

Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (repealed)

PART ONE

COMMON PROVISIONS

TITLE VI

GRANTS

CHAPTER 1

Scope and form of grants

Article 121

Scope of grants

1 Grants are direct financial contributions, by way of donation, from the budget in order to finance any of the following:

- a an action intended to help achieve a Union policy objective;
- b the functioning of a body which pursues an aim of general Union interest or has an objective forming part of, and supporting, a Union policy ('operating grants').

Grants shall be covered either by a written agreement or by a Commission decision notified to the successful applicant of a grant.

The Commission may establish secure electronic systems for exchanges with the beneficiaries.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the detailed specification of the scope of grants, and concerning rules determining whether grant agreements or grant decisions are to be used. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning details of the electronic exchange system, including the conditions under which documents submitted by means of such systems, including grant agreements, are to be deemed originals and to have been signed, and the use of framework partnerships.

2 The following do not constitute grants within the meaning of this Title:

- a expenditure on the members and staff of the institutions and contributions to the European schools;
- b public contracts as referred to in Article 101, aid paid as macro-financial assistance, and budget support;
- c financial instruments, as well as shareholdings or equity participation in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or specialised Union bodies such as the European Investment Fund;

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- d contributions paid by the Union as subscriptions to bodies of which it is a member;
- e expenditure implemented under shared management and indirect management within the meaning of Articles 58, 59 and 60, unless specified otherwise in the financial rules applicable to the budget of the entities or persons entrusted pursuant to point (c) of Article 58(1) or in delegation agreements;
- f contributions to executive agencies referred to in Article 62, made by virtue of each agency's constitutive act;
- g expenditure relating to fisheries markets as referred to in point (f) of Article 3(2) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁽¹⁾;
- h repayment of travel and subsistence expenses incurred by, or where appropriate any other indemnities paid to, persons invited or mandated by the institutions;
- i prizes given as rewards for a contest, to which Title VII of Part One applies.

3 Interest rate rebates and guarantee fee subsidies shall be treated as grants, provided that they are not combined in a single measure with financial instruments as referred to in Title VIII of Part One.

Such rebates and subsidies shall be subject to the provisions of this Title, with the exception of the following:

- a the co-financing principle as set out in Article 125(3);
- b the no-profit principle as set out in Article 125(4);
- c for actions where the objective is to reinforce the financial capacity of a beneficiary or to generate an income, the assessment of the financial capacity of the applicant as referred to in Article 132(1).

4 Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate.

Article 122

Beneficiaries

1 Where several entities satisfy the criteria for being awarded a grant and together form one entity, that entity may be treated as the sole beneficiary, including where the entity is specifically established for the purpose of implementing the action to be financed by the grant.

2 For the purpose of this Title, the following entities shall be considered as entities affiliated to the beneficiary:

- a entities forming the beneficiary in accordance with paragraph 1;
- b entities that satisfy the eligibility criteria and that do not fall within one of the situations referred to in Article 131(4) and that have a link with the beneficiary, in particular a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the minimum content of grant agreements or decisions, in particular, where a grant is awarded to several entities, the specific obligations of the coordinator, if any, and of the other beneficiaries, the applicable responsibility regime and the conditions for adding or removing a beneficiary.

Article 123

Forms of grants

- 1 Grants may take any of the following forms:
 - a reimbursement of a specified proportion of the eligible costs, referred to in Article 126, actually incurred;
 - b reimbursement on the basis of unit costs;
 - c lump sums;
 - d flat-rate financing;
 - e a combination of the forms referred to in points (a) to (d).
- 2 When determining the appropriate form of a grant, the potential beneficiaries' interests and accounting methods shall be taken into account to the greatest possible extent.
- 3 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning rules for the different forms of grants, including low value grants.

Article 124

Lump sums, unit costs and flat-rate financing

1 Without prejudice to the provisions of the basic act, the use of lump sums, unit costs or flat-rate financing shall be authorised by way of a Commission decision ensuring respect for the principle of equal treatment of beneficiaries for the same category of actions or work programmes.

