



TESIM

Technical support to the implementation and management of ENI CBC programmes

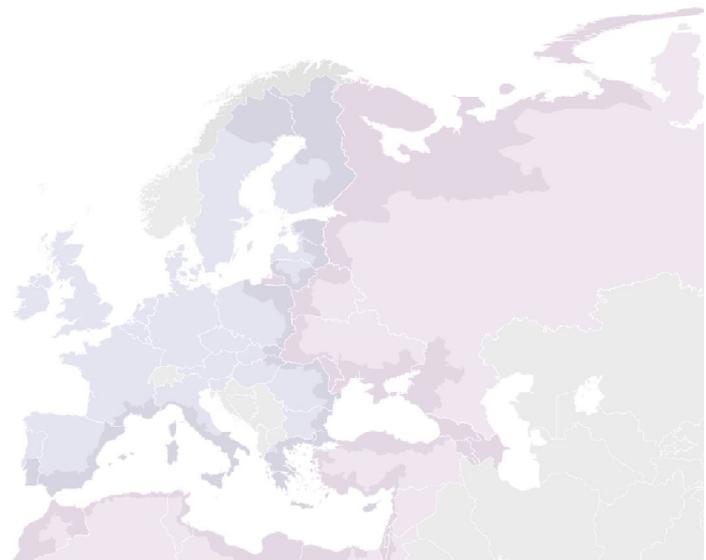
Factsheet on contracting

October 2018

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1. Introduction

The **contracting process** starts with the Joint Monitoring Committee (JMC) decision on the selected projects and ends with the signature of the grant contract between the Managing Authority (MA) and the lead beneficiary:



The JMC is responsible for the evaluation and selection procedure and it takes the final decision on the projects to be financed by the programme.

With the decision on the projects to be awarded, the JMC hands over the task to the MA, which is responsible for preparing and signing contracts with the lead beneficiaries.

2. Award decision and publication of awarded projects

Article 44 of the ENI CBC Implementing Rules

"In order to ensure transparency concerning the projects supported by the programme, the Managing Authority shall maintain a list of awarded projects in a spread-sheet data format, allowing the data to be sorted, searched, extracted, compared and easily published on internet. The list of projects shall be accessible on the website of the programme and updated at least every six months."

The Regulation talks about the publication of information of projects awarded, even if not yet contracted. It further provides in Article 44.2 a list of information that has to be included in the publication. Please note that this Article also requires that the list is forwarded to the EC not later than 30 June of the year following the financial year in which the projects were selected. This information shall be published on an internet site of the Union institutions.

The aim of the publication is not only informing the successful and unsuccessful applicants, but rather facilitating the re-use of the list of projects by the private and public stakeholders. For this purpose, the MA may include information on the applicable licensing rules under which the data can be used by the third parties.

3. Letters to the applicants

After the project selection has been finalised, the MA has to inform the applicants in writing about the results of the project selection process. Both successful and unsuccessful applicants have to be informed, and in the latter case the MA has to provide the reasons for the rejection of the application with reference to the selection and award criteria that have not been met by the application. The reasons should not only list the criteria in which the project did not perform well, but

also contain an explanation of the major shortcomings. It is advised that in the same letter a reference to the applicable complaint procedure is included.

Some MAs also include a recommendation to come back to the applications that fit well to the programme strategy but were not of sufficient quality to be approved.

Example of the Kolarctic CBC programme

The JMC of the programme has coined the expression “positive rejection” for projects that are important for the achievement of the programme strategy, but did not have sufficient quality in the call for proposals in which they were submitted. These projects are invited to submit an improved application in the next call.

If there is a **reserve list** of projects created for a particular call, the respective applicants need to be informed about it in the decision letters. The letters also have to state the implications of being included in the reserve list (e.g., how long the list is valid and what actions are expected from the applicants).

The **award letters** that are sent to the successful applicants have to provide clear instructions on the next steps in the contracting process, and these can be:

- Request for an official confirmation by the applicant institution to be still committed to implement the submitted project proposal and acceptance of the terms of implementation laid down in the grant contract;
- Conditions that have to be fulfilled by the applicant and its project partners before the signature of the contract and the deadline for receipt of the necessary clarifications;
- Information on the further process of the grant contract negotiation.

