



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 July 2011

12847/11

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"I" ITEM NOTE

From: Working Party on Information
To: Coreper
No. prev. doc.: 11969/11

Subject: Framework Partnership Agreement for the deposit of the EU historical archives at the European University Institute in Florence

1. By note dated 15 September 2010 ¹, the Secretary-General of the Commission consulted the Secretaries-General of the Council, the European Parliament, the Court of Auditors and the Economic and Social Committee on a set of objectives for the future co-operation between the European University Institute (EUI) in Florence and the EU institutions and bodies, which deposit their historical archives at the EUI (depositing institutions ²).

In its note, the Commission pointed out that the deposit contract of 17 December 1984, which forms the basis of the existing co-operation between the EUI and the depositing institutions, has become obsolete in many respects and ought to be replaced. It also specified that although it intends to propose an amendment of the Archives Regulation to that effect, some operational aspects of the co-operation between the EUI and the depositing institutions can be improved within the framework of the 1984 contract in the meantime.

¹ The text is set out at Annex I to this note.

² The European Investment Bank also deposits its archives with the EUI but on the basis of a separate agreement.

2. In its note, the Commission therefore proposed to:

- implement the deposit contract of 17 December 1984, through a "framework partnership agreement" (hereinafter referred to as the "FPA"), which would formalise co-operation between the EU, represented by the Commission, and the EUI;
- set out the provisions on the management of the historical archives and the future co-operation with the EUI in the form of an action plan annexed to the FPA. This action plan would complement the 1984 contract by catering for recent technological developments and requirements in the archives area without modifying the terms of the deposit contract;
- replace the annual "service contracts" between the EUI and the Commission with "grant agreements", and thereby change the role of the EUI from that of a service provider to that of a partner and beneficiary of grants awarded for actions intended to help achieve one or more objectives forming part of an EU policy, in accordance with article 108 of the Financial Regulation ³;
- start discussions between the Commission and the EUI on a draft FPA with the EUI before the end of 2010.

3. In response to this initiative, the Secretaries-General of the other depositing institutions indicated their agreement in principle that the Commission began discussions in view of the conclusion of an FPA with the EUI, subject to their approval of the final text and the actions planned under the agreement before it was signed.

³ In its note, the Commission sought the endorsement of the depositing EU institutions only on the proposed action plan, given that the change of payment instrument, i.e. the replacement from a "service contract" to a "grant agreement", is a matter falling within the Commission's competence.,

4. On 14 December 2010 and 26 - 27 January 2011, discussions were held between the Commission and the EUI in the presence of observers representing the Archives Services of the Council and of the European Parliament ⁴, which led to agreement on the actions planned and set out in Annex I to the FPA ⁵.
5. The preamble of the agreement sets out the following five general objectives to be pursued by the depositing institutions and the EUI:
- to ensure the fullest and most effective public access to the historical archives of the European Union;
 - to bring the historical archives of the EU institutions together at a single location where they can be made available for public consultation;
 - to give a new impetus to the preservation and dissemination of the heritage of the EU institutions by adding value to, and promoting public consultation of, these archives;
 - to promote the parallel acquisition, by the EUI, of private archives as a complement to the institutional archives in order to achieve the greatest possible intelligibility and comprehension of the history of the construction of Europe;
 - to obtain lasting synergies in the work of the EU institutions and the EUI that will lead to a more efficient management of the historical archives of the EU and to their increased accessibility, notably by a better division of work reflecting their mutual responsibilities for opening these to the public.
6. By letter of 13 April 2011, the Commission submitted the text of the agreement (set out at Annex II to this note) to the other depositing institutions for their approval. On 30 May the Court of Auditors notified the Commission that it could agree to the FPA to be signed with the EUI.. The Bureau of the Economic and Social Committee, for its part, endorsed the agreement at its meeting of 14 June, whereas the European Parliament confirmed its approval by letter signed by its Secretary General on 16 June 2011.

⁴ In reply to the wish generally shared by the other depositing institutions represented in the Interinstitutional Working Group on Archives to be put on an equal footing with the Commission in their relations with the EUI, the Commission suggested in its note of 15 September that observers from the Archives Services of the European Parliament and the Council be invited to take part in the discussions on the future FPA. This was accepted by the other depositing institutions.

⁵ The financial aspects of the FPA were dealt with during separate negotiations between the Commission and the EUI in February - March 2011.

7. At its meetings of 30 June and 15 July 2011, the Information Working Party examined the text set out in Annex I of the proposed FPA.
8. Following this examination, and given that there is no other meeting of the Council in July, the Permanent Representatives Committee is invited, as an "I" Item at its forthcoming meeting,
 - to decide, by unanimity, to use the written procedure to approve the action plan set out in Annex I to the Framework Partnership Agreement, attached as Annex II to the present document,and
 - to authorise the General Secretary of the Council to sign the draft letter to the Secretaries-General of the Commission, the European Parliament, the Court of Auditors and the Economic and Social Committee, as set out in Annex III to the present note.

The Annexes are available in English only.



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, 15 SEP. 2010

NOTE FOR THE ATTENTION OF

MR K. WELLE, SECRETARY GENERAL, EUROPEAN PARLIAMENT
MR. P. DE BOISSIEU, SECRETARY GENERAL, COUNCIL OF MINISTERS
MR E. RUIZ GARCIA SECRETARY GENERAL, COURT OF AUDITORS
MR. M. WESTLAKE, SECRETARY GENERAL, ECONOMIC AND SOCIAL COMMITTEE
MR. A. QUEREJETA, SECRETARY GENERAL, EUROPEAN INVESTMENT BANK

Subject: Framework Partnership Agreement with the European University Institute in Florence

During the past months the archives services of the EU institutions have been informally reflecting about the future of the EU historical archives. There is a large degree of agreement on the need of a forward looking and ambitious policy to define the future role and responsibilities of the EUI with respect to our archives, ensuring that this rich historical legacy is properly preserved and made accessible. The need for such a forward looking policy is not only a reflection of the evolution of the EU over the years, but is also underlined by the advent of new technologies: digital archives and the ever increasing opportunities for online access and consultation.

To provide a sound foundation for the policy, a new legal basis for a permanent role of the EUI in the management and valorisation of our archives is needed. It would replace the current deposit contract from 17 December 1984, which over the years has become outdated and is not the best legal and financial basis for a policy oriented long term relationship. We are currently considering which legal base would be most appropriate to succeed the 1984 contract for the deposit and funding of the archives at the EUI.

In the meantime, some operational aspects of the relationship with the EUI can already be improved within the framework of the 1984 contract.

The 1984 contract is now implemented through successive annual "service contracts" signed with the EUI. Experience shows, however, that a service contract does not well fit the nature of our relationship with the Institute and the long term role the EUI plays in hosting and making available the historical archives of the EU. The Commission would therefore like to propose to implement the 1984 contract through a "framework partnership agreement", instead of a service contract. This will allow for a more long term planning of the management of the EU historical archives by the EUI and the funding will be by way of a grant, instead of a fee.