Where the maximum amount per grant does not exceed the amount of a low value grant, the authorisation may be given by the authorising officer responsible.

- 2 The authorisation shall at least be supported by the following:
 - a justification concerning the appropriateness of such forms of financing with regard to the nature of the supported actions or work programmes, as well as to the risks of irregularities and fraud and costs of control;
 - b identification of the costs or categories of costs covered by lump sums, unit costs or flat-rate financing, which shall exclude ineligible costs under the applicable Union rules;
 - c description of the methods for determining lump sums, unit costs or flat-rate financing, and of the conditions for reasonably ensuring that the no-profit and co-financing principles are complied with and that double financing of costs is avoided. Those methods shall be based on:
 - (i) statistical data or similar objective means; or
 - (ii) a beneficiary-by-beneficiary approach, by reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices.

3 Where recourse to the usual cost accounting practices of the beneficiary is authorised, the authorising officer responsible may assess compliance of those practices *ex ante* with the conditions set out in paragraph 2 or through an appropriate strategy for *ex post* controls.

If the compliance of the beneficiary's usual cost accounting practices with the conditions referred to in paragraph 2 has been established *ex ante*, the amounts of lump sums, unit

costs or flat-rate financing determined by application of those practices shall not be challenged by *ex post* controls.

The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary are compliant with the conditions referred to in paragraph 2 if they are accepted by national authorities under comparable funding schemes.

4 The grant decision or agreement may authorise or impose, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7 % of total eligible direct costs for the action, except where the beneficiary is in receipt of an operating grant financed from the budget. The 7 % ceiling may be exceeded on the basis of a reasoned decision of the Commission.

5 SME owners and other natural persons who do not receive a salary may declare eligible personnel costs for the work carried out under an action or work programme, on the basis of unit costs determined by way of a Commission decision.

6 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules regarding lump sums, unit costs and flat-rate financing.

CHAPTER 2

Principles

Article 125

General principles applicable to grants

1 Grants shall be subject to the principles of transparency and equal treatment.

2 Without prejudice to Article 130, grants shall not be cumulative or awarded retrospectively.

3 Grants shall involve co-financing without prejudice to the specific rules laid down in Title IV of Part Two.

Unless otherwise specified in this Regulation, the regulations governing political parties at European level and the rules regarding their funding are laid down in Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding⁽²⁾.

4 Grants shall not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary ('no-profit principle').

The first subparagraph shall not apply to:

- a actions the objective of which is the reinforcement of the financial capacity of a beneficiary, or actions which generate an income to ensure their continuity after the period of Union financing provided for in the grant decision or agreement;
- b study, research or training scholarships paid to natural persons;
- c other direct support paid to natural persons most in need, such as unemployed persons and refugees;
- d grants based on flat rates and/or lump sums and/or unit costs where these comply with the conditions set out in Article 124(2);

e low value grants.

Where a profit is made, the Commission shall be entitled to recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary to carry out the action or work programme.

5 For the purpose of this Title, profit shall be defined as a surplus of the receipts over the eligible costs incurred by the beneficiary, when the request is made for payment of the balance.

The receipts referred to in the first subparagraph shall be limited to income generated by the action or work programme, as well as financial contributions specifically assigned by donors to the financing of the eligible costs.

In the case of an operating grant, amounts dedicated to the building up of reserves shall not be taken into account for the purpose of verifying compliance with the no-profit principle.

6 If a political party at Union level realises a surplus of income over expenditure at the end of a financial year in which it received an operating grant, the part of that surplus corresponding to up to 25 % of the total income for that year may, by derogation from the no-profit principle laid down in paragraph 4, be carried over to the following year provided that it is used before the end of the first quarter of that following year.

For the purpose of verifying compliance with the no-profit principle, the own resources, in particular donations and membership fees, aggregated in the annual operations of a political party at Union level, which exceed 15 % of the eligible costs to be borne by the beneficiary, shall not be taken into account.

The second subparagraph shall not apply if the financial reserves of a political party at Union level exceed 100 % of its average annual income.