4. Fulfillment of conditions, clarifications, corrections

In many cases the letters to successful applicants include conditions put forward by the JMC and the MA that aim at ensuring that the project is fully compliant with the programme requirements, it achieves the best possible quality and can be implemented successfully. These conditions are usually expressed in the form of requests for clarifications or corrections, and they are usually set as a prerequisite for signature of the grant contract.

The most typical conditions are:

- Review the project budget (correction of arithmetical errors, inaccuracies, reduction of unrealistic and ineligible costs);
- Review the project time plan, especially in cases where time between the submission of the application and award decision has been lengthy;
- Review of the consistency of the project logframe, including a revision of indicators;
- Request for additional documents (e.g., for the infrastructure component of the project);
- Revision of activities to ensure State aid compliance.

The need for corrections of the submitted application shall be directly linked to the comments made by the assessors, the Selection Committee and the JMC. In any case, the suggested modifications shall not call into question the award decision and they have to ensure equal treatment of the applicants. The amount of the grant and the percentage of programme co-financing as a result of these corrections shall not be increased.

Another pre-condition for the signature of the grant contract with the project lead beneficiary may be carrying out an **ex-ante on-the-spot-check** by the MA/ Joint Technical Secretariat (JTS) to the project site(s). This can be especially relevant in cases where project activities include significant infrastructure or supply components.

Example from the Romania-Republic of Moldova ENI CBC programme

“In order to verify the information and documents provided by the project partners during the evaluation process in what concerns the location(s) where the project will be implemented and/or the infrastructure component will be executed, in order to prevent possible fraud or contracting errors, the JTS will perform pre-contracting on-site visits at the selected Applicants and at all the locations where infrastructure shall be executed, irrespective the Partner concerned. The purpose of the on-site visits will be, inter alia, to check the documents necessary for the signature of the contract as originals, to check the location where the project is to be implemented and the infrastructure is to be executed, to identify any potential problems which may hinder sound implementation of the selected project, and give feedback to the partners etc. During the on-site visits, the JTS may recommend corrective measures.”

Source: Guidelines for applicants

Programmes might also consider if all **project budget information** in the submitted application has to be annexed to the grant contract, since for the purposes of the project assessment the ENI CBC IRs require a “*detailed budget*” in the full project application. However, for contracting purposes, Article 180 of the Rules of Application of the Financial Regulation (Commission Delegated Regulation 1268/2012) suggest the inclusion of an “*estimated overall budget*”. Leaving out the details necessary at the assessment stage from the budget that is annexed to the grant contract will allow for greater flexibility and reduce the number of minor and major budget changes during the project implementation. If this path is followed, the MA needs to specify clearly what exactly is expected in the “*estimated overall budget*” that shall constitute part of the grant contract.



Example from the Poland-Belarus-Ukraine ENI CBC programme

During the contracting process, the programme has decided to invest more time in standardizing the budget information to be presented in the grant contracts by grouping the different budget subheadings into specific clusters so that the level of detail is comparable among different projects. Moreover, the programme also tries to avoid very detailed budget breakdowns with a huge number of subheadings (which was quite a frequent situation at the application phase) in order to reduce the number of grant contract modifications needed during project implementation.

Source: Interview with the JTS on the contracting practices

The ENI CBC IRs require also to include a **detailed financial plan** as part of the application form (ar. 43. 1 (j)), but according to Article 180 mentioned above there is no obligation to annex it to the grant contract.

The main challenge for the programme bodies is to organise the contracting process in an efficient way so that the gap between the award decision and grant contract signature is as short as possible. An inefficient contracting procedure will have direct implications on the project implementation phase, which will start consequently later than originally expected¹.

The following suggestions may be considered in order to speed up the entire contracting process:

- some documents could be requested only after the grant contract is signed but before proceeding with the initial pre-financing (e.g., information about the external auditor, partnership agreement, building permit in case of infrastructure projects),
- select only projects ready for implementation (applicable mostly for infrastructure projects with all documents necessary to start works submitted already during the application phase),
- clearly formulate the conditions under which the project is approved.

5. Contract preparation and signature

One of the main responsibilities of the MA is signing grant contracts with successful lead applicants whose projects were selected by the JMC for funding. This requirement is directly reflected in the ENI CBC IRs.