We would propose to use this change of the implementation method for the 1984 contract as an opportunity to pursue a number of objectives that are the interest of all the depositing institutions. In this way, even before a new legal basis is eventually agreed and without prejudice to what it may contain, the historical archives of the EU could adapt to the needs of our time. In particular concerning a more modern description of the role and responsibilities of the EUI, providing for an increased collaboration and co-operation between EU institutions and the EUI and a stronger role for the Inter-institutional working group on archives. It should be stressed that these improvements will not change the essential elements of the 1984 contract or contradict specific clauses thereof. It will only specify or complement in more detail the obligations of the 1984 contract.

Before initiating such discussions with the EUI, we need to be confident that depositing institutions support the objectives set out in the enclosed note.

If you agree with the enclosed objectives, the Commission proposes to start discussions on a draft framework partnership agreement with the EUI on this basis. As requested, an observer from both the European Parliament and the Council will be invited to participate in these discussions. We will furthermore report on the progress of the discussions with the EUI to the Inter-institutional group on archives. This will allow us to take account of the observations of the other depositing institutions. Once agreement with the EUI has been reached, the Commission will submit the final text of the partnership agreement to the other depositing institutions in the Inter-institutional working group on archives to confirm their agreement.

We would like to conclude the partnership agreement with the EUI before the end of 2010 so that the new financing instrument can be implemented from the beginning of next year.

I would therefore be grateful if you could indicate your agreement to pursue the objectives for a framework partnership agreement with the EUI as set out in the enclosed note by 1 October.

Catherine Day

Enclosure: 1

c.c.: Mr. R. Grass, Registrar, Court of Justice
Mr G. Stahl, Secretary General, Committee of the Regions
Mr. G. Grisse, Director General Administration, European Central Bank



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B
SG-B-2
Document Management Policy

FRAMEWORK PARTNERSHIP AGREEMENT

FRAMEWORK AGREEMENT NUMBER [...]

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), itself represented for the purposes of signature of this framework agreement by Catherine DAY, Secretary General,

of the one part,

and

the European University Institute
via Dei Roccettini 9
I- 50016 SAN DOMENICO DI FIESOLE (FI)

"the partner", represented for the purposes of signature of this agreement by Josep BORRELL FONTELLES, President,

of the other part,

HAVE AGREED

the **Preamble**, **Special Conditions**, **General Conditions** and **Annexes** that go to make up the present framework partnership agreement ("the framework agreement")

The **Preamble** sets out the context of the partnership established between the parties with respect to the management of the historical archives of the EU.

The **Special Conditions** and the **General Conditions** indicate the subject and duration of the framework agreement and the operational arrangements for the partnership.

The following documents are annexed to the framework agreement:

Annex I Actions planned under the partnership, roles and responsibilities

Annex II Model specific grant agreement

The terms of the Special Conditions, of which the Preamble forms an integral part, shall take precedence over those in the other parts of the framework agreement. The terms of the General Conditions shall take precedence over those in the Annexes.

Through his signature, the partner accepts the terms of the framework agreement and their application to any specific grant agreements subsequently concluded between the parties.

In the articles of the framework agreement, the generic term "action" shall refer to the management of the EU historical archives and related activities carried out by the partner in accordance with annex 1, for which one or more action grants may be awarded.

PREAMBLE

For more than a quarter of a century the European Union and the European University Institute in Florence (EUI) have been partners in the management of the historical archives of the European Union. This mutually beneficial cooperation is based on a contract of 17 December 1984 between the European Communities, represented by the European Commission, and the EUI, which provides for the deposit of the EU archives at the EUI where they are made available to the public. This cooperation was confirmed by the joint declaration of 27 September 2004 on the occasion of the 20th anniversary of the deposit of the historical archives at the EUI, by the Presidents of the European Commission and the European University Institute.

The purpose of the deposit of the EU historical archives at the EUI is to provide access to the EU archives from a single location, to promote their consultation and to stimulate research into the history of European integration and the European institutions.

The depositing institutions, represented by the Commission, wish to establish a relationship of lasting cooperation with the EUI based on shared common objectives and a clear definition of the role and responsibilities of each of the parties with respect to the historical archives of the EU institutions.

The general objectives which the depositing institutions share with the European University Institute with regard to the historical archives of the European Union and which justify the establishment of a partnership are the following:

- to ensure the fullest and most effective public access to the historical archives of the European Union;
- to bring the historical archives of the EU institutions together at a single location where they can be made available for public consultation;
- to give a new impetus to the preservation and dissemination of the heritage of the EU institutions by adding value to, and promoting public consultation of, these archives;
- to promote the parallel acquisition, by the EUI, of private archives as a complement to the institutional archives in order to achieve the greatest possible intelligibility and comprehension of the history of the construction of Europe;
- to obtain lasting synergies in the work of the EU institutions and the EUI that will lead to a more efficient management of the historical archives of the EU and to their increased accessibility, notably by a better division of work reflecting their mutual responsibilities for opening these to the public.

The roles and responsibilities with a view to the attainment of these objectives and the activities that the parties agree to undertake are set out in Annex I.

This partnership agreement replaces the service contracts that were concluded annually by the Commission and the EUI to fund and programme the deposit of the EU historical archives at the EUI. The deposit contract of 17 December 1984 and the joint declaration of 27 September 2004 remain fully applicable.

I - SPECIAL CONDITIONS

ARTICLE I.1 - PURPOSE

- I.1.1 The framework agreement is concluded as part of an ongoing, formalised relationship of co-operation between the Commission and the partner ("the partnership") on the basis of Union objectives and an action plan set out in Annex I, in order to contribute to the objectives of the Union policy referred to in the Preamble.
- I.1.2 The purpose of the framework agreement is to define the respective roles and responsibilities of the Commission and the partner in implementing their partnership. The specific grant agreements that may be signed under the framework agreement shall relate to grants for an action.
- I.1.3 In the context of the action plan and under the conditions laid down in Annex I, the partner shall each year submit a work programme which shall be jointly agreed by the parties and shall serve as a basis for the award of any grants during the year in question. The annual work programme shall be submitted before the start of the partner's corresponding financial year.

ARTICLE I.2 – AWARD OF GRANTS

- I.2.1 The partner will submit a proposal for action to the Commission on the basis of the annual work programme jointly agreed between the parties and the technical and financial criteria stipulated by the Commission that the actions must satisfy if they are to qualify for a grant.
- I.2.2 Where the Commission decides to accept a proposal for action, it shall send the partner a specific grant agreement ("specific agreement") in accordance with the model in Annex II. The specific agreement is governed by the terms of the framework agreement and must be signed by the authorized representatives of the parties under the same conditions as the framework agreement.
- I.2.3 By signing the specific agreement, the partner undertakes to carry out the action under his own responsibility on the terms laid down in the specific agreement and the annexes thereto and in compliance with the undertakings entered into under the framework agreement.
- I.2.4 Signature of the framework agreement by the parties shall not give rise to any obligation on the Commission to award a grant. It shall be without prejudice to the partner's participation in other calls for proposals with a view to the award of grants outside the action plan set out in Annex I.

ARTICLE I.3 - DURATION

- I.3.1 The framework agreement shall enter into force on the date when the last of the two parties signs.

- I.3.2 It shall be concluded for a period of 4 years starting from the date of its entry into force.
- I.3.3 Specific agreements must be signed before the date when the framework agreement expires. Where the actions are carried out after the above-mentioned date, the terms of the framework agreement shall continue to apply to the implementation of the corresponding specific agreements.

