1 and 2 into the relevant agreements and shall request the Financial Intermediaries to report on their observance.*

3. *When implementing Financial Instruments, the Organisation shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in particular Regulation (EU) 2015/847 of the European Parliament and of the Council<sup>14</sup> and Directive (EU) 2015/849.*
4. *When concluding agreements with Financial Intermediaries or Final Recipients that are subject to Directive (EU) 2015/849, the Organisation shall make funding contingent upon the Financial Intermediaries' or Final Recipients' disclosure of beneficial ownership information in accordance with Article 30 of Directive (EU) No 2015/849. When concluding agreements with Financial Intermediaries or Final Recipients that are subject to Directive (EU) 2013/36<sup>15</sup>, the Organisation shall make funding contingent upon the Financial Intermediaries' or Final Recipients' publication of country-by-country reporting in accordance with Article 89 (1) of Directive (EU) 2013/36.*
5. *When implementing Financial Instruments, the Organisation shall comply with paragraphs 1, 2 and 3 by applying its rules and procedures on anti-money laundering, terrorism financing, tax avoidance, tax fraud, tax evasion and non-cooperative jurisdictions, as assessed in the ex-ante pillar assessment, subject to the additional requirements set out in paragraphs 4, 6 and 7.*
6. *When implementing Financial Instruments:*
  - a) *the Organisation shall not enter into new or renewed Operations, by way of direct contractual relationships, with entities incorporated or established in any jurisdiction listed in the EU NCJ List or the EU AML List, subject to the derogation set out in paragraph 2, second subparagraph;*
  - b) *the grace period set out in Section III.2.7 of EBRD Domiciliation Policy, the "Home Jurisdiction" exemption set out in Section III.5 of EBRD Domiciliation Policy, or other derogations beyond the one specified in paragraph 2, shall not apply in respect of any jurisdiction listed in the EU NCJ List or the EU AML List; and*
  - c) *the Organisation shall extend the application of its rules and procedures in relation to project-by-project due diligence, including integrity checks, to:*
    - (i) *relevant entities in the project structure involved in the financial flows of the project, as per the list of 'relevant entities' mentioned under Section IV(1) 1.2 of the Commission Communication C(2018)1756, and*
    - (ii) *controlling owners in the meaning of the EU definition of beneficial ownership stemming from Article 3(6)(a), (b) and (c) of Directive 2015/849 as explained under Section V of the Commission Communication C(2018)1756,*

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<sup>14</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, OJ L 141, 5.6.2015, p. 1–18.

<sup>15</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338–436.

*provided that, with respect to tax due diligence, extended tax due diligence under this subparagraph c) (A) shall only apply if tax due diligence is required for the project under the Organisation rules and procedures; (B) shall only apply to relevant entities or controlling owners incorporated or established in a jurisdiction other than that where the action is physically implemented and (C) shall assess whether those relevant entities or controlling owners exploit any of the deficiencies identified by the EU in jurisdictions mentioned in the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, as set out in the table in Annex III to the FFPA referred to in Article 1 of the Special Conditions (updates will be made available on the website of DG Taxation and Customs Union ([https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes\\_en](https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes_en))).*

7. *In respect of the transposition requirements under the third subparagraph of paragraph 2, the Organisation shall comply with its obligations under paragraphs 1 and 2 as follows:*
  - a) *the Organisation shall conduct due diligence on the Financial Intermediary's risk and compliance systems and controls framework (including with respect to KYC measures), in accordance with the Organisation rules and procedures (as assessed in the ex-ante pillar assessment), and shall require the Financial Intermediary to apply such Financial Intermediary's standards to Final Recipients;*
  - b) *the Organisation shall require the Financial Intermediary not to enter, when implementing Financial Instruments, into new or renewed Operations, by way of direct contractual relationships, with Final Recipients incorporated or established in any jurisdiction listed in the EU NCJ List or the EU AML List, subject to the derogation set out in paragraph 2, second subparagraph; and*
  - c) *where the Final Recipient is a Medium Enterprise<sup>16</sup> with a turnover or balance sheet equal to or exceeding EUR 10 million or a Large Enterprise<sup>17</sup>, the Organisation shall in addition require the Financial Intermediary to make EU funding contingent upon (i) the submission by the Final Recipient of the self-declaration in form set out in Annex II to the FFPA referred to in Article 1 of the Special Conditions or (ii) the conduct of equivalent due diligence by the Financial Intermediary.*
8. *In the event of any breach of the obligations under this clause, the remedial measures available to the Commission may include, but shall not be limited to, the recovery of any payments made by the Commission to the Organisation or the exclusion or ineligibility of the Operation for Union funding. This is without prejudice to any general rights that the Commission or the Organisation may have in relation to recovery, suspension or termination of this Agreement.*
9. *For the avoidance of doubt, in case the status of a jurisdiction referred to in paragraph 2 changes, this change in status shall be applied by the Organisation to new agreements to be signed by the Organisation or by the Financial Intermediaries.*
10. *The Organisation shall provide an independent audit report on the implementation of the tax avoidance measures under paragraphs 6 and 7 not later than 30 June 2024. The Commission and the Organisation shall review paragraphs 6 and 7, as appropriate, by 31 December 2024, on this basis.*

*8.2.2/8.3.2 By derogation from the provisions on reporting, the Organisation shall not be required to provide information on date of manifestation of interest in the pipeline report.*

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<sup>16</sup> Term "Medium Enterprise" has the meaning given to it in the European Commission Recommendation 2003/361/EC, as published in the Official Journal of the European Union L 124, p. 36 of 20 May 2003.

<sup>17</sup> "Large Enterprise" means an entity that is not a natural person, a Micro Enterprise, a Small Enterprise or a Medium Enterprise according to the European Commission Recommendation 2003/361/EC.

8.2.3/8.3.3 *By derogation from the provisions on eligibility of costs, provisions for losses, debts or potential liabilities are eligible if incurred under the Operations up to the amount of the EU Contribution.*

- 16.3 Each Contribution Agreement for Financial Instruments of a funded nature shall also state the following derogatory conditions:

*“8.2.4 By derogation from the guidelines for hedging of non-euro exchange rate risk in case of Operations expressed in a Tradable Currency, in order to fix the euro equivalent of a specific activity in a Tradable Currency, the Organisation shall purchase the Tradable Currency in the amount required for the activity. Any such transaction shall be made on the date of the signature of the relevant activity or as soon as practically possible following that date.*

*8.2.5 By derogation from the provisions on the consequences of termination of the Agreement, upon termination of the latter when either Party believes that the purpose of the Agreement can no longer be effectively or appropriately performed the part of the EU Contribution that:*

- (i) is not committed to Operations or portfolios of Operations by the Organisation pursuant to any agreement entered between the Organisation and any third parties for the purposes of the Agreement, and*
- (ii) is committed to Operations or Portfolio of Operations by the Organisation pursuant to any agreement, other than a guarantee agreement, entered between the Organisation and any third parties for the purposes of the Agreement, which can be reasonably terminated on legal grounds,*

*shall be reimbursed to the Commission. For the avoidance of doubt, it is understood that: (i) the EU Contribution is committed upon entry by the Organisation into the financing agreement for the relevant Operation, and (ii) Operations pertaining to guarantee agreements entered into by the Organisation cannot be reasonably terminated on legal grounds.*

*The above derogation does not affect the provisions as regards the part of the EU Contribution allocated to Ancillary Support and/or Other Activities.*

*8.2.6 By derogation from the provisions on reporting on the Action Account, the Organisation shall provide, by email, copies of SWIFT statements confirming closing balances, within twenty (20) working days after the end of each calendar quarter.*

*8.2.7 By derogation from the provisions on the Action Account:*

- (i) the Organisation may open an Action Account at a bank which is rated below P-2 short term Moody's or equivalent subject to the prior agreement of the Commission, when there is an operational need to open a bank account in that specific country, and there is no acceptable alternative with a better rated bank, provided that the Organisation takes mitigating measures and reports on the implementation of these measures.*