Article 26.3 of the ENI CBC IRs

As regards the selection and management of projects, the Managing Authority shall:

(d) sign contracts with beneficiaries [...]

¹ This is particularly important for the last calls for proposals, where the deadline for project implementation will be closer.



Article 39.5 of the ENI CBC IRs

“The Managing Authority shall provide the lead beneficiary for each selected project with a document setting out the conditions to support the project, including the specific requirements concerning the products or services to be delivered by the project, the financial plan and the time-frame for execution”.

At the same time, the ENI CBC IRs do not provide any concrete requirements regarding the minimum content of the grant contract, and the only legal reference which shall be taken into consideration in this case is Article 180 of the Rules of Application of the Financial Regulation (1268/2012) on the content of grant agreements and decisions. Please refer to Annex 1 for more details on the indicative components of the grant contract.

Building on Article 39.5 above, the grant contract is signed between the MA, which acts as the Contracting Authority, and the beneficiaries (according to Art.26.3 (d) of the ENI CBC IRs) who take responsibility for the implementation of the project. However, contract provisions apply to the whole project partnership. It is therefore of utmost importance that both the lead beneficiary and all the beneficiaries are fully aware of the grant contract conditions.

Even in cases where the grant contract template has been made available to the applicants during the call for proposals as part of the application pack, it is still important to explain the provisions of the grant contract to all interested parties in order for them to be fully aware of their rights and responsibilities during and beyond the project implementation. This document sets out all issues concerning project implementation, thus a proper reading and understanding from the side of the beneficiary is a pre-requirement for a smooth implementation of the project. Such understanding should be facilitated by the MA.

Example of facilitation mechanism from the South-East Finland – Russia CBC programme

Kick-off meeting between the MA and the project beneficiaries

“A kick-off meeting between the MA and the project beneficiaries has to take place before signature of the grant contract, as “The MA wants to ensure the effectiveness and transparency of the internal information flow in the project. In addition, the kick off meeting aims to ensure that all rights and responsibilities of each partner are clear and understood before the project actions start. The whole implementation procedure should be clear to all partners.”

Source: Q&A on the programme’s website

Irrespective the approach followed, the negotiation process should serve three main purposes:

- Collection of the information to be:
 - included in the contract (e.g., agreeing on the starting date of the project);

- annexed to the grant contract (e.g., financial identification documents of the lead beneficiary);
- Submission of other documents necessary for a proper project implementation in accordance with programme rules if relevant;
- Explaining the terms and conditions of the grant contract to the lead applicant and its project partners and fostering their joint understanding of project implementation provisions.

6. Signature of the partnership agreement

In the ENI CBC IRs, the signature of a partnership agreement between the lead beneficiary and the other project beneficiaries is explicitly stated and is mandatory, which was not the case of the previous programming period.

Article 46.3.(c) of the ENI CBC IRs

"The lead beneficiary shall: [...]

(c) lay down the partnership arrangements with the beneficiaries in an agreement comprising provisions that, inter alia, guarantee the sound financial management of the funds allocated to the project including the arrangements for recovery of funds unduly paid"

Partnership agreements provide a framework for effective and efficient project implementation and governance. Project implementation arrangements in the CBC programmes are more complex and involve more risks than in other types of interventions. The use of a partnership agreement shall help to reduce these risks, taking into consideration that:

- by clearly defining project responsibilities and procedures, partnership agreements should make it easier to implement projects;
- the legally-binding nature of partnership agreements means that if problems that cannot be resolved by the partners themselves arise, procedures can be enforced to arrive to a solution.

The ENI CBC IRs do not specify the exact timing for the signature of the partnership agreement ; the best option has to be decided by each programme individually. However, taking into account the past experience of lengthy negotiations among the project partners about the provisions of the partnership agreement, it is suggested that this process is initiated by the lead applicant/ lead beneficiary as early as possible.

Drafting concrete templates may help to speed up the preparation of partnership agreements or stimulate projects to initiate its negotiation even before submission of the full application form, so that the signature of the document can take place right after the award decision. In the latter case, the procedure describing the possibility for any changes in the partnership scheme, which may occur once the application was submitted, shall be drawn. The indicative components of the partnership agreement are presented in Annex 2.