ARTICLE I.4 - FINANCING THE ACTIONS

- I.4.1. The grant awarded for an action may not finance the entire cost of the action. The amounts and sources of co-financing other than from Union funds shall be set out in the estimated budget of the action concerned.

The partner must provide proof of the amount of co-financing provided. The co-financing may be provided either from the partner's own resources and/or from other sources of external finance.

If considered necessary and appropriate, contributions in kind from third parties may be accepted as co-financing provided that the value calculated for such contributions does not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the partner free of charge but bear the costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are booked to the third parties' accounts.

Contributions involving real estate shall be excluded from the calculation of the amount of co-financing.

- I.4.2 The provisions relating to the submission of the reports and other documents relating to the action and the arrangements for payment of the grant are set out in the specific agreement.

ARTICLE I.5 – ADJUSTMENT OF THE ESTIMATED BUDGET

By way of derogation from Article II.14, the partner may, when carrying out the action, adjust the estimated budget by transfers between headings of eligible costs, provided that this adjustment of expenditure does not affect the implementation of the action and that the transfer between headings does not exceed 10% of the amount of each heading of estimated eligible costs for which the transfer is intended, and without exceeding the total eligible costs indicated in Article 3 of the specific grant agreement. He shall inform the Commission in writing.

ARTICLE I.6 – PAYMENT ARRANGEMENTS

I.6.1 Pre-financing:

Following the signature of the action grant agreement by the last of the two parties, within 45 days of the date of receipt of the request for pre-financing, a pre-financing payment shall be made to the partner representing 50% of the maximum amount of the grant specified in the grant agreement.

I.6.2 Second pre-financing payment

A second pre-financing payment may be requested after 30 June of the year of the grant agreement concerned and provided that at least 80% of the first pre-financing payment has been used up. To this end the partner must submit a detailed statement of the eligible costs actually incurred.

Within 45 days of the date of receipt of the request, a second pre-financing payment shall be made to the partner representing 40% of the maximum amount of the grant specified in the grant agreement.

I.6.3 Payment of the balance

The request for payment of the balance shall be accompanied by the annual activity report and the financial statement specified in Article II.16.4 of the framework agreement.

The Commission shall have 30 days to approve or reject the annual activity report or to request additional supporting documents or information under the procedure laid down in Article II.16.4. In that case, the partner shall have 20 days to submit the additional information or a new report.

A payment representing the balance of the grant determined in accordance with Article II.18 of the framework agreement shall be made to the partner within 45 days following approval by the Commission of the implementation report accompanying the request for payment of the balance.

The Commission may suspend the period for payment in accordance with the procedure in Article II.17.2 of the framework agreement.

ARTICLE I.7 – BANK ACCOUNT

I.7.1 Payments shall be made to the partner's bank account or sub-account denominated in euros, as indicated below:

Name of bank: CASSA DI RISPARMIO DI FIRENZE
Address of branch: VIA BUFALINI 6 – 50100 FIRENZE
Precise denomination of the account holder: ISTITUTO UNIVERSITARIO EUROPEO
Full account number (including bank codes): 01600280057775
IBAN account code: IT35O0616002800000000577C75
BIC: CRFIIT3F

I.7.2 The funds paid to this account or sub-account shall yield interest or equivalent benefits under the law of the State on whose territory the account or sub-account is opened.

Moreover, this account or sub-account must identify the payments made by the Commission and related interest. Otherwise, the accounting methods of the beneficiary must make it possible to identify the payments made by the Commission and the interest or other benefits yielded by these funds.

Such interest or benefits shall, if they are generated by pre-financing, be deducted from the payment of the balance or recovered by the Commission as specified in Article II.17.4.

ARTICLE I.8 - COST OF EQUIPMENT

By way of derogation from the third indent of Article II.15.3, the purchase cost of equipment may be eligible, provided that it satisfies the criteria set out Article II.15.1.

ARTICLE I.9 - GENERAL ADMINISTRATIVE PROVISIONS

I.9.1 Any communication addressed to the Commission in connection with the framework agreement or a specific agreement shall be in writing, indicating the number of the agreement concerned, and shall be sent to the following address:

European Commission
Secretariat General
Peter HANDLEY
Head of Unit
SG.B2 – BERL 6/297
B - 1049 BRUXELLES

I. 9.2 Ordinary mail shall be considered to have been received by the Commission on the date on which it is formally registered by the Commission unit responsible referred to above.

I. 9.3 Any communication addressed to the partner in connection with the framework agreement or a specific agreement shall be in writing, indicating the number of the agreement, and shall be sent to the following address:

Josep BORRELL FONTELLES
President
European University Institute
Badia Fiesolana - 9, Via Dei Roccettini
I-50014 SAN DOMENICO DI FIESOLE

I. 9.4 Any change of address by the partner shall be communicated in writing to the Commission.

ARTICLE I.10 - LAW APPLICABLE AND COMPETENT COURT

Grants are governed by the terms of the framework agreement and specific agreements, the Union law applicable and, on a secondary level, by the law of Belgium relating to grants.

The partner may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the above-mentioned agreements, and the arrangements for implementing them, before the General Court of the European Union and, in the event of appeal, the Court of Justice.

ARTICLE I.11 – DATA PROTECTION

I.11.1. Any personal data included in the framework agreement and specific agreements, or related to these agreements and their implementation, shall be processed pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the framework agreement and specific agreements by the Secretariat General of the European Commission, without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

I. 11.2. The partner shall have the right of access to his/her personal data and to rectify any such data. Should the partner have any queries concerning the processing of his/her personal data, he/she shall address them to entity acting as data controller.

I. 11.3. Partners shall have the right of recourse at any time to the European Data Protection Supervisor at any time.

I. 11.4. Where the framework agreement or specific agreements requires the processing of personal data by partners, they may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise their rights.

I. 11.5. The partner shall limit access to the data to the staff strictly necessary for the implementation, management and monitoring of the framework agreement.

I. 11.6. The partner undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - i) unauthorised reading, copying, alteration or removal of storage media;
 - ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - iii) unauthorised persons from using data-processing systems by means of data transmission facilities;

- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE I.12 - OWNERSHIP/USE OF THE RESULTS

Without prejudice to Article II.2 and II.4 of the General Conditions, partners shall warrant that the European Union has the rights to:

- use any pre-existing intellectual property rights which have been included in the results of the action,
- use, re-use and edit the results of the action, as a whole or parts of them,
- translate and re-write the results of the action in a different language or into a different form,
- exploit the results of the action in the way it is normally intended for,
- modify the results of the action, in particular to cut, dub, insert meta-data, subtitles, legends or other graphic, visual, audio or word elements, for the sake of dissemination and in agreement with the beneficiary,
- broadcast the results of the action,
- sub-license the results of the action,
- distribute the results of the action with or without modifications to them,
- prepare derivative works of the results of the action,
- store the results of the action,
- include the results of the action in the indexes and databases worldwide,
- extract audio or video files from the results of the action,
- compile or decompile the results of the action.