*As mitigating measures, the Organisation shall have, in addition to the Action Account referred above, another Action Account rated P-2 short term Moody's or equivalent or higher, where the EU Contribution shall be held. Funds shall be transferred to the Action Account referred to in first subparagraph as and when needed for future disbursements. The Organisation shall report on both Action Accounts.*

*The above provisions are without prejudice to the application of the provisions on management of the assets held in the Action Account laid down in Article [8.2.8].*

- (ii) the name of the Action Account shall start by the wording "EBRD", followed by "EC/FI" and the name of the Action. An abbreviated Action name may be used to comply with limits on the character length of the names for bank accounts;*

- (iii) *the Organisation may transfer the EU Contribution related to the Ancillary Support and/or Other Activities paid by the Commission into the Action Account into a bank account different than the Sub-account (the “Ancillary Support Bank Account”). The Ancillary Support Bank Account is not a fiduciary account and thus is not subject to the requirements for the opening or closure of the Action Account or Sub-account.*

*The Ancillary Support Bank Account may hold, in addition to the EU Contribution related to the Ancillary Support and/or Other Activities, other funds, including co-financing from Grant Beneficiaries for the Ancillary Support and/or Other Activities. There will be one set of common financial statements for the Action Account and for the Ancillary Support Bank Account, which shall include any co-financing from Grant Beneficiaries.*

*The Ancillary Support Bank Account shall be debited with negative remuneration subject to the asset management guidelines laid down in Article [8.2.8], including if incurred after the Implementation Period of the Action and until the Organisation repays any amount due to the Commission, for the purpose of provisions on eligibility of costs. Any interest generated in the Ancillary Support bank account shall be due.*

*8.2.8 By derogation from the provisions on management of the assets held in the Action Account, the Organisation shall manage the EU Contribution as prudently as its own funds. In practice this means that a best effort is made, where applicable, to apply the same risk management principles and framework to the EU Contribution as those applied to the Organisation’s own treasury funds, and with due regard to the nature and purpose of the EU Contribution.*

*Without prejudice to the prudential management of the EU Contribution (including risk management), the Organisation shall use its best efforts, on the basis of this Agreement and subject to the donor fund management guidelines above, to avoid negative remuneration on the cash balance kept in the Action Account, Sub-account or Ancillary Support Bank Account. In this regard, the Organisation shall endeavour to shorten the submission period of the final report and to reduce the payment deadlines to its Contractors, Grant Beneficiaries, Financial Intermediaries or Final Recipients.*

*By 15 August and 15 February each year, should it become apparent that negative remuneration cannot reasonably be avoided during the following six (6) months, the Organisation shall inform the Commission of:*

- (i) *the estimated negative remuneration, if any, for the following six (6) months, including as percentage of the maximum EU Contribution;*
- (ii) *negative remuneration accrued in two preceding six (6) -month periods, including as percentage of the maximum EU Contribution;*
- (iii) *total negative remuneration accrued as percentage of the maximum EU Contribution.*

*In addition it shall also:*

- (i) *provide a list of bank accounts, including the Action Account, Sub-account and Ancillary Support Bank Account, to be impacted, and*
- (ii) *demonstrate that no reasonable better alternative is available and explain the strategy in place to minimise the impact. In exceptional circumstances, where the impact of negative remuneration is likely to negatively affect the purpose of the Action, the Parties may consult with a view to find a mutually acceptable strategy to address such situation.*

*Should an occurrence materially affect the reliability of such latest estimate provided by the Organisation, the Organisation shall inform the Commission without delay.*

*8.2.9 By derogation from the provisions on payments:*

- (a) *The Commission shall always provide a first payment as laid down in the Special Conditions within thirty (30) Days of receiving a payment request following signature of the Agreement and approval of the opening of the Action Account.*
- (b) *Notwithstanding the provisions of the Special Conditions setting out arrangements on the payment of the first and further payments, the Organisation may, in its sole discretion and on a case-by-case basis, decide to request the Commission to pay each of the first and/or any further payment(s) to the Organisation in two or more, as applicable, separate tranches. In the event the Organisation decides to exercise the foregoing option, the Parties agree as follows:*
  - (i) *the Commission shall pay the second and subsequent tranches of each of the payment(s) to the Organisation in the amount corresponding to the outstanding balance of each such first or further payment(s) set out, as applicable, in the Special Conditions or in the forecast budget pertaining to the relevant further payment(s);*
  - (ii) *where the Organisation requests the Contracting Authority to pay the first and/or any further instalment(s) in two tranches, the instalment shall be paid within thirty (30) Days of receiving a request from the Organisation for the payment of such relevant second tranche;*
  - (iii) *where the Organisation requests to pay the payment(s) in more than two tranches, the deadline shall be fifteen (15) Days of receiving a request from the Organisation of such relevant second and subsequent tranches;*
  - (iv) *the Organisation shall not be required to submit to the Commission any form of reporting or justification in connection with its request for the payment of the second and subsequent tranches of each of the first and/or further payment; and*
  - (v) *this derogation is without prejudice to the payment obligations of the Commission under this Agreement, including its obligation to pay to the Organisation the entire amount of each of the first and/or any further payment(s) as set out in the Special Conditions in single respective tranche if so requested by the Organisation.”*

16.4 Each Contribution Agreement for Financial Instruments of an unfunded nature shall also be subject to the following:

16.4.1 The Special Conditions shall be modified as follows:

*The first subparagraph of Article 4.1 shall be modified as follows: “by derogation from the provisions of payments, and subject to Article 4.2bis, the Commission shall provide a first pre-financing instalment as set out in the Special Conditions upon signing of this Agreement by both Parties and within thirty (30) Days of receiving a payment request from the Organisation”.*

A new Article 4.2bis is introduced:

*“4.2.bis Notwithstanding the provisions of the Special Conditions setting out arrangements on the payment of the first and further pre-financing instalments, the Organisation may, in its sole discretion and on a case-by-case basis, decide to request the Commission to pay each of the first and/or any further pre-financing instalment(s) to the Organisation in two or more, as applicable, separate tranches. In the event the Organisation decides to exercise the foregoing option, the Parties agree as follows:*

- (i) *the Commission shall pay the second and subsequent tranches of each of the pre-financing instalment(s) to the Organisation in the amount corresponding to the outstanding balance of each such first or further pre-financing instalment(s) set out, as applicable, in the Special Conditions or in the forecast budget pertaining to the relevant further pre-financing instalment(s);*

- (ii) *where the Organisation requests the Contracting Authority to pay the first and/or any further pre-financing instalment(s) in two tranches, the Commission shall pay the second tranche within thirty (30) Days of receiving a request from the Organisation for the payment of such relevant second tranche;*
- (iii) *where the Organisation requests to pay the pre-financing instalment(s) in more than two tranches, the deadline shall be fifteen (15) Days of receiving a request from the Organisation of such relevant second and subsequent tranches;*
- (iv) *the Organisation shall not be required to submit to the Commission any form of reporting or justification in connection with its request for the payment of the second and subsequent tranches of each of the first and/or further pre-financing instalment; and*
- (v) *this is without prejudice to the payment obligations of the Commission under this Agreement, including its obligation to pay to the Organisation the entire amount of each of the first and/or any relevant further pre-financing instalment (s) as set out in the Special Conditions in single respective tranche if so requested by the Organisation.*”

16.4.2 Each Contribution Agreement for Financial Instruments shall also state the following derogatory conditions:

*“8.3.4 By derogation from the provisions on the consequences of termination of the Agreement, upon termination of the latter, when either Party believes that the purpose of the Agreement can no longer be effectively or appropriately performed, the part of the EU Contribution that:*

- is not committed to Operations or portfolios of Operations by the Organisation pursuant to any agreement entered between the Organisation and any third parties for the purposes of the Agreement, and*
- is committed to Operations or Portfolio of Operations by the Organisation pursuant to any agreement, other than a guarantee agreement entered between the Organisation and any third parties for the purposes of the Agreement, which can be reasonably terminated on legal grounds;*