ANNEX 1 Grant contract

Suggested component	Suggested content	Issues to be considered and sources of inspiration
Signing parties/ Contact addresses	MA and lead beneficiary , legal representatives and their functions	Possibility to indicate all beneficiaries as parties of the contract who have conferred powers of attorney for the purposes of the signature of the contract to the lead beneficiary ² .
Legal basis	Applicable EU rules, programme documents, Financing Agreement and a reference to the relevant national provisions in force.	
Purpose of the project	Award of a grant to a particular project , stating its title , to be co-financed in the framework of a particular ENI CBC programme .	
Execution and implementation periods	Implementation period of the project and execution period of the contract, including the date on which the contract shall enter into force .	
Obligations of the lead beneficiary and the beneficiaries	Responsibilities of the lead beneficiary (coordinator in PraG template) and other beneficiaries .	Provisions of Article 46 of the ENI CBC IRs and programme specific rules. Articles which are applicable to all beneficiaries may be specifically mentioned at the beginning of the grant contract.
Financing of the project	The overall budgetary allocation , including total eligible project expenditure, maximum grant value, EU co-financing rate and other sources of funding , including revenues .	Accepting different rates of EU contribution per each beneficiary may result in difficulties for the calculation of the grant and the payments. Consider the possibility of a single rate for the whole project, if possible.

² The co-applicant(s) authorise the lead applicant to submit on their behalf the application form and to sign on their behalf the standard grant contract with the Contracting Authority as well as, to be represented by the lead beneficiary in all matters concerning this grant contract.

<p>Reporting arrangements</p>	<p>Frequency and type of progress reports to be submitted, including reporting deadlines (narrative/financial/progress reports), period to be covered by the report, reporting on output/result indicators, baselines and targets to be reached and consequences in case they are not achieved.</p>	<p>Programmes may consider linking the submission of reports to the pre-financing payments or set a concrete reporting schedule for each type of report. In the latter case, they should consider the inclusion of specific deadlines for submission of each type of report.</p>
<p>Liability</p>	<p>Liability of the beneficiaries towards third parties, non-liability of the Managing Authority.</p>	<p>Refer to the provisions of Article 3 of PraG General Conditions.</p>
<p>Conflict of interests and good conduct</p>	<p>Obligation to avoid and report conflicts of interest, definition of conflict of interest.</p>	<p>Refer to the provisions of Article 4 of PraG General Conditions.</p>
<p>Confidentiality and data protection</p>	<p>Confidentiality of the MA and the beneficiaries' documents and information, protection of personal data.</p>	<p>Refer to the provisions of Article 5 and General provisions on data protection of PraG General Conditions.</p>
<p>Visibility, communication and capitalisation</p>	<p>Please refer to the provisions of Article 6 of PraG General Conditions, which shall be supplemented with the specific programme visibility requirements as well as requirements on information, publicity, communication and capitalisation issues. Include a reference to programme communication guidelines if available.</p>	<p>The following issues might be considered:</p> <ul style="list-style-type: none"> ➤ a reference to the project information and communication plan; ➤ communication between the project and programme bodies; ➤ contribution of projects to the programme's overall communication strategy as well as contribution of projects to its own and the programme's overall capitalisation; ➤ information, dissemination or capitalisation events in which projects are requested to take part.

<p>Ownership/use of results and assets</p>	<p>Ownership of results, reports and other documents produced by the project and possibility for the MA and the EC to use them. Include also relevant provisions from the Financing agreement(s) if any (e.g. art. 11 of FA with Russia on use of studies).</p>	<p>Refer to the provisions of Article 7 of PraG General Conditions</p> <p>Information on the transfer of ownership of the equipment and supplies can be included if deemed necessary and relevant, including information on the final recipients and documents proving the transfer.</p>
<p>Evaluation/monitoring of the action</p>	<p>Programme bodies and the EC can perform the monitoring and evaluation activities themselves or send evaluators on their behalf, including on-the-spot checks, programme and external ROM missions. The contract should state the obligation for the beneficiaries to provide documents and information necessary for monitoring/ evaluation, and the obligation in return to provide beneficiaries with the evaluation reports/ information on the evaluation results.</p>	<p>Refer to the provisions of Article 8 of PraG General Conditions.</p>
<p>Amendment of the Grant Contract</p>	<p>Programme requirements for introducing amendments to the grant contract shall be provided (e.g., flexibility rules for budget shifts, extension of duration, changes in partnership and modifications of work plan, differentiating between procedures for minor changes without the necessity for a written form and procedures for major changes requiring signature of the addendum)³, deadlines applicable for proposing amendments</p>	<p>The following can be regulated in the grant contract:</p> <ul style="list-style-type: none"> ➤ form for introducing amendments (written form, no written form/ necessity to sign an addendum, etc.); ➤ eligible period for introducing amendments (within grant contract execution period and without a possibility for retroactive changes);

³ It should be clear from the contract which programme body is in charge of approving each type of contract amendment (the notion of Contracting Authority may not be only one in these cases), as well as the procedure for doing it.