7 Grants may be awarded without a call for proposals to the EIB or the European Investment Fund for actions of technical assistance. In such cases Articles 131(2) to (5) and 132(1) shall not apply.

8 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 complementing the general principles applicable to grants, including the no-profit principle and the co-financing principle. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the definition of technical assistance.

Article 126

Eligible costs

1 Grants shall not exceed an overall ceiling expressed in terms of an absolute value which shall be established on the basis of estimated eligible costs.

Grants shall not exceed the eligible costs.

2 Eligible costs are costs actually incurred by the beneficiary of a grant which meet all of the following criteria:

- a they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;
- b they are indicated in the estimated overall budget of the action or work programme;

- c they are necessary for the implementation of the action or of the work programme which is the subject of the grant;
- d they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary;
- e they comply with the requirements of applicable tax and social legislation;
- f they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

3 Calls for proposals shall specify the categories of costs considered as eligible for Union funding.

Without prejudice to the basic act and in addition to paragraph 2, the following categories of costs shall be eligible where the authorising officer responsible has declared them as such under the call for proposals:

- a costs relating to a pre-financing guarantee lodged by the beneficiary of the grant, where that guarantee is required by the authorising officer responsible pursuant to Article 134(1);
- b costs relating to external audits where such audits are required in support of the requests for payments by the authorising officer responsible;
- c value added tax ("VAT") where it is not recoverable under the applicable national VAT legislation and is paid by a beneficiary other than a non-taxable person as defined in the first subparagraph of Article 13(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁽³⁾;
- d depreciation costs, provided they are actually incurred by the beneficiary;
- e salary costs of the personnel of national administrations 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.

4 Costs incurred by entities affiliated to a beneficiary as described in Article 122 may be accepted as eligible by the authorising officer responsible under the call for proposals. In such a case, the following conditions shall apply cumulatively:

- a the entities concerned are identified in the grant agreement or decision;
- b the entities concerned abide by the rules applicable to the beneficiary under the grant agreement or decision with regard to eligibility of costs and rights of checks and audits by the Commission, OLAF and the Court of Auditors.

5 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning further specifications on eligible costs.

Article 127

Co-financing in kind

1 For the purpose of calculating the profit generated by the grant, co-financing in the form of contributions in kind shall not be taken into account.

2 The authorising officer responsible may accept contributions in kind as co-financing, if considered necessary or appropriate. Where co-financing in kind is offered in support of low value grants and the authorising officer responsible has decided to refuse this, he or she shall justify why it is unnecessary or inappropriate.

Such contributions shall not exceed:

- a either the costs actually incurred by third parties and duly supported by accounting documents;
- b or, in the absence of such documents, the costs that correspond to those generally accepted on the market in question.

Contributions in kind shall be presented separately in the estimated budget to reflect the total resources allocated to the action. Their unit value shall be evaluated in the provisional budget and shall not be subject to subsequent changes.

Contributions in kind shall comply with national tax and social security rules.

Article 128

Transparency

1 Grants shall be subject to a work programme, to be published prior to its implementation.

That work programme shall be implemented through the publication of calls for proposals, except in duly justified exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action, or where the beneficiary is identified in a basic act.

The first subparagraph shall not apply to crisis management aid, civil protection operations or humanitarian aid operations.

2 Calls for proposals shall specify the planned date by which all applicants shall have been informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.

Those dates shall be fixed on the basis of the following periods:

- a for informing all applicants of the outcome of the evaluation of their application, a maximum of six months from the final date for submission of complete proposals;
- b for signing grant agreements with applicants or notifying grant decisions to them, a maximum of three months from the date of informing applicants they have been successful.

Those periods may be adjusted in order to take into account any time needed to comply with specific procedures that may be required by the basic act in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽⁴⁾ and may be exceeded in exceptional, duly justified cases, in particular for complex actions, where there is a large number of proposals or delays attributable to the applicants.