*shall not be the subject of a payment request to the Commission. For the avoidance of doubt, it is understood that: (i) the EU Contribution is committed upon entry by the Organisation into the financing agreement for the relevant Operation, and (ii) Operations pertaining to guarantee agreements entered into by the Organisation cannot be reasonably terminated on legal grounds.*

*The above derogation does not affect the provisions as regards the part of the EU Contribution allocated to Ancillary Support and/or Other Activities.*”

## *Article 17*

### *Interpretative provisions*

The Parties agree to interpret the Contribution Agreement for Financial Instruments according to the following:

- 17.1 Articles 11.1, 11.3, 11.4, 11.5, 11.7, 11.10, 11.12, 11.13, 11.14, 11.16, 11.17, 11.19, 11.20, 11.21, 11.22, 11.26, 11.29, 11.30 and 11.33 shall apply to the Contribution Agreement for Financial Instruments. For the avoidance of doubt, references to Contracting Authority in those provisions shall be construed as referring to the Commission and references to Contribution Agreement shall be deemed to be replaced with references to Contribution Agreement for Financial Instruments.
- 17.2 Article 11.15 shall apply to the Contribution Agreement for Financial Instruments provided that, in case of guarantees, in addition to the reasons set out in Article 11.17(i), it may not be appropriate or possible for any visibility and/or publicity measures to be undertaken due to commercial considerations (for example, existence of a guarantee may discourage obligors from complying with their obligations). For the avoidance of doubt, references to Contracting



Authority in those provisions shall be construed as referring to the Commission and references to Contribution Agreement shall be deemed to be replaced with references to Contribution Agreement for Financial Instruments.

- 17.3 Articles 11.2, 11.6, 11.8, 11.9, 11.18 shall apply to the Contribution Agreement for Financial Instruments and references to Financial Intermediaries and Final Recipients shall be deemed to be included in these provisions after references to Contractors and Grant Beneficiaries. For the avoidance of doubt, references to Contracting Authority in those provisions shall be construed as referring to the Commission and references to Contribution Agreement shall be deemed to be replaced with references to Contribution Agreement for Financial Instruments.
- 17.4 For the avoidance of doubt, when a Financial Instrument which is a guarantee, is issued to the Organisation against the credit risk of a Financial Institution<sup>18</sup>, the Commission and the Organisation agree that the Financial Institution borrowing from the Organisation may on a case by case basis be considered as the Final Recipient. Where the Parties so agree, this shall be indicated in the Special Conditions.
- 17.5 For the avoidance of doubt, the term Operation (i) captures only those resources of the Organisation that it has engaged for the implementation of a given Action pursuant to the Contribution Agreement for Financial Instruments and (ii) does not encompass any Ancillary Support and/or Other Activities.
- 17.6 For the purposes of reference to the exclusion criteria in the definition of the Clawback Amounts, it is understood that the clawback provisions apply to amounts that have been contracted as a result of wrongful application of such exclusion criteria.
- 17.7 The Parties shall agree on a detailed description of activities and purpose of the Action, including the intended use and effect of the EU contribution in the Description of the Action. Should there be any unintentional impact of the EU contribution that could classify as an undue advantage (being defined as any effect which has not been described in the Description of the Action and particularly considering the possible use of EU contribution to increase of dividends for shareholders) for any third party (not being the EU or the Organisation), the Parties shall discuss a further course of action.
- 17.8 Indicators described in the Description of the Action, other than Performance Indicators, are indicative and are for monitoring and evaluation purposes without prejudice to the right of the Parties to amend the relevant Contribution Agreement for Financial Instruments.
- 17.9 It is understood that when the Organisation reports on total costs incurred, it reports on costs based on: (i) the invoices authorised, but which may not yet have been paid by the Organisation as of the date of relevant progress report. in respect of Ancillary Support and/or Other Activities; or (ii) claims received, (iii) payment defaults occurred, (iv) subscription amounts, purchase prices or contributions due, under the Financial Instrument and authorised by the Organisation, but which may not yet have been paid or claimed by the Organisation as of the date of relevant progress report.
- 17.10 It is understood that the Organisation may report on the number of sub-loans signed as a proxy of the number of Final Recipients, provided that same information is used for Indicators.
- 17.11 It is understood that the disclosures on financial risk management included in the audited financial statements shall be provided by the Organisation in accordance with its risk disclosure practices as long as these comply with the EU accounting rules requirements.
- 17.12 It is understood that the results of the Action, which the Commission shall be granted the right to use free of charge, are limited to the reports and annexes thereto and any other documents expressly foreseen as deliverables in the Contribution Agreement for Financial Instruments to be

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<sup>18</sup> 'Financial Institution' has the meaning given to it by the Financial Action Task Force (FATF): <https://www.fatf-gafi.org/glossary/fatfrecommendations/d-i/>.



provided to the Commission in the context of the performance of the Organisation's reporting obligations.

- 17.13 It is understood that the provisions on transfer of equipment, including eligibility of related costs, are only relevant for Ancillary Support and/or Other Activities.
- 17.14 It is understood that the opening of an Action Account for Contribution Agreements for Funded Financial Instruments by the Organisation always requires the approval of the Commission which will not be unreasonably withheld, while the subsequent opening of a Sub-account only requires a notification to the Commission.
- 17.15 It is understood that the provisions on Commission's right to suspend the time limit for payment if the Organisation requests a change in the Action Account for Contribution Agreements for Funded Financial Instruments apply only in cases where approval of such change by the Commission is pending.
- 17.16 For the purposes of recovery provisions pertaining to Contribution Agreements for Unfunded Financial Instruments, it is understood that the amount of EU Contribution which the Organisation had already committed for Operations, by means of concluding relevant agreements with third parties, under any given Contribution Agreement shall not be subject to offsetting by a Contracting Authority or the Commission under any agreement.
- 17.17 With respect to the term "fiduciary account" used in relation to the Action Account, for Contribution Agreements for Funded Financial Instruments, the Parties agree that the Action Account shall be opened by the Organisation on its own name and on behalf of the Commission.
- 17.18 It is understood that the justification the Organisation needs to provide in the context of the minimum remuneration it is entitled in case of termination is limited to relevant explanation to be provided by the Organisation to the Commission in respect of the type of activities it has undertaken and the Organisation will not be required to produce supporting documents in this regard.
- 17.19 The principle requiring avoidance of market distortion by Financial Intermediaries shall be understood as being met through Actions structured to address market failures and minimize the risk of disruption or unduly distorting markets or crowding out private finance, including new entrants.
- 17.20 The Organisation's Regulations and Rules provide that for determining the economic viability of Final Recipients either the rules of the Organisation or of the Financial Intermediary shall apply. It is understood that such rules comply with sound banking principles.

## **Title VII**

### **Final Provisions**

#### *Article 18*

#### *Data Protection*

Processing of personal data by the Commission for the purposes of conclusion, amendment and implementation of this FFPA takes place pursuant to Regulation 2018/1725<sup>19</sup>, as detailed in the specific privacy statement.

#### *Article 19*

#### *Entry into force, review and, termination of the FFPA*

- 19.1 This FFPA shall enter into force upon signature by both Parties. Subject to Article 19.2 below, it replaces the framework arrangement signed between the Commission and the Organisation on 13 December 2017.
- 19.2 This FFPA shall not affect contracts entered into force prior to the date of its entry into force, which shall remain governed by any arrangements in force at the time of the conclusion of such contracts where applicable, unless otherwise agreed on a case by case basis by the Parties in writing.
- 19.3 Subject to Article 1.7, in the event of conflict between the provisions of Contribution Agreements and this FFPA, the latter shall prevail.
- 19.4 The Parties agree that a review of this FFPA will be necessary before the end of the 2021-2027 Multi-Annual Financial Framework of the EU which is 31 December 2027.
- 19.5 Modification to any provision under this FFPA, including Titles IV, V, VI, and any of the Annexes will be done in writing by exchange of letters between the Parties unless agreed otherwise. The FFPA may be modified pursuant to this Article 19.5 to reflect any pertinent updates relevant to the Contribution Agreement or Contribution Agreement for Financial Instruments templates.
- 19.6 If, at any time, either Party believes that the purpose of the FFPA can no longer be effectively or appropriately performed, it shall consult the other Party. Failing agreement on a solution, either Party may terminate this FFPA by serving six (6) months written notice to other Party. Unless the Parties agree otherwise, the contracts governed by the terms of this FFPA which entered into force before the date of its termination, shall not be affected by the termination.
- 19.7 Nothing in this FFPA shall constitute, or be construed as constituting a waiver, renunciation or modification of any of the immunities, privileges and exemptions accorded to the Organisation under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable laws.