II -GENERAL CONDITIONS

PART A: LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – UNDERTAKINGS BY THE PARTNER

By signing the framework agreement, the partner undertakes to:

- respect the common general objectives that formed the basis for establishing the partnership, as mentioned in the Preamble;
- fulfil the undertakings entered into under the action plan set out in Annex I, where appropriate together with the annual work programmes jointly agreed between the parties;
- make every effort to achieve in practice the above-mentioned common general objectives in each action for which a Commission grant is awarded;
- maintain relations of mutual co-operation and regular exchanges of information with the Commission on matters of common interest to do with use of the framework agreement and on the follow-up to implementation of the action plan set out in Annex I;
- adopt a transparent attitude with regard to managing and keeping accounts on the actions for which a Commission grant is awarded and co-operate fully with annual or occasional checks on the implementation of the framework agreement and/or the specific agreements.

ARTICLE II.2 – LIABILITY

- II.2.1 The partner shall have sole responsibility for complying with any legal obligations incumbent on him.
- II.2.2 The Commission shall not, in any circumstances or on any grounds, be held liable in the event of a claim under specific agreements relating to any damage caused during the execution of an action. Consequently, the Commission will not entertain any request for indemnity or reimbursement accompanying any such claim.
- II.2.3 Except in cases of *force majeure*, the partner shall make good any damage sustained by the Commission as a result of the execution or faulty execution of an action.
- II.2.4 The partner shall assume sole liability towards third parties, including for damage of any kind sustained by them while the action is being carried out.

ARTICLE II.3 – CONFLICTS OF INTEREST

- II.3.1 The partner undertakes to take all the necessary measures to prevent any risk of conflict of interest which could affect the impartial and objective performance of the framework agreement and/or the specific agreements. Such conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or emotional reasons, or any other common interests.

- II.3.2 Any situation constituting or likely to lead to a conflict of interest during the implementation of the framework agreement and/or the specific agreements must be brought to the attention of the Commission, in writing, without delay. The partner shall undertake to take whatever steps are necessary to rectify this situation without delay.
- II.3.3 The Commission reserves the right to check that the measures taken are appropriate and may demand that the partner take additional measures, if necessary, within a certain time.

ARTICLE II.4 - OWNERSHIP/USE OF THE RESULTS

- II.4.1 Unless stipulated otherwise in the specific agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the partner.
- II.4.2 Without prejudice to paragraph 1, the partner grants the Commission the right to make free use of the results of an action as it deems fit, and, in particular, to display, reproduce by any technical procedure, translate or communicate the results of the action by any medium, including on the Europa website, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.
- II.4.3 Where industrial and intellectual property rights, including rights of third parties, exist prior to the agreement being entered into ("pre-existing intellectual property rights"), the partner shall establish a list which shall specify all rights of ownership and use in the pre-existing intellectual property rights and disclose it to the Commission at the latest prior to the commencement of implementation. The partner shall ensure that it has all rights to use any pre-existing intellectual property rights in implementation of the agreement.

ARTICLE II.5 – CONFIDENTIALITY

The Commission and the partner undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the framework agreement or specific agreements that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the expiry date of the framework agreement.

ARTICLE II.6 - PUBLICITY

- II.6.1 Unless the Commission requests otherwise, any communication or publication by the partner about an action, including at a conference or seminar, shall indicate that the action has received funding from the Union.

Any communication or publication by the partner, in any form and medium, shall indicate that sole responsibility lies with the author and that the Commission is not responsible for any use that may be made of the information contained therein.

II.6.2 The partner authorizes the Commission to publish the following information in any form and medium, including via the Internet:

- the partner's name and address,
- the subject and purpose of the grants awarded,
- the amounts granted and the proportions of the actions' total cost covered by the funding.

Upon a reasoned and duly substantiated request by the partner, the Commission may agree to forgo such publicity, if disclosure of the information indicated above would risk compromising the partner's security or prejudicing his commercial interests.

ARTICLE II.7 - EVALUATION

Whenever the Commission carries out an interim or final evaluation of an action's impact measured against the objectives of the Union programme concerned, the partner undertakes to make available to the Commission and/or persons authorized by it all such documents or information, including information in electronic format, as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.20.

ARTICLE II.8 - SUSPENSION

II.8.1 The partner may suspend implementation of an action if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. He shall inform the Commission without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

II.8.2 If the Commission does not terminate the specific agreement under Article II.12.2, the partner shall resume implementation once circumstances allow and shall inform the Commission accordingly. The duration of the action shall be extended by a period equivalent to the length of the suspension.

II.8.3 In accordance with Article II.14, a supplementary written agreement to the specific agreement shall be concluded to extend the duration of the action and to make any amendments that may be necessary to adapt the action to the new implementing conditions.

ARTICLE II.9 – FORCE MAJEURE

II.9.1 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* by the defaulting party.

II.9.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, probable duration and foreseeable effects.

II.9.3 Neither of the parties shall be held in breach of their obligations under the agreement if they are prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.

II.9.4 Actions under way may be suspended in accordance with Article II.8.

ARTICLE II.10 - AWARD OF CONTRACTS

II.10.1 If the partner has to conclude contracts in order to carry out an action and they constitute costs under an item of eligible direct costs in the estimated budget for the action annexed to the specific agreement, he shall award the contract to the bid offering best value for money; in doing so he shall take care to avoid any conflict of interests.

II.10.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:

- (a) they may only cover the execution of a limited part of the action;
- (b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the tasks concerned must be set out in the annex to the specific agreement that describes the action and the corresponding estimated costs must be set out in detail in the estimated budget for the action;
- (d) any recourse to the award of contracts while the action is under way, if not provided for in the grant application, shall be subject to prior written authorisation by the Commission;
- (e) the partner shall have sole responsibility for executing the action and complying with the terms of the framework agreement and the corresponding specific agreement. The partner must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Commission under the framework agreement and/or specific agreement;
- (f) the partner must undertake to ensure that the conditions applicable to him under Articles II.2, II.3, II.4, II.5, II.6, II.7, II.11 and II.20 of the framework agreement are also applicable to the contractor.

ARTICLE II.11 - ASSIGNMENT

II.11.1 Claims against the Commission may not be transferred.

II.11.2 In exceptional circumstances, where the situation warrants it, the Commission may authorize the assignment of the specific agreements, or part thereof, and any payments flowing from them to a third party, following a written request to that effect, giving reasons, from the partner. If the Commission agrees, it must make its agreement known in writing before the proposed assignment takes place. In the absence of the above authorization, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Commission.

II.11.3 In no circumstances shall such an assignment release the partner from his obligations to the Commission.

ARTICLE II.12 – TERMINATION OF THE FRAMEWORK AGREEMENT

II.12.1 Termination by the partner

The partner may terminate the framework agreement at any time by giving 60 days' written notice. Where he avails himself of that right, he must undertake to complete the implementation of any specific agreements which have entered into force before the date when termination of the framework agreement takes effect.

In duly justified cases, the partner may withdraw his request for a grant and terminate a specific agreement which is in the process of being implemented by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account.

If no reasons are given or if the Commission does not accept the reasons, the partner shall be deemed to have terminated the agreement improperly, with the consequences set out in the fourth subparagraph of paragraph 4.

II.12.2 Termination by the Commission

The Commission may decide to terminate the framework agreement at any time, without any indemnity on its part, by giving 60 days' written notice. Where the Commission avails itself of that right, it must honour the obligations arising from the implementation of any specific agreements which have entered into force before the date when termination of the framework agreement takes effect, insofar as this implementation gives rise to expenditure foreseen in those specific agreements which is reasonable, except in the cases set out below.