The authorising officer by delegation shall report in his or her annual activity report on the average time taken to inform applicants, sign grant agreements or notify grant decisions. In the event of the periods referred to in the second subparagraph being exceeded, the authorising officer by delegation shall give reasons and, where not duly justified in accordance with the third subparagraph, shall propose remedial action.

3 All grants awarded in the course of a financial year shall be published annually in accordance with Article 35(2) and (3).

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the requirements regarding the work programme, the

content of calls for proposals, the exceptions to calls for proposals, information for applicants and *ex post* publication.

Article 129

Principle of non-cumulative award

1 Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where otherwise authorised in the relevant basic acts.

A beneficiary may be awarded only one operating grant from the budget per financial year.

The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action or to the same work programme.

In no circumstances shall the same costs be financed twice by the budget.

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the principle of the non-cumulative award of grants.

Article 130

Principle of non-retroactivity

1 A grant may be awarded for an action which has already begun provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement or notification of the grant decision.

In such cases, costs eligible for financing shall not have been incurred prior to the date of submission of the grant application, except in duly justified exceptional cases as provided for in the basic act or in the event of extreme urgency for crisis management aid, civil protection operations and humanitarian aid operations, or in situations of imminent or immediate danger threatening to escalate into armed conflict or to destabilise a country, whereby an early engagement by the Union would be of major importance in promoting conflict prevention.

No grant may be awarded retroactively for actions already completed.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the principle of non-retroactivity.

2 In the case of operating grants, the grant agreement shall be signed or notification of the grant decision given within six months of the start of the beneficiary's financial year. Costs eligible for financing may neither have been incurred before the grant application was submitted nor before the start of the beneficiary's financial year.

CHAPTER 3

Award procedure

Article 131

Applications for grants

1 Grant applications shall be submitted in writing, including, where appropriate, in a secure electronic format.

The Commission shall provide, where it deems it feasible, the possibility of making online grant applications.

- 2 Grant applications shall be eligible if submitted by the following:
- a legal persons; or
 - b natural persons, in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

For the purposes of point (a) of the first subparagraph, grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on behalf of the entity and offer guarantees for the protection of the Union's financial interests equivalent to those offered by legal persons.

3 The application shall state the legal status of the applicant and demonstrate his or her financial and operational capacity to carry out the proposed action or work programme.

For that purpose the applicant shall submit a declaration on his or her honour and, unless the grant is a low value grant, any supporting documents requested, on the basis of a risk assessment, by the authorising officer responsible. The prerequisite documents shall be indicated in the call for proposals.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships, to natural persons most in need and in receipt of direct support, to public bodies or international organisations. The authorising officer responsible may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies or international organisations.

4 Article 106(1) and Articles 107, 108 and 109 shall also apply to grant applicants. Applicants shall certify that they are not in one of the situations referred to in those Articles. However, the authorising officer responsible shall not require such certification in the following cases:

- a low value grants;
- b when such certification has recently been provided in another award procedure.

5 Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer responsible, in accordance with Article 109.

Those penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer responsible or fail to supply that information.

6 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the arrangements for grant applications, evidence of not falling within an exclusion situation, applicants without legal personality, legal persons forming one applicant, financial and administrative penalties, eligibility criteria and low value grants.

Article 132

Selection and award criteria

1 The selection criteria announced in advance in the call for proposals shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.

2 The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on selection and award criteria.

Article 133

Evaluation procedure

1 Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.

2 The authorising officer responsible shall, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.

3 The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution concerned shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the evaluation and award of grants and information to applicants.

CHAPTER 4

Payment and control

Article 134

Pre-financing guarantee

1 The authorising officer responsible may, if he or she deems it appropriate and proportionate, on a case-by-case basis and subject to risk analysis, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

2 Notwithstanding paragraph 1, guarantees shall not be required in the case of low value grants.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the pre-financing guarantee.

Article 135

Payment of grants and controls

1 The amount of the grant shall not become final until after the authorising officer responsible has approved the final reports and accounts, without prejudice to subsequent checks by the institution concerned, which shall be carried out in a timely manner.

2 Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure. The authorising officer responsible shall inform OLAF immediately of suspected cases of fraud.