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<sup>19</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p.39).

*Article 20*  
*Annexes*

The following documents are annexed to this FFPA and form an integral part of it:

**Annex I: Verification clauses** between the Commission and the EBRD for Contribution Agreements and Contribution Agreements for Financial Instruments

**Annex II: Form of declaration** on the honour in respect of the transposition requirements of money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion

**Annex III: Table of deficiencies** identified by the EU in jurisdictions mentioned in the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes

**Annex IV: EU Restrictive Measures** customised wording

\* \* \*

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this FFPA.

Done in 3 originals, in the English language.

For the Commission

For the Organisation

Date

Date

## ANNEX I

### VERIFICATION CLAUSES BETWEEN THE COMMISSION AND THE EBRD FOR CONTRIBUTION AGREEMENTS AND CONTRIBUTION AGREEMENTS FOR FINANCIAL INSTRUMENTS

#### 1. Interpretation of verification provisions

As regards the provisions in the Contribution Agreement and the Contribution Agreements for Financial Instruments relating to access and financial checks, it is agreed that verifications conducted by the Commission shall be planned and carried out in a collaborative manner between the Organisation and the Commission<sup>20</sup>, keeping in mind the Parties' commitment to the effective and efficient operation of the relevant agreement in order to avoid overlap and to minimise any potential disruption of activities of all Parties involved. The verifications shall be planned and carried out in accordance with the provisions of this Annex I to the FFPA and with due regard to the interests of the Organisation and the Commission and with due consideration to preserving, all times, the inviolability of the Organisation's archives.

The Organisation shall make available, upon request, to the Commission all financial information relevant to the Actions financed by the EU, as further specified in Appendix A to this Annex I. It is understood that the information shall be drawn from accounts and records and will be in a form which makes it possible for the Commission to verify the use to which EU funds or contributions have been put. It is further agreed and understood that clarifications, including verification of specific documents, may be requested by the Commission and that the right of the Commission to request the Organisation to make available information related to the Actions financed by the EU does not constitute a general right of access to the records and accounts of the Organisation and is subject to the EBRD's privileges and immunities.

As regards the verifications<sup>21</sup> to which reference is made in the provisions relating to access and financial checks of the Contribution Agreement, it is understood that the Commission representatives will be given access to the site(s) of the Action or the headquarters of the Organisation, taking into account the guidelines for verifications under point 2 (*Guidelines for verifications carried out by Commission*) below. The Organisation will provide relevant information and documentation, and explain to the representatives, with appropriate concrete examples, how the accounts and controls are managed, and the procedures used to ensure transparency and accuracy in the accounts and to guard against the misuse of funds and fraud. The purpose of such verifications is to allow Commission representatives to be in a position to report to their own institutions and to the European Parliament on the implementation of Actions. It is understood that such verifications will be limited to information on the use of the financing provided by the EU and is without prejudice to the immunities of the Organisation as set forth in the respective constituent instruments, international conventions, national laws and/or bi-lateral agreements.

Any question of application and interpretation of, and any dispute arising from, this Annex shall be resolved by amicable means between the Commission and the Organisation, without prejudice to the provisions on applicable law and settlement of disputes of the Contribution Agreement or the Contribution Agreements for Financial Instruments.

It is understood that, without prejudice to existing possibilities for carrying out further verifications, the Commission shall rely on audits of financial statements and reports setting out the use of EU

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<sup>20</sup> The present Annex only applies to the European Commission. References to the Commission hereinafter shall be deemed to apply to the European Commission's services and their representatives, excluding OLAF.

<sup>21</sup> Regardless of the terminology employed, including, *inter alia*, access, 'on-site' mission, *ex post* control, desk review, 'on the spot' check, investigation, or mission.

Contributions made available by the Organisation that provide reasonable assurance and are prepared by an independent auditor based on internationally accepted audit standards.

Each Party is to bear its own costs under this Annex.

## 2. Guidelines for verifications carried out by Commission

### 2.1 Preparation of the verification

In order to ensure that the provisions of this Annex function satisfactorily, it is important that the verifications are carefully prepared, that sufficient notice, at least two (2) months, is given and that the Organisation is informed in advance of the Actions to be verified. The Commission and the Organisation shall agree in advance on procedural matters. These matters are the timing of the verification, questions the verification team wishes to review with the management of the Organisation, nature of the financial information, whether verifications are to visit headquarters locations and/or project offices, how many persons the verification team consists of and documentation/information to be made available. This will take place in the context of the opening meeting with the Commission and/or the verification team to ensure that the necessary documentation, which may not be readily available, can be prepared.

Access to documentation (original or copies)<sup>22</sup> (which may be in electronic form) held by the Organisation will be ensured. The relevant services of the Organisation will assist the verification team in seeking access to documentation (original or copies)<sup>23</sup> held by Grant Beneficiaries, Contractors, Partners, Financial Intermediaries and Final Recipients or other third parties.

### 2.2 Conduct of the verification

The verification should be conducted in a spirit of partnership with the Organisation. The verification will be carried out by Commission representatives in a reasonable manner and without creating an undue burden on the Organisation's regular operations.

Verifications are based on the concept of "agreed upon procedures". The verification team performs procedures which the Commission has specified and listed in the terms of reference. The verification team does not provide an audit opinion but a report of factual findings as the object is not to carry out a full-scale audit of the Organisation but to verify, by sample-checking, how the EU funds in relation to a specific Action have been used.

The verification team has access to all documents (originals or copies)<sup>24</sup>, which may be in electronic form, without exception, for verification purposes. Documents will only be copied if this is necessary and copies will not be taken of documents which the Organisation considers particularly sensitive.

In cases where the verification team identifies serious problems of mismanagement, irregularity, weaknesses in the control systems and procedures, or where they consider it necessary to take photocopies of particularly sensitive documents, they will inform the Organisation and will request it to examine the matter.

When the Parties agree that copies of documents will be sent to the Commission for a verification, the Parties agree to comply with the principle of "reasonableness" and the request for documents should be related to the Action funded by the EU.

In all cases, when it is necessary to take copies, or copies are sent to the Commission for a verification, each such copy of a document provided by the Organisation, shall remain the sole property of, and form part the archives of, the Organisation and shall not be further copied without the prior consent of the Organisation. Subject to such consent being granted, any further copies made by the Commission shall also belong to the Organisation and shall form part of the archives of the Organisation.

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<sup>22</sup> Originals shall be provided whenever these are available.

<sup>23</sup> Originals shall be provided whenever these are available.

<sup>24</sup> Originals shall be provided whenever these are available.

The documents, copies of which are to be provided, should be identified in a list and accompanied by a letter from the Organisation, countersigned by the Commission, specifying its acceptance of the terms under which the copies of the documents are provided, and specifying that copies are provided without waiving, renouncing or modifying any of the immunities, privileges or exemptions of the Organisation accorded under the Agreement Establishing the European Bank for Reconstruction and Development dated 29 May 1990, international convention or any applicable law, as well as, that the copies of the documents are released subject to the following conditions:

1. the documents remain the sole property of, and form part the archives of, the Organisation;
2. the documents shall be held confidentially and be marked confidential, and shall not be copied;
3. the Commission shall be responsible for ensuring the safety and confidentiality of the documents, and of the information contained in the documents, and shall not disclose any document, or its content, to a third party, unless prior written consent is obtained from the Organisation;
4. the documents may only be used by the Commission for the purposes of the verification as set forth in the relevant Agreement.