The Commission may decide to terminate the framework agreement and the specific agreements in the process of being implemented, without any indemnity on its part, in the following circumstances:

- (a) in the event of a change to the partner's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the partner fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- (c) in the event of *force majeure*, notified in accordance with Article II.9 or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.8;
- (d) if the partner is declared bankrupt, is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) where the Commission has evidence or seriously suspects the partner or any related entity or person, of professional misconduct;

- (f) if the partner has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- (g) where the Commission has evidence or seriously suspects the partner or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (h) where the Commission has evidence or seriously suspects the partner or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- (i) if the partner has made false declarations or submits reports inconsistent with reality to obtain the grant provided for in the agreement.

In the cases referred to in points (e), (g) and (h) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the partner. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

II.12.3 Termination procedure

The procedure is initiated by registered letter with acknowledgement of receipt or equivalent.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the partner shall have 30 days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the agreement. If the Commission fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when the termination decision is received.

If notice is not given in the cases referred to in points (c), (f) and (i) above, termination shall take effect from the day following the date when the termination decision is received.

II.12.4 Effects of termination

In the event of termination of a specific agreement, payments by the Commission shall be limited to the eligible costs actually incurred by the partner up to the date when termination takes effect, in accordance with Article II.18. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The partner shall have 60 days from the date when termination of the specific agreement takes effect, as notified by the Commission, to produce a request for final payment in accordance with Article II.16.4. If no request for final payment is received within this time limit, the Commission shall not reimburse the expenditure incurred by the partner up to the date of termination and it shall recover any amount, if its use is not substantiated by the technical implementation reports and financial statements approved by the Commission.

By way of exception, at the end of the period of notice referred to in paragraph 3, where the Commission is terminating a specific agreement on the grounds that the partner has failed to produce the final technical implementation report and financial statement as stipulated in the agreement and has still not complied with this obligation within two months following the written reminder sent by the Commission by registered letter with acknowledgement of receipt or equivalent, the Commission shall not reimburse the expenditure incurred by the partner up to the date on which the action ended and it shall recover any amount, if its use is not substantiated by the technical implementation reports and financial statements approved by the Commission.

By way of exception, in the event of improper termination by the partner or termination by the Commission on the grounds set out in points (a), (e), (g), (h) or (i) above, the Commission may require the partial or total repayment of sums already paid under a specific agreement on the basis of technical implementation reports and financial statements approved by the Commission, in proportion to the gravity of the failings in question and after allowing the partner to submit his observations.

ARTICLE II.13 - FINANCIAL PENALTIES

II.13.1 By virtue of the Financial Regulation applicable to the General Budget of the European Communities, any partner declared to be in grave breach of his contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the grant in question.

II.13.2 This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the establishment of the first.

II.13.3 The partner shall be notified in writing of any decision by the Commission to apply such financial penalties.

ARTICLE II.14 – SUPPLEMENTARY AGREEMENTS

II.14.1 Any amendment to the framework agreement or a specific agreement must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.

II.14.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the framework agreement or a grant or result in unequal treatment of applicants for framework agreements or grants.

II.14.3 If the request for amendment is made by the partner, he must send it to the Commission in good time before it is due to take effect and, as far as specific agreements are concerned, one month before the closing date of the action, except in cases duly substantiated by the partner and accepted by the Commission.

PART B - FINANCIAL PROVISIONS

ARTICLE II.15 – ELIGIBLE COSTS

II.15.1 Eligible costs of the action or work programme are costs actually incurred by the partner, which meet the following criteria:

- they are incurred during the duration of the action or of the work programme as specified in the specific agreement, with the exception of costs relating to final reports and certificates on the financial statements and underlying accounts;
- they are connected with the subject of the specific agreement and they are indicated in the estimated overall budget of the action or work programme annexed to it;
- they are necessary for the implementation of the action or of the work programme which is the subject of the specific agreement;
- they are identifiable and verifiable, in particular being recorded in the accounting records of the partner and determined according to the applicable accounting standards of the country where the partner is established and according to the usual cost-accounting practices of the partner;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The partner's accounting and internal auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

II.15.2 In the case of an operating grant, the following operating costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

- the cost of staff, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the partner's usual policy on remuneration;

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;

- travel and subsistence allowances for staff, provided that they are in line with the partner's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the partner and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the period of eligibility for Union funding covered by the agreement may be taken into account by the Commission, except where its nature and/or use justifies different treatment by the Commission;

- costs of consumables and supplies;
- costs entailed by other contracts awarded by the partner for the purposes of implementing the work programme, provided that the conditions laid down in Article II.10 are met;
- costs arising directly from requirements imposed by the agreement (in particular, audit costs), including the costs of any financial services (especially the cost of financial guarantees);
- overheads.

II.15.3 In the case of a grant for an action, the eligible costs consist of direct costs and indirect costs.

The eligible direct costs for an action are those costs which, with due regard for the conditions of eligibility set out in paragraph 1, are identifiable as specific costs directly linked to the implementation of the action and which can therefore be booked to it direct. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in paragraph 1:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the partner's usual policy on remuneration;
- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the partner's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the partner and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Commission, except where the nature and/or the context of its use justifies different treatment by the Commission;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- costs entailed by other contracts awarded by the partner for the purposes of carrying out the action, provided that the conditions laid down in Article II.10 are met;
- costs arising directly from requirements imposed by the framework agreement or the specific agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees);

The eligible indirect costs for an action are those costs which, with due regard for the conditions of eligibility set out in paragraph 1, are not identifiable as specific costs directly linked to implementation of the action which can be booked to it direct, but which can be identified and justified by the partner using his accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

By way of derogation from paragraph 1, the indirect costs incurred in carrying out an action may be eligible for flat-rate funding fixed at not more than 7% of the total eligible direct costs. If provision is made in the specific agreement for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.

II.15.4 The following costs shall not be considered eligible:

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the partner can show that he is unable to recover it according to the applicable national legislation. VAT paid by public bodies is not an eligible cost;
- costs declared by the partner and covered by another action or work programme receiving a Union grant;
- excessive or reckless expenditure.

II.15.5 Contributions in kind shall not constitute eligible costs. However, the Commission can accept, if considered necessary or appropriate, that the co-financing referred to in Article I.4 should be made entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the partner free of charge but bear the corresponding costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be covered by this possibility.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the action as ineligible costs and in receipts from the action as co-financing in kind. The partner shall undertake to obtain these contributions as provided for in the specific agreement.

II.15.6 By way of derogation from paragraph 3, indirect costs shall not be eligible under a grant for an action awarded to a partner who already receives an operating grant from the Commission during the period in question.

ARTICLE II.16 - REQUESTS FOR PAYMENT

II.16.1 Pre-financing

Pre-financing is intended to provide the partner with a float.

Where required by the paragraph on pre-financing in Article 5 of the specific agreement or the equivalent article in the framework agreement, the partner shall provide a financial guarantee

from a bank or an approved financial institution established in one of the Member States of the Union.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the partner).

The financial guarantee shall provide that it remains in force until the pre-financing is cleared against interim payment(s) or payment of the balance by the Commission to the partner or, in the absence of such clearing, three months after a recovery is notified to the partner by which the Commission asks him to repay the pre-financing. The Commission undertakes to release the guarantee within the following month.