3 Where, after the award of the grant, the award procedure or the implementation of the grant proves to have been subject to substantial errors, irregularities, fraud, or breach of obligations, the authorising officer responsible may, depending on the stage reached in the procedure and, provided that the applicant or beneficiary has been given the opportunity to make observations:

- a refuse to sign the grant agreement or to give notification of the grant decision;
- b suspend implementation of the grant; or
- c where appropriate, terminate the grant agreement or decision.

4 Where such errors, irregularities or fraud are attributable to the beneficiary, or should the beneficiary breach his or her obligations under a grant agreement or decision, the authorising officer responsible may, in addition, reduce the grant or recover amounts unduly paid under the grant agreement or decision, in proportion to the seriousness of the errors, irregularities or fraud or of the breach of obligations, provided that the beneficiary has been given the opportunity to make observations.

5 Where controls or audits demonstrate systemic or recurrent errors, irregularities, fraud or breach of obligations attributable to the beneficiary and having a material impact on a number of grants awarded to that beneficiary under similar conditions, the authorising officer responsible may suspend implementation of all the grants concerned or, where appropriate, terminate the concerned grant agreements or decisions with that beneficiary, in proportion to the seriousness of the errors, irregularities, fraud or of the breach of obligations, provided that the beneficiary has been given the opportunity to make observations.

The authorising officer responsible may, in addition, following an adversarial procedure, reduce the grants or recover amounts unduly paid in respect of all the grants affected by the systemic or recurrent errors, irregularities, fraud or breach of obligations referred to in the first subparagraph that may be audited in accordance with the grant agreements or decisions.

6 The authorising officer responsible shall determine the amounts to be reduced or recovered, wherever possible and practicable, on the basis of costs unduly declared as eligible for each grant concerned, following acceptance of the revised financial statements submitted by the beneficiary.

7 Where it is not possible or practicable to quantify precisely the amount of ineligible costs for each grant concerned, the amounts to be reduced or recovered may be determined by extrapolating the reduction or recovery rate applied to the grants for which the systemic or recurrent errors or irregularities have been demonstrated, or, where ineligible costs cannot serve as a basis for determining the amounts to be reduced or recovered, by applying a flat rate, having regard to the principle of proportionality. The beneficiary shall be given the opportunity to make observations on the extrapolation method or flat rate to be applied and to propose a duly substantiated alternative method or rate before the reduction or recovery is made.

8 The Commission shall ensure equal treatment of beneficiaries of a programme, in particular where it is implemented by several authorising officers responsible.

Beneficiaries shall be informed of the means for challenging decisions taken under paragraphs 3, 4, 5, 6 and 7 of this Article, in accordance with Article 97.

9 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules for the payment of grants and controls, including rules concerning supporting documents and the suspension and reduction of grants.

Article 136

Periods for record-keeping

1 Beneficiaries shall keep records, supporting documents, statistical records and other records pertaining to a grant for five years following the payment of the balance, and for three years in the case of low value grants.

2 Records pertaining to audits, appeals, litigation, or the pursuit of claims arising out of the performance of the project shall be retained until such audits, appeals, litigation or claims have been disposed of.

CHAPTER 5

Implementation

Article 137

Implementation contracts and financial support to third parties

1 Where implementation of an action or a work programme requires financial support to be given to third parties, the beneficiary may give such financial support provided that the following conditions are met:

- a before awarding the grant, the authorising officer responsible has verified that the beneficiary offers adequate guarantees as regards the recovery of amounts due to the Commission;
- b the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, in order to avoid the exercise of discretion by the beneficiary;
- c the amounts concerned are small, except where the financial support is the primary aim of the action.

2 Each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, concerning documents premises and information, including that stored on electronic media, over all third parties who have received Union funds.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on implementation contracts and financial support to third parties.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 209, 11.8.2005, p. 1.
- (2) OJ L 297, 15.11.2003, p. 1.
- (3) OJ L 347, 11.12.2006, p. 1.
- (4) OJ L 55, 28.2.2011, p. 13.