All copies of documents shall be either in:

- (1) hard/print copy, or
  - (2) PDF encrypted electronic copies, so that they cannot be copied, printed or edited,
- whichever format is more convenient for the team and the auditor.

Each copy of a document (including those further made by the Commission) shall bear the following header text:

*“This confidential document belongs to the European Bank for Reconstruction and Development (EBRD) and forms part of its archives. It has been released subject to certain conditions, as set out in the Protocol of [specify date] between the European Commission and EBRD. It should not be held, copied or used, except in accordance with those conditions, without prior authorisation of the EBRD.”*

A document or a copy, or any information relating to, or the content of such document or copy, obtained in the course of the verification or sent by the Organisation for a verification, may be disclosed, only subject to prior written consent from the Organisation.

When disclosing to a third party, following consent being granted by the Organisation, any copy of a documents provided by the Organisation to the Commission, the Commission shall inform those authorities that such disclosure is without prejudice to, or waiver, renunciation or modification of, any of the immunities, privileges or exemptions of the Organisation accorded under the 1990 Agreement Establishing the Organisation, international convention or any applicable laws and therefore should the recipient decide to use it for its purposes it shall seek the appropriate consent and/or waiver of immunity from the Organisation, as necessary.

The Commission shall take the necessary measures to ensure that each copy of a document of the Organisation, obtained by it or sent to it, pursuant to the Annex, shall be destroyed or deleted ten (10) years following the date of cover letter under which it has been provided to the Commission, unless otherwise agreed between the Parties.

Each document and copy may only be used for the purposes of carrying out verifications on the use of funds provided by the EU, unless otherwise agreed in writing by the Organisation.

The verification team will offer to make a draft of its report available to the Organisation's Management for comments to be taken into account by the verification team prior to final issuance of the report.

### 2.3 Procedure for dealing with problems arising during a verification

If problems arise concerning access to documentation or any other aspect of this Annex, the verification team should contact immediately the responsible Director at Commission headquarters in order that difficulties may be resolved without delay and the verification completed on time.

## **APPENDIX A**

### **SUPPORTING DOCUMENTS**

#### **Document Retention Requirements for Verification and Audit Purposes**

In accordance with the provisions on archiving of the Contribution Agreement or the Contribution Agreement for Financial Instruments the following information and documentation, where relevant and in accordance with the Organisation's document retention policy, shall be retained and be kept until five (5) years from the End Date and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the European Antifraud Office (OLAF) if notified to the Organisation:

- The financial information of the Organisation in respect of the EU Contribution deposited and the disbursements made therefrom, complemented by:
- Evidence that the Grants<sup>25</sup> and Procurement Contracts were awarded by the Organisation in accordance with the rules laid down or referred to in the Contribution Agreement or the Contribution Agreement for Financial Instruments, including its own rules and procedures for the award and management of Procurement Contracts and Grants which have been assessed in the Ex-ante Pillar Assessment;
- Evidence that Financial Intermediaries or Final Recipients, as applicable, were selected in accordance with the rules laid down or referred to in the Contribution Agreement for Financial Instruments;
- For Grants to Grant Beneficiaries by the Organisation:
  - the agreements between the Organisation and the Grant Beneficiary (and all addenda thereof). When the Organisation needs to redact these agreements, these shall still provide the necessary information to give assurance that the Grant Beneficiary meets the conditions established for receiving such Grant;
  - Grant Beneficiary's financial and narrative progress reports that were submitted to the Organisation;
  - Organisation's monitoring reports of the Grant Beneficiary's actions and expenditures (including procurement and financial management assessments), if any;
  - Grant Beneficiary's financial information related to the Grant, including audit reports, invoices, financial statements and/or accounting records related to the Grant, proof of payments and payroll records;
  - Grant Beneficiary's implementation documentation (including sub-agreements, procurement files, contracts and purchase orders).
- For Procurement Contracts, if any:
  - the Procurement Contracts between the Organisation and the Contractors (including for the avoidance of doubt any order forms placed by the Organisation), invoices and evidence of payments to Contractors (such as receipts, bank advice or bank statements). When the Organisation needs to redact these Procurement Contracts, these shall still provide the necessary information to give assurance that the Contractor meets the conditions established for receiving such Procurement Contract;
  - evidence that the services/goods/works were procured by the Organisation in accordance with the rules laid down or referred to in the Contribution Agreement or

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<sup>25</sup> Reference to Grants in this Annex (including its Appendix) shall be construed as referring to Investment Grants in the case of the Contribution Agreement for Financial Instruments.



Contribution Agreement for Financial Instruments, including its own procurement procedures which have been assessed in the Ex-ante Pillar Assessment; including the deliverables associated with these contracts;

- evidence that the services were provided, that the goods were supplied (such as delivery slips) or that the works were completed (such as acceptance certificates) as required by the Organisation in accordance with its Regulations and Rules.
- For staff of the Organisation participating in the Action:
  - for salary costs that are fully or partially covered by the EU Contribution, if any: Job offer letter and the job description to which it pertains, payslips and proofs of payments and other documents, if any, demonstrating that salary costs are relevant to the Action;
  - for Action-related travel expenses that are covered from the EU Contribution, if any: evidence of travel expenses incurred, such as invoices, tickets, taxi receipts, etc., in line with the Organisation's Regulations and Rules.
- For Financial Instruments:
  - The agreements with the Final Recipient, or the Financial Intermediary (and all addenda thereof) pursuant to which financing is provided for the Operation covered by the EU Contribution, When the Organisation needs to redact such agreements, these shall still provide the necessary information to give assurance that the Final Recipient/Financial Intermediary meets the required conditions for receiving support;
  - Financial Intermediary's or Final Recipient's financial and narrative progress reports and other similar implementation documentation in respect of the Operation covered by the EU Contribution that were submitted to the Organisation, if any;
  - Organisation's monitoring reports of the Financial Intermediary's or Final Recipient's actions and expenditures (including financial management assessments) in respect of the Operation covered by the EU Contribution, if any;
  - Financial Intermediary's or Final Recipient's financial information related to the Operation covered by the EU Contribution, that was submitted to the Organisation, such as audit reports, claims made, invoices and any other supporting documents justifying expenditure reported.

**ANNEX II**  
**FORM OF DECLARATION ON THE HONOUR IN RESPECT OF THE TRANSPOSITION**  
**REQUIREMENTS OF MONEY LAUNDERING, TERRORISM FINANCING, TAX**  
**AVOIDANCE, TAX FRAUD OR TAX EVASION.**

**[To be required by Financial Intermediaries from Final Recipients]**

I ..., the undersigned, declare that the entity I represent:

(i) is not subject to cross-border control<sup>26</sup> in the project structure;

or

(ii) is subject to cross-border control in the project structure and:

a) cross-border control is mainly motivated by sound business reasons (and not mainly by tax reasons) and does not include tax planning involving the elimination or near elimination of taxation deriving from artificial arrangements; and

b) neither this entity nor any entity having control<sup>27</sup> over it exploits the deficiencies identified by the EU<sup>28</sup>, as set out in the table available on the website of DG Taxation and Customs Union ([https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes\\_en](https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes_en)).

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<sup>26</sup> For the purposes of this declaration, there is cross-border control if an entity incorporated or established in a jurisdiction other than that of the Final Recipient holds a **direct or indirect interest** of 50% or more in the Final Recipient, or otherwise has the **power to direct the management and policies** of the Final Recipient.

<sup>27</sup> For the purpose of this provision, there is control if an entity (irrespective of the jurisdiction of its incorporation or establishment) holds a **direct or indirect interest** of 50% or more in the Final Recipient, or otherwise has the **power to direct the management and policies** of the Final Recipient.

<sup>28</sup> See Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, published from time to time on the Council's website [Taxation: EU list of non-cooperative jurisdictions - Consilium \(europa.eu\)](https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes_en).