II.16.2 Further pre-financing payments

Where pre-financing is divided into several instalments, the partner may request a further pre-financing payment once he has used up the percentage of the previous payment specified in the paragraph on further pre-financing payments in Article 5 of the specific agreement or the equivalent article in the framework agreement. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred;
- where required by the abovementioned provisions of Article 5 or the equivalent, a financial guarantee in accordance with paragraph 1;
- where required by the abovementioned provisions of Article 5 or the equivalent, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies, by a competent and independent public officer;
- any other documents that may be required by the specific agreement in support of the request for further pre-financing payments.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the framework agreement and the specific agreement, including where appropriate the annexes thereto.

II.16.3 Interim payments

Interim payments are intended to reimburse the partner for expenditure on the basis of a detailed statement of the costs incurred, once the action has reached a certain level of completion. It may clear all or part of any pre-financing.

By the appropriate deadline indicated in the Article on Submission of reports and other documents in the specific agreement, the partner shall submit a request for interim payment accompanied by the following documents:

- an interim report on implementation of the action;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- where required by the paragraph on interim payments in Article 5 of the specific agreement or the equivalent article in the framework agreement, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies, by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the partner in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the framework agreement and the specific agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the framework agreement and the specific agreement, including any annexes. The partner shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the framework agreement and the specific agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Commission shall have the period specified in the paragraph on interim payments in Article 5 of the specific agreement or the equivalent article in the framework agreement in order to:

- approve the interim report on implementation of the action;
- ask the partner for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Commission within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the partner in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The partner shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The partner shall have the period laid down in the abovementioned provisions of Article 5 or the equivalent to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this Article shall apply.

In the event of renewed rejection, the Commission reserves the right to terminate the agreement by invoking Article II.12.2 (b).

II.16.4 Payment of the balance

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of the costs actually incurred by the partner in carrying out the action. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article II.18.

By the appropriate deadline indicated in the Article on Submission of reports and other documents in the specific agreement, the partner shall submit a request for payment of the balance accompanied by the following documents:

- a final report on the implementation of the action;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- a full summary statement of the receipts and expenditure of the action;
- where required by the paragraph on payment of the balance in Article 5 of the specific agreement or the equivalent article in the framework agreement, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or, in case of public bodies, a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the partner in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the framework agreement and the specific agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the framework agreement and the specific agreement, including where appropriate the annexes thereto. The partner shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the framework agreement and the specific agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Commission shall have the period specified in the paragraph on payment of the balance in Article 5 of the specific agreement or the equivalent article in the framework agreement in order to:

- approve the final report on implementation of the action;
- ask the partner for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Commission within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of the regularity or the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the partner in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The partner shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The partner shall have the period laid down in the abovementioned provisions of Article 5 or the equivalent to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this Article shall apply.

In the event of renewed rejection, the Commission reserves the right to terminate the specific agreement by invoking Article II.12.2 (b).

II.16.5 Costs of transfers

Costs of the transfers are borne in the following way:

- costs of dispatch charged by the bank of the Commission shall be borne by the Commission;
- costs of receipt charged by the bank of the partner shall be borne by the partner;
- all costs of repeated transfers caused by one of the parties shall be borne by the party who caused repetition of the transfer.

ARTICLE II.17 - GENERAL PROVISIONS ON PAYMENTS

II.17.1 Payments shall be made by the Commission in euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Commission, unless specific provisions are laid down for the purpose in the Special Conditions of the framework agreement or in the specific agreement.

Payments by the Commission shall be deemed to be effected on the date when they are debited to the Commission's account.

II.17.2 The Commission may suspend the period for payment laid down in Article 5 of the specific agreement or the equivalent article in the framework agreement at any time for the purposes of additional checks by notifying the partner that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because appropriate supporting documents must be produced or because there is a suspicion that some of the expenses in the financial statement are not eligible.

The Commission may suspend its payments at any time if the partner is found or presumed to have infringed the provisions of the framework agreement or the specific agreement, in particular in the wake of the audits and checks provided for in Article II.20.

The Commission may also suspend its payments:

- if there is a suspicion of irregularity committed by the partner in the implementation of the grant agreement;

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- if there is a suspected or established irregularity committed by the partner in the implementation of another grant agreement or grant decision funded by the General Budget of the Union or by any other budget managed by it. In such cases, suspension of the payments will only proceed where the suspected or established irregularity can affect the implementation of the current grant agreement.

The Commission shall inform the partner as soon as possible of any such suspension by registered letter with acknowledgement of receipt or equivalent, setting out the reasons for suspension.

Suspension shall take effect on the date when notice is sent by the Commission. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Commission.

II.17.3 On expiry of the period for payment specified in Article 5 of the specific agreement or the equivalent article in the framework agreement, and without prejudice to paragraph 2 of this Article, the partner is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the Union.

Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 1, inclusive. The interest shall not be treated as a receipt for the purposes of determining the final grant within the meaning of Article II.18.4. The suspension of payment by the Commission may not be considered as late payment.

By way of exception, when the interest calculated in accordance with the provisions of the first and second subparagraphs is lower than or equal to EUR 200, it shall be paid to the partner only upon demand submitted within two months of receiving late payment.

II.17.4 The Commission shall deduct the interest yielded by pre-financing which exceeds EUR 50 000, as provided for in *Article I.6 "payment arrangements"*, from the payment of the balance of the amount due to the partner. The interest shall not be treated as a receipt, within the meaning of Article II.18.4.

Where the pre-financing payments exceed EUR 750 000 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the Commission may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.

Where the interest yielded exceeds the balance of the amount due to the partner, or is generated by pre-financing referred to in the previous subparagraph, the Commission shall recover it in accordance with Article II.19.

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

II.17.5 The partner shall have two months from the date of notification by the Commission of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.18 or, failing that, of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests shall no longer be considered. The Commission undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply.

This procedure is without prejudice to the partner's right to appeal against the Commission's decision pursuant to the Article on Law applicable and competent court. Under the terms of Union law in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

ARTICLE II.18 - DETERMINING THE FINAL GRANT

II.18.1 Without prejudice to information obtained subsequently pursuant to Article II.20, the Commission shall adopt the amount of the final payment to be granted to the partner on the basis of the documents referred to in Article II.16.4 which it has approved.

II.18.2 The total amount paid to the partner by the Commission may not in any circumstances exceed the maximum amount of the grant laid down in Article 3 of the specific agreement, even if the total actual eligible costs exceed the estimated total eligible costs specified in the estimated budget annexed to the specific agreement.

II.18.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Commission's contribution shall be limited to the amount obtained by applying the Union grant percentage specified in Article 3 of the specific agreement to the actual eligible costs approved by the Commission.

II.18.4 The partner hereby agrees that the grant shall be limited to the amount necessary to balance the receipts and expenditure of the action, in the case of a grant for an action, or of the operating budget which allows the work programme to be implemented, in the case of an operating grant, and that it may not in any circumstances produce a profit for him.

In the case of a grant for an action, profit shall mean any surplus of all actual receipts attributable to the action over the total actual costs of the action. In the case of an operating grant, profit shall mean any surplus of the partner's total actual operating receipts over his total actual operating costs.