## ANNEX III

### TABLE OF DEFICIENCIES IDENTIFIED BY THE EU IN JURISDICTIONS MENTIONED IN THE COUNCIL CONCLUSIONS ON THE REVISED EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

#### CAVEAT

*The purpose of this table is, on the basis of publicly available information and in order to facilitate tax due diligence by EU implementing partners, to compile the tax deficiencies identified by the EU in a) jurisdictions committed to address these deficiencies (mentioned in Annex II of the ECOFIN Council conclusions) and b) non-cooperative jurisdictions (mentioned on Annex I of the ECOFIN Council conclusions, i.e. the EU list of non-cooperative jurisdictions for tax purposes). This table compiles jurisdictions of both categories in alphabetical order but should of course not be seen as another EU list.*

**Tax deficiencies identified by the EU (based on [ECOFIN conclusions of 24.02.2022](#)) (updates will be made available on the website of DG Taxation and Customs Union ([https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes\\_en](https://taxation-customs.ec.europa.eu/common-eu-list-third-country-jurisdictions-tax-purposes_en)))**

#### **For the purposes of this table:**

“BEPS” means base erosion and profit shifting in the context of the [OECD/G20 Base Erosion and Profit Shifting Project](#), currently comprising 15 actions, including minimum standards

“CbCR” means country-by-country reporting according to BEPS Action 13<sup>29</sup>

“Global Forum” means the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#)

“Inclusive Framework” means the OECD/G20 Inclusive Framework on BEPS

“MAC” means the [OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#), as amended

Jurisdiction	Tax deficiencies
American Samoa (non-cooperative jurisdiction)	<ul style="list-style-type: none"><li>• Does not apply any automatic exchange of financial account information</li><li>• Has not signed and ratified the MAC</li><li>• Did not commit to apply the BEPS minimum standards</li></ul>
Anguilla	<ul style="list-style-type: none"><li>• Has a “Non-compliant” rating by the Global Forum in relation to exchange of information on request<sup>30</sup> but will undergo a supplementary review to obtain a higher rating</li><li>• Does not ensure the effective monitoring of company obligations regarding substantial economic activities in the jurisdiction</li></ul>
Bahamas	<ul style="list-style-type: none"><li>• Does not ensure the effective monitoring of company obligations regarding substantial economic activities in the jurisdiction</li><li>• Has not put in place all the necessary administrative arrangements to exchange CbCR information in line with the minimum standard</li></ul>

<sup>29</sup> [73dc97a6-en.pdf \(oecd-ilibrary.org\)](#)

<sup>30</sup> [ac228609-en.pdf \(oecd-ilibrary.org\)](#)

Jurisdiction	Tax deficiencies
Barbados	<ul style="list-style-type: none"> <li>Has a “Partially Compliant” rating by the Global Forum in relation to exchange of information on request<sup>31</sup> but is undergoing a supplementary review to obtain a higher rating</li> <li>Does not ensure the effective monitoring of company obligations regarding substantial economic activities in the jurisdiction</li> <li>Has not introduced the necessary legal and administrative framework to implement the CbCR minimum standard</li> </ul>
Belize	<ul style="list-style-type: none"> <li>Has not put in place all the necessary administrative arrangements to exchange CbCR information in line with the minimum standard</li> </ul>
Bermuda	<ul style="list-style-type: none"> <li>Does not ensure the effective monitoring of company obligations regarding substantial economic activities in the jurisdiction</li> </ul>
Botswana	<ul style="list-style-type: none"> <li>Has a “Partially Compliant” rating by the Global Forum in relation to exchange of information on request<sup>32</sup> but is undergoing a supplementary review to obtain a higher rating</li> </ul>
British Virgin Islands	<ul style="list-style-type: none"> <li>Has not put in place all the necessary administrative arrangements to exchange CbCR information in line with the minimum standard</li> </ul>
Costa Rica	<ul style="list-style-type: none"> <li>Has harmful tax regimes (foreign-source income exemption regime<sup>33</sup>, free trade zone)</li> </ul>
Dominica	<ul style="list-style-type: none"> <li>Has a “Partially Compliant” rating by the Global Forum in relation to exchange of information on request<sup>34</sup> but is undergoing a supplementary review to obtain a higher rating</li> </ul>
Fiji (non-cooperative jurisdiction)	<ul style="list-style-type: none"> <li>Is not a member of the Global Forum</li> <li>Has not signed and ratified the MAC</li> <li>Has harmful tax regimes (Exporting Companies, Income Communication Technology (ICT) Incentive, Concessionary rate of tax for regional or global headquarters)</li> <li>Has not become a member of the Inclusive Framework or implemented OECD anti-BEPS minimum standards</li> </ul>
Guam (non-cooperative jurisdiction)	<ul style="list-style-type: none"> <li>Does not apply any automatic exchange of financial account information</li> <li>Has not signed and ratified the MAC</li> <li>Did not commit to apply the BEPS minimum standards</li> </ul>
Hong Kong	<ul style="list-style-type: none"> <li>Has a harmful tax regime (foreign-source income exemption regime)<sup>35</sup></li> </ul>
Israel	<ul style="list-style-type: none"> <li>Has not introduced the necessary legal and administrative framework to implement the CbCR minimum standard</li> </ul>

<sup>31</sup> [fbb6ecef-en.pdf \(oecd-ilibrary.org\)](https://data.oecd-ilibrary.org/doc/document/ST-14222-2021-INIT/en/pdf)

<sup>32</sup> [fd32b72f9-en.pdf \(oecd-ilibrary.org\)](https://data.oecd-ilibrary.org/doc/document/ST-14222-2021-INIT/en/pdf)

<sup>33</sup> [https://data.oecd-ilibrary.org/doc/document/ST-14222-2021-INIT/en/pdf \(europa.eu\)](https://data.oecd-ilibrary.org/doc/document/ST-14222-2021-INIT/en/pdf)

<sup>34</sup> [b6dd4a18-en.pdf \(oecd-ilibrary.org\)](https://data.oecd-ilibrary.org/doc/document/ST-14222-2021-INIT/en/pdf)

<sup>35</sup> <https://data.oecd-ilibrary.org/doc/document/ST-14223-2021-INIT/en/pdf>

Jurisdiction	Tax deficiencies
Jamaica	<ul style="list-style-type: none"> <li>Has a harmful tax regime (special economic zones)</li> </ul>
Jordan	<ul style="list-style-type: none"> <li>Has a harmful tax regime (Aqaba special economic zone)</li> </ul>
Malaysia	<ul style="list-style-type: none"> <li>Has a harmful tax regime (foreign-source income exemption regime)<sup>36</sup></li> </ul>
Montserrat	<ul style="list-style-type: none"> <li>Has not introduced the necessary legal and administrative framework to implement the CbCR minimum standard</li> </ul>
North Macedonia	<ul style="list-style-type: none"> <li>Has a harmful tax regime (technological industrial development zone)</li> </ul>
Palau (non-cooperative jurisdiction)	<ul style="list-style-type: none"> <li>Does not apply any automatic exchange of financial account information</li> <li>Has not signed and ratified the MAC</li> </ul>
Panama (non-cooperative jurisdiction)	<ul style="list-style-type: none"> <li>Does not have a rating of at least “Largely Compliant” by the Global Forum in relation to exchange of information on request</li> <li>Has a harmful tax regime (foreign-source income exemption regime)<sup>37</sup></li> <li>Has not put in place all the necessary administrative arrangements to exchange CbCR information in line with the minimum standard</li> </ul>
Qatar	<ul style="list-style-type: none"> <li>Has a harmful tax regime (foreign-source income exemption regime)<sup>38</sup></li> </ul>
Russian Federation	<ul style="list-style-type: none"> <li>Has a harmful tax regime (international holding companies)</li> </ul>
Samoa (non-cooperative jurisdiction)	<ul style="list-style-type: none"> <li>Has a harmful tax regime (Offshore Business)</li> </ul>
Seychelles	<ul style="list-style-type: none"> <li>Has a “Partially Compliant” rating by the Global Forum in relation to exchange of information on request<sup>39</sup> but will undergo a supplementary review to obtain a higher rating</li> </ul>
Thailand	<ul style="list-style-type: none"> <li>Has not introduced the necessary legal and administrative framework to implement the CbCR minimum standard</li> </ul>
Trinidad and Tobago (non-cooperative jurisdiction)	<ul style="list-style-type: none"> <li>Does not apply any automatic exchange of financial account information</li> <li>Does not have a rating of at least “Largely Compliant” by the Global Forum in relation to exchange of information on request</li> <li>Has not signed and ratified the MAC</li> <li>Has a harmful tax regime (Free Zones)</li> <li>Has not introduced the necessary legal and administrative framework to implement the CbCR minimum standard</li> </ul>

<sup>36</sup> [https://data.consilium.europa.eu/doc/document/ST-14224-2021-INIT/en/pdf\(europa.eu\)](https://data.consilium.europa.eu/doc/document/ST-14224-2021-INIT/en/pdf(europa.eu))

<sup>37</sup> [https://data.consilium.europa.eu/doc/document/ST-14226-2021-INIT/en/pdf\(europa.eu\)](https://data.consilium.europa.eu/doc/document/ST-14226-2021-INIT/en/pdf(europa.eu))

<sup>38</sup> [https://data.consilium.europa.eu/doc/document/ST-14227-2021-INIT/en/pdf\(europa.eu\)](https://data.consilium.europa.eu/doc/document/ST-14227-2021-INIT/en/pdf(europa.eu))

<sup>39</sup> [688fc4f9-en.pdf\(oecd-ilibrary.org\)](https://data.consilium.europa.eu/doc/document/ST-14227-2021-INIT/en/pdf(europa.eu)688fc4f9-en.pdf(oecd-ilibrary.org))

Jurisdiction	Tax deficiencies
Tunisia	<ul style="list-style-type: none"> <li>Has not put in place the necessary administrative arrangements to exchange CbCR information in line with the minimum standard</li> </ul>
Turkey	<ul style="list-style-type: none"> <li>Has not exchanged financial account information with all EU Member States</li> <li>Has a “Partially Compliant” rating by the Global Forum in relation to exchange of information on request<sup>40</sup> but is undergoing a supplementary review to obtain a higher rating</li> </ul>
Turks and Caicos Islands	<ul style="list-style-type: none"> <li>Does not ensure the effective monitoring of company obligations regarding substantial economic activities in the jurisdiction</li> </ul>
Uruguay	<ul style="list-style-type: none"> <li>Has a harmful tax regime (foreign-source income exemption regime)</li> </ul>
US Virgin Islands <i>(non-cooperative jurisdiction)</i>	<ul style="list-style-type: none"> <li>Does not apply any automatic exchange of financial account information</li> <li>Has not signed and ratified the MAC</li> <li>Has harmful tax regimes (Economic Development Programme, Exempt companies, International Banking Center Regulatory Act)</li> <li>Did not commit to apply the BEPS minimum standards</li> </ul>
Vanuatu <i>(non-cooperative jurisdiction)</i>	<ul style="list-style-type: none"> <li>Facilitates offshore structures and arrangements by not having in place adequate legislation for companies to meet obligations regarding substantial economic activities and by not exchanging information with partner jurisdictions regarding these companies</li> <li>Has a “Partially Compliant” rating by the Global Forum in relation to exchange of information on request<sup>41</sup> and will undergo a supplementary review to obtain a higher rating</li> </ul>
Vietnam	<ul style="list-style-type: none"> <li>Has not put in place the necessary legal and administrative arrangements to exchange CbCR information in line with the minimum standard</li> </ul>

<sup>40</sup> [9789264205963-en.pdf \(oecd-ilibrary.org\)](#)

<sup>41</sup> [dd70b774-en.pdf \(oecd-ilibrary.org\)](#)

## ANNEX IV

### EU RESTRICTIVE MEASURES CUSTOMISED WORDING

#### Part 1

#### CONTRIBUTION AGREEMENTS<sup>42</sup>

“7.1 The following shall supplement the General Conditions:

7.1.X The following definitions are inserted:

EU Restrictive Measures:	restrictive measures adopted pursuant to the Treaty on European Union (TEU) or to the Treaty on the Functioning of the European Union (TFEU).
Restricted Person:	any entities, individuals or groups of individuals designated by the EU as subject to the EU Restrictive Measures. <sup>43</sup>

7.1.X The provisions on general obligations shall be supplemented as follows:

- (a) In their contractual relationship the Parties recognise that under EU law no EU funds or economic resources are to be made available directly or indirectly to, or for the benefit of, Restricted Persons.
- (b) The Organisation shall ensure that no transaction subject to a verified hit against the EU sanctions list shall benefit directly or indirectly from EU funding. The Organisation commits to ensure this i) through screening for hits against EU sanctions before any direct contracts it concludes and ii) at subsequent levels through the Organisation's risk based due diligence.

The Organisation will implement this obligation through the following measures:

- (i) The Organisation shall screen for hits against the EU sanctions list, before entering into, and before making payments under, the relevant agreements, each Contractor and Grant Beneficiary with whom the Organisation has or is expected to have a direct contractual relationship, so as to assess whether such recipient is a Restricted Person.
- (ii) The Organisation shall ensure, through screening or through other appropriate means (that may include an ex-post verification) on a risk based approach basis, that no entity that has or is expected to have a direct contractual relationship with a Grant Beneficiary in relation to the implementation of the Action and that would receive EU funding (“Indirect Recipient”), is a Restricted Person.
- (c) In the event that the Organisation assesses that any of the recipients of the EU funding referred to in subparagraphs (b)(i) and (b)(ii) is a Restricted Person, and the Organisation decides that the transaction should proceed notwithstanding a verified hit against EU sanctions, the Organisation shall promptly inform the Contracting Authority. Should the Contracting Authority consider that the use of the EU funding in connection with the Agreement would result in a breach of the EU Restrictive Measures, the Contracting Authority shall notify the Organisation within twenty-five (25) Days of the date of the receipt of the Organisation's notice pursuant to the immediately preceding sentence. If the Contracting Authority does not notify the Organisation pursuant to this subparagraph, the Contracting Authority shall be deemed to have no objection.

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<sup>42</sup> Including Contribution Agreements for Nuclear Safety Actions.

<sup>43</sup> Consolidated list (the “**EU sanctions list**”) presently available at <https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions>. Note that the EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.

- (d) If the Contracting Authority notifies the Organisation pursuant to the immediately preceding subparagraph, the Organisation and the Contracting Authority shall promptly consult each other with a view to jointly determining remedial measures in accordance with their respective applicable legal frameworks. These measures may include, but shall not be limited to: (A) the reallocation of the relevant portion of the EU funding net of any costs incurred by the Organisation for undertaking any procurement or award procedure unless in case of the Organisation's gross negligence or wilful misconduct; (B) recovery by the Contracting Authority from the Organisation of the amount of the EU funding provided directly or indirectly for the benefit of a recipient referred to in subparagraphs (b)(i) and b)(ii) that is a Restricted Person under the Agreement. Where appropriate, a combination of remedial measures may be applied. Where remedial measures cannot be agreed or if the Organisation nonetheless decides to proceed with a transaction, the corresponding amount shall not be charged (including through the application of the notional approach) to (i) the Action where the Action is exclusively financed by the EU, or in case the Action is Multi-Donor and the maximum EU Contribution is expressed as a percentage of total eligible costs of the Action; or (ii) to the EU Contribution in all other cases. This is without prejudice to any rights that the Contracting Authority may have to suspend or terminate this Agreement or to recover any EU funding contributed by the Contracting Authority to the Organisation.
- (e) The determination of remedial measures will be made in accordance with the principle of proportionality. Remedial measures shall apply only to the EU funding made available to, or for the benefit of, a recipient referred to in subparagraphs (b)(i) and (b)(ii) for the period during which it remained a Restricted Person.
- (f) For the avoidance of doubt, the Parties acknowledge that if a recipient of the EU funding becomes a Restricted Person after the date on which such EU funding was made available to, or for the benefit of, such recipient, subparagraphs (c) and (d) shall not apply to the EU funding made available to, or for the benefit of, the Restricted Person before its listing.
- (g) Preceding subparagraphs (a) to (f) are without prejudice to the exceptions contained in the EU Restrictive Measures.
- (h) The Contracting Authority will not intervene in the Organisation's processes for selecting and engaging with recipients in full respect of the Organisation's Regulations and Rules.