The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the partner for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this Article. For the purposes of this Article, only actual costs of the action or the operating budget falling within the categories set out in the estimated budget annexed to the specific agreement shall be taken into account; non-eligible costs shall always be covered by non-Union resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.

II.18.5 Without prejudice to the right to terminate the specific agreement under Article II.12, and without prejudice to the right of the Commission to apply the penalties referred to in Article II.13, if the action is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in the specific agreement.

II.18.6 On the basis of the amount of the final grant determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Commission shall set the amount of the payment of the balance as being the amount still owing to the partner. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Commission shall issue a recovery order for the surplus.

ARTICLE II.19 – RECOVERY

II.19.1 If any amount is unduly paid to the partner or if recovery is justified under the terms of the framework agreement or a specific agreement, the partner undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.

II.19.2 If the partner fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.17.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

II.19.3 If payment has not been made by the due date, sums owed to the Commission may be recovered by offsetting them against any sums owed to the partner, in cases where the partner also has a claim on the Union or the European Atomic Energy Community, after informing him accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee provided in accordance with Article II.16.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Commission may recover by offsetting before the due date of the payment. The partner's prior consent shall not be required.

- II.19.4 Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the partner.
- II.19.5 The partner understands that, under Article 299 of the Treaty on the functioning of the European Union, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the General Court of the European Union.

ARTICLE II.20 - CHECKS AND AUDITS

- II.20.1 The partner undertakes to provide any detailed information, including information in electronic format, requested by the Commission or by any other outside body authorised by the Commission to check that the actions and the provisions of the framework agreement and/or specific agreements are being properly implemented.
- II.20.2 The partner shall keep at the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to each specific agreement for a period of five years from the date of payment of the balance for the corresponding action.
- II.20.3 The partner agrees that the Commission may have an audit of the use made of the grants awarded carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the specific agreements until their balances are paid and for a period of five years from the date of payment of the balance for the corresponding actions. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
- II.20.4 The partner undertakes to allow Commission staff and outside personnel authorised by the Commission the appropriate right of access to sites and premises where the actions are carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
- II.20.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Commission.
- II.20.6 The Court of Auditors shall have the same rights as the Commission, notably right of access, as regards checks and audits.

SIGNATURES

For the partner

Josep BORRELL FONTELLES
President

For the Commission

Catherine DAY
Secretary General

Signature: _____

Signature: _____

Done at _____, on _____

Done at _____, on _____

In duplicate in English

ANNEX I

ACTIONS PLANNED UNDER THE PARTNERSHIP, ROLES AND RESPONSIBILITIES

1. **The deposit of the EU historical archives at the European University Institute (EUI)**
 - a) The original documents and files of the European Union which are a part of the 'historical archives' in the sense of article 1 paragraph 2 of the Commission decision 359/83/CECA¹ and article 1 paragraph 2 of the Council Regulation 354/83² as amended by Council Regulation 1700/2003³, which are over thirty years old and have been opened to the public in accordance with the applicable rules, are deposited at the EUI in accordance with the conditions stipulated in this partnership agreement.
 - b) The deposit of the historical archives of the European Union at the EUI does not in any way affect the ownership or protection of the archives as afforded by Protocol on the Privileges and Immunities of the European Union (Protocol n° 7 annexed to TFUE, article 2).
 - c) The EUI will immediately inform each of the depositing institutions⁴ concerned about any circumstances which could put at risk the inviolability of the archives that they have deposited.
 - d) The original documents and files will be deposited at the EUI, together with a microform and/or digital copy, in annual instalments and to the extent possible under the normal archiving processing procedures of the EU institutions.
 - e) The institutions will deposit the original documents and files at the EUI together with transfer lists and/or inventories for all deposited archives. In order to simplify the work of the EUI, whenever possible, such transfer lists and inventories will be made available in digital format.
 - f) The depositing institutions retain the exclusive responsibility for the composition of the documents and files that are deposited at the EUI. The EUI undertakes to respect the principle of provenance and not to modify the classification⁵ established by the depositing institutions nor eliminate, alter or destroy documents or files.
 - g) The EUI will return to the depositing institutions the originals of any deposited documents and files requested by these institutions. These originals will be returned to the EUI as soon as they are no longer needed by the depositing institutions
 - h) The depositing institutions and the EUI undertake to plan and coordinate the deposits.
 - i) The depositing institutions will coordinate the transport to the EUI of the archives concerned, including any related insurance costs.
 - j) Within a month after the reception of deposited documents and files, the EUI will send an acknowledgement of receipt to the depositing institutions concerned.

¹ JO L43, 15.2.1983, p.14.

² JO L43, 15.2.1983, p.1.

³ JO L243 27.9.2003, p.1.

⁴ At present the European Parliament, the Council of Ministers, the European Commission, the European Court of Auditors, the European Economic and Social Committee, the European Investment Bank and the CEDEFOP deposit their historical archives at the EUI.

⁵ "Classification" refers to the systematic identification of records and archives as defined in ISO standard 15489.

2. Preservation at the EUI

- a) The deposited documents and files will be preserved in a purpose built repository at the Villa "Salviati", which has been made permanently and freely available to the EUI for this purpose by the Italian government.
- b) The EUI will take the necessary steps to ensure the preservation and protection of deposited documents and files. This preservation and protection shall comply with recognised international standards for the physical protection of archives and shall at least respect the technical and security rules that correspond with those which are used for the preservation and management of Public Archives in Italy⁶.
- c) The EUI recognises the right of any of the depositing institutions to request information with respect to management of its archives by the EUI and to carry out an inspection of the documents and files that it has deposited there.

3. Ensuring access and promoting public consultation of the archives

- a) The archives services of the EU institutions will open the historical archives to the public in accordance with Commission decision 359/83/CECA and Council Regulation 354/83 as amended by Council Regulation 1700/2003.
- b) For this purpose the archives services of the depositing institutions undertake to identify, appraise, declassify, describe and prepare the archives for public consultation in accordance with recognised international archival standards.⁷
- c) The EUI will respect the copyright and intellectual property rights of the depositing institutions for their transfer lists and finding aids.
- d) The EUI shall prepare inventories and other finding aids for the archives deposited at the EUI in accordance with recognised international archival standards.⁸ The EUI may consolidate and complement the transfer lists and finding aids provided by the depositing institutions in consultation with them. In other cases, e.g. private archives, it will produce the finding aids itself.
- e) The EUI will publish the finding aids for the EU historical archives on the internet.
- f) The EUI will provide free of charge public access to the deposited documents and files. In order to protect the originals of paper documents and files from deterioration, where possible, a microform or digital copy will be used for giving public access.
- g) The EUI will provide onsite access to the historical archives of the EU in a dedicated reading room during normal working hours as published on the webpages of the EUI. The reading room will comply with internationally recognised standards and will be suitably equipped for the consultation of digital finding aids and archives.
- h) The EUI will progressively provide online access to the EU historical archives available in digital form.
- i) In order to facilitate online access to the EU historical archives, the depositing institutions will, whenever possible, provide digital copies of the deposited paper archives and descriptions.

⁶ See the exchange of letters between the EUI and the European Commission annexed to the contract of 17 December 1984 and notably the "Règles techniques et de sécurité prévues à l'article 5 du contrat entre les Communautés européennes et l'Institut universitaire européen de Florence".