## **Part 2**

### **CONTRIBUTION AGREEMENTS FOR FINANCIAL INSTRUMENTS (GUARANTEES AND/OR OTHER OPERATIONS) AND ANCILIARY SUPPORT AND/OR OTHER ACTIVITIES, IF ANY**

“8.1 The following shall supplement the General Conditions:

8.1.X /8.2.X The following definitions are inserted:

EU Restrictive Measures	restrictive measures adopted pursuant to the Treaty on European Union (TEU) or to the Treaty on the Functioning of the European Union (TFEU).
Restricted Person	any entities, individuals or groups of individuals designated by the EU as subject to the EU Restrictive Measures. <sup>44</sup>

8.1.X /8.2.X The provisions on general obligations shall be supplemented as follows

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<sup>44</sup> Consolidated list (the “EU sanctions list”) presently available at <https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions>. Note that the EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.



- (a) In their contractual relationship the Parties recognise that under EU law no EU funds or economic resources are to be made available directly or indirectly to, or for the benefit of, Restricted Persons.
- (b) The Organisation shall ensure that no transaction subject to a verified hit against the EU sanctions list shall benefit directly or indirectly from EU funding. The Organisation commits to ensure this i) through screening for hits against EU sanctions before any direct contracts it concludes and ii) at subsequent levels through the Organisation's risk based due diligence.

The Organisation will implement this obligation through the following measures:

- (i) For Ancillary Support, Other Activities, and/or any Operation that does not take the form of a guarantee, if any, under the Agreement:
  - (1) The Organisation shall screen for hits against the EU sanctions list, before entering into, and before making payments under, the relevant agreements, each Contractor, Grant Beneficiary<sup>45</sup>, Financial Intermediary and Final Recipient with whom the Organisation has or is expected to have a direct contractual relationship, so as to assess whether such recipient is a Restricted Person.
  - (2) The Organisation shall ensure, through screening or through other appropriate means (that may include an ex-post verification) on a risk based approach basis, that no entity that has or is expected to have a direct contractual relationship with a Grant Beneficiary or a Financial Intermediary in relation to the implementation of the Action and that would receive EU funding ("Indirect Recipient"), is a Restricted Person.
- (ii) For guarantees under the Financial Instrument of the Agreement,
  - (1) The Organisation shall screen for hits against the EU sanctions list, before entering into a relevant loan agreement or guarantee agreement (as applicable), the borrower and the guarantee beneficiary that is expected to receive a guarantee from the Organisation and have a direct contractual relationship with the Organisation ("Organisation's Guarantee Counterparty"), so as to assess whether such Organisation's Guarantee Counterparty is a Restricted Person.
  - (2) In respect of any borrower or guarantee beneficiary that is expected to receive a guaranteed loan<sup>46</sup> or a guarantee from, and have a direct contractual relationship with an Organisation's Guarantee Counterparty in relation to the project benefiting from the EU funds ("Indirect Guarantee Counterparty"), the relevant provisions of subparagraph (e) of this Article shall apply (without prejudice to subparagraphs (f) and (g)) if it is established that it is or was a Restricted Person at the time of entering into a relevant loan agreement or guarantee agreement (as applicable).
- (c) In the event that the Organisation assesses that any of the recipients of the EU funding referred to in subparagraph (b)(i) or any borrower or guarantee beneficiary referred to in subparagraph (b)(ii) is a Restricted Person, and the Organisation decides that the transaction should proceed notwithstanding a verified hit against EU sanctions, the Organisation shall promptly inform the Commission. Should the Commission consider that the use of the EU funding in connection with the Agreement would result in a breach of the EU Restrictive Measures, the Commission shall notify the Organisation within twenty-five (25) Days of the date of the receipt of the Organisation's notice pursuant to the immediately preceding sentence. If the Commission does

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<sup>45</sup> References to Grant Beneficiary or Contractor are only relevant when Ancillary Support or Other Activities is made available pursuant to the Contribution Agreement for Financial Instruments.

<sup>46</sup> For the avoidance of doubt, an Indirect Guarantee Counterparty means only a borrower or a guarantee counterparty whose loan or guarantee is guaranteed by the EU funding. In other words, sub-loans not covered by the EU guarantee are excluded from this obligation.

not notify the Organisation pursuant to this subparagraph, the Commission shall be deemed to have no objection.

- (d) If the Commission notifies the Organisation pursuant to the immediately preceding subparagraph, the Organisation and the Commission shall promptly consult each other with a view to jointly determining remedial measures in accordance with their respective applicable legal frameworks. Subject to subparagraph (e) below that shall apply to guarantees (both funded and unfunded), these measures may include, but shall not be limited to: (A) the reallocation of the relevant portion of the EU funding net of any costs incurred by the Organisation for undertaking any procurement or award procedure unless in case of the Organisation's gross negligence or willful misconduct; (B) recovery by the Commission from the Organisation of the amount of the EU funding provided directly or indirectly for the benefit of a recipient referred to in subparagraph (b)(i) that is a Restricted Person under the Agreement. Where appropriate, a combination of remedial measures may be applied. Where remedial measures cannot be agreed or if the Organisation nonetheless decides to proceed with a transaction, the corresponding amount shall not be charged (including through the application of the notional approach) to (i) the Action where the Action is exclusively financed by the EU, or in case the Action is Multi-Donor and the maximum EU Contribution is expressed as a percentage of total eligible costs of the Action; or (ii) to the EU Contribution in all other cases. This is without prejudice to any rights that the European Commission may have to suspend or terminate this Agreement or to recover any EU funding contributed by the European Commission to Organisation.
- (e) This subparagraph applies solely in respect of guarantees (both funded and unfunded) granted by the Commission under this Agreement to guarantee the Organisation's loans or guarantees. In the event the Organisation identifies, via screening or other appropriate means that may include ex post checks on a risk based approach basis, an Organisation's Guarantee Beneficiary or an Indirect Guarantee Counterparty that is a Restricted Person, the remedial measures available to the Commission may include, but not be limited to, the recovery of any payments made by the Commission to the Organisation in respect of the relevant loan or relevant guarantee under this Agreement, the exclusion of the relevant loan or relevant guarantee from the Commission's guarantee cover or the termination of the Commission's guarantee. Where remedial measures cannot be agreed, the Organisation shall procure that the Commission's guarantee does not cover the Organisation's Guarantee Counterparty or the Indirect Guarantee Counterparty that is a Restricted Person.
- (f) The determination of remedial measures will be made in accordance with the principle of proportionality. Remedial measures shall apply only to the EU funding or the EU guarantee (as applicable) made available to, or for the benefit of, a recipient referred to in subparagraph (1)(A) or an EBRD Guarantee Counterparty or Indirect Guarantee Counterparty for the period during which it remained a Restricted Person.
- (g) For the avoidance of doubt, the Parties acknowledge that if a recipient of the EU funding or the EU guarantee becomes a Restricted Person after the date on which such EU funding or the EU guarantee (as applicable) was made available to, or for the benefit of, such recipient, subparagraphs (c), (d) and (e) shall not apply to the EU funding or the EU guarantee (as applicable) made available to, or for the benefit of, the Restricted Person before its listing.
- (h) Preceding subparagraphs (b) to (g) are without prejudice to the exceptions contained in the EU Restrictive Measures.
- (i) The Commission will not intervene in the Organisation's processes for selecting and engaging with recipients in full respect of the Organisation's Regulations and Rules.