⁷ Such as the ICA standards ISAD(G) and ISAAR (CPF).

⁸ Ibid.

- j) In order to promote the largest possible online dissemination of the archives, the EUI will comply with the international archival standards used by the Archives Portal for Europe project.
- k) The EUI will seek to progressively integrate online access to the EU historical archives in the Archives Portal for Europe. It will coordinate its input in the Archives Portal for Europe with the depositing institutions.
- l) The EUI will observe any data protection provisions that may apply to the historical archives of the EU institutions.
- m) The preceding provisions do not exclude that the EU Institutions give public access to their own historical archives.
- n) To promote the accessibility of the archives the EUI and the depositing institutions will endeavour to harmonise and coordinate the presentation of the archives on their respective websites and to provide links between these sites.
- o) In order to promote and facilitate access and consultation of the historical archives of the EU, the EUI will organise, alone or in joint collaboration with one or more depositing institutions, in accordance with the budgetary constraints, promotion actions such as exhibitions, symposia, programmes of grants for researchers, etc.

4. The acquisition and treatment of private archives

- a) In accordance with the joint declaration of 27 September 2004 by the President of the European Commission and the President of the institute, the EUI undertakes, in addition to the institutional archives, to acquire, describe, and prepare for public consultation private collections of individual persons, public organs or private organisations that have contributed to the construction of Europe.
- b) The acquisition of private collections by the EUI will cover the following areas:
 - personal papers deposited by former Commissioners and high level civil servants of the EU institutions. The EUI will ensure that such deposits are made in accordance with the relevant rules and regulations in force at these institutions;
 - personal papers of the MEPs, in the framework of the agreement signed by EP, EC and EUI on 17 January 2008;
 - documents deposited by high level political personalities that played an important role in the process of European integration from 1920 till today;
 - archives of historical interest deposited by European movements or political groups and parties;
 - copies of archives held by the National Archives of the EU member states related to the Treaty negotiations and the EU enlargements.
- c) The EUI will include proposals for the acquisition and treatment of private archives in its annual work programme and will inform the Commission if other opportunities to acquire private archives arise in the course of the year. The Commission will, in turn, inform the other depositing institutions concerned.
- d) The acquisition of private archives will not in any way affect the primary responsibility of the EUI to collect and provide public access to the historical archives deposited at the EUI by the EU institutions, as set out in this agreement.

5. Digitisation and source publications

- a) The depositing institutions and the EUI envisage to:
 - digitise selected parts of the archives deposited at the EUI;
 - prepare, together with the EU institutions, one or more thematic publication(s) of primary sources on European integration.
- b) The EUI will include proposals for the digitisation of selected parts of the archives deposited at the EUI and for a thematic publication of source materials in the annual work programme.
- c) In their respective digitisation activities, the depositing institutions and the EUI will seek to maximise synergies and complementarities.

6. Annual work programme and budget

- a) In order to take account of the timetable for the establishment of the EU budget, the EUI will submit a draft budget together with a preliminary draft work programme, no later than 15 February of the year preceding the EUI financial year concerned.
- b) The draft annual work programme will be discussed during the year preceding its implementation. The Commission will consult the other depositing institutions by 30 June of the year preceding the EUI financial year concerned.
- c) In accordance with article I.1.3 of the special conditions, the final annual work programme shall be jointly agreed by the Commission and the EUI before the start of the EUI's corresponding financial year and shall serve as a basis for the award of any grants for the year in question.
- d) The Commission shall consult the other depositing institutions on the implementation of the work programme.

7. Reporting

- a) After the close of each calendar year, the EUI shall establish an annual activity report. The payment of the balance of the annual grant is subject to the approval of the annual activity report by the Commission as specified in article I.6.3 of this agreement.
- b) The EUI will send the annual activity report to each of depositing institutions.

8. Implementation of the agreement

The EUI or the Commission will call a meeting, at their own initiative or at the request of one or more of the other depositing institutions, to discuss any possible problems which may arise with respect to the implementation of this partnership agreement.



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B
SG-B-2
Document Management Policy

ANNEX II
MODEL SPECIFIC GRANT AGREEMENT FOR AN ACTION

SPECIFIC AGREEMENT No/..
ON A GRANT FOR AN ACTION

This specific agreement ("the agreement") is concluded between:

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), itself represented for the purposes of signature of this agreement by Peter HANDLEY, Head of Unit SG.B2,

of the one part,

and

the European University Institute
via Dei Roccettini 9
I- 50016 SAN DOMENICO DI FIESOLE (FI)

"the partner", represented for the purposes of signature of this agreement by Josep BORRELL FONTELLES, President,

of the other part,

The following annexes form an integral part of the agreement:

Annex I: Description of the action

Annex II: Estimated budget for the action

Article 1 – Purpose of the agreement

The agreement is concluded in the context of the partnership established between the parties. It is drawn up in accordance with the relevant terms of framework partnership agreement No [...] signed between the Commission and the partner on [...].

The Commission has decided to award a grant, under the terms and conditions set out in this agreement and the framework agreement, which the partner hereby declares that he has taken note of and accepts, for the action entitled " [...]" ("the action").

The partner accepts the grant and undertakes to do everything in his power to carry out the action as described in Annex I, in accordance with the terms and conditions of the above-mentioned framework agreement applicable to the implementation of the agreement, acting on his own responsibility.

Article 2 – Duration of the action

The action shall begin on [...] ("starting date of the action")

The action shall last for [...] months from the starting date.

The period of implementation of the action shall determine the period of eligibility for the Union grant.

Article 3 - Financing the action

The total cost of the action is estimated at EUR [...], as shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for Union funding under the terms of Article II.15 of the framework agreement, of any other costs that the action may entail, and of all receipts, so that receipts and costs balance.

The total eligible costs of the action for which the Commission grant is awarded are estimated at EUR [...], as shown in the estimated budget in Annex II.

The Commission shall contribute a maximum of EUR [...], equivalent to [...] % of the estimated total eligible costs indicated above. The final amount of the grant shall be determined as specified in Article II.18 of the framework agreement, without prejudice to Article II.20 thereof.

Article 4 – Submission of reports and other documents

The provisions relating to the submission of the annual activity report and financial statements are contained in the framework partnership agreement.

SIGNATURES

For the partner
Josep BORRELL FONTELLES
President

For the Commission
Peter HANDLEY
Head of Unit

Signature: _____

Signature: _____

Done at _____, on _____

Done at _____, on _____

In duplicate

Ms Catherine DAY,
Secretary General, European Commission

Mr Klaus WELLE ,
Secretary General , European Parliament

Mr. Eduardo RUIZ GARCIA,
Secretary General, Court of Auditors

Mr. Martin WESTLAKE,
Secretary General, Economic and Social Committee

Subject: Framework Partnership Agreement for the deposit of the EU historical archives at the European University Institute in Florence

Madam, Sir,

By letter dated 13 April, the Commission forwarded the text of the Framework Partnership Agreement, on which discussions were held during the first quarter of 2011 between the Commission and the EUI, to the Council, the European Parliament, the Court of Auditors and the Economic and Social Committee for their approval.

I would hereby inform you that the Council has as of 2011 recorded its approval of the Framework Partnership Agreement.

(Complimentary close)

General Secretary