	(e.g., at least 30 calendar days before the date on which the amendment should enter into force).	➤ detailed definition for minor/ substantial change with concrete examples when respective amendments may be applied
Implementation/ procurement procedures	<p>Procurement procedures for the different types of beneficiaries, depending on the country in which they are established and their legal status, the possible consequences in case of non-observation of these procedures, the rules of origin and nationality. Exceptions in terms of national preferences in the case of Russia (Financing Agreement, art. 7.3) should be stated.</p> <p>The contract articles that are also applicable to the subcontractors (e.g. confidentiality, checks etc.) should be specified, together with the obligation that beneficiaries include provisions to that effect, as appropriate, in their contracts with subcontractors.</p> <p>Moreover, the article shall reflect the sustainability requirements stipulated in article 39 (3) of the ENI CBC IRs or other stricter sustainability requirements agreed on the programme level, as well as the State aid provisions in line with article 12(3) of the ENI CBC IRs⁴.</p>	<p>Article 72.7 of the ENI CBC Implementing Rules regarding the use of COCOF criteria for the flat-rate corrections applicable in case of irregularities in procurement procedures.</p> <p>Programmes may decide to keep the requirement of outsourcing “a limited portion of the Action” or not. In any case, this provision is not applicable for infrastructure/ investment projects.</p> <p>Procurement procedures shall be adjusted to the provisions of Articles 52-56 of the ENI CBC IRs, programme requirements and country requirements (as indicated in the Financing Agreement for CBC Partner Countries and national legislation for private partners in MS).</p> <p>In case the programme foresees financial support to third parties, it is suggested to add a specific clause or separate article presenting all requirements to be satisfied by both direct and sub-grant beneficiaries in line with the provisions of Article 57 of the ENI CBC IRs.</p>

⁴ Where applicable, and in line with the outcome of the evaluation process on the State aid relevance of the project. Please refer to the specific Guidance on State Aid issued by TESIM. Latest version, dated August 2016, available under <https://tesim-enicbc.eu/library/>

<p>Extension and suspension</p>	<p>Conditions and procedure for suspension by the lead beneficiary, conditions and procedure for suspension by the Managing Authority, basis and supporting documents for the request for extension of the implementation period by the lead beneficiary.</p>	<p>Refer to the provisions of Article 11 of PraG General Conditions. Definition of “force majeure” and other cases when suspension is possible can be considered.</p>
<p>Termination of the Contract</p>	<p>List of cases in which termination by the Managing Authority is possible, possibility for termination by the lead beneficiary, documentation and calculation of payment in case of termination.</p>	<p>Refer to the provisions of Article 12 of PraG General Conditions.</p>
<p>Applicable law and dispute settlement</p>	<p>Law governing the contract and the procedure of dispute settlement among the parties of the contract.</p>	<p>Refer to the provisions of Article 13 of PraG General Conditions. Include concrete deadlines for the steps in the dispute settlement process.</p>
<p>Eligible costs</p>	<p>Cost eligibility criteria, list of eligible costs, list of non-eligible costs in accordance with Articles 48 and 49 of the ENI CBC IRs. If applicable, financial limits for the simplified costs in accordance with Article 50 of the ENI CBC IRs and indirect costs in accordance with Article 51 of the ENI CBC IRs.</p>	<p>More detailed cost eligibility rules may be defined in the JOP, if so, they need to be included in the Grant Contract as well; Calculation methodology for indirect costs based on fair, equitable and verifiable method shall be provided prior the grant contract signature, either by the beneficiary or by the programme.</p>
<p>Expenditure and revenue verification</p>	<p>Frequency, deadlines and conditions for expenditure and revenue verification, including a reference to article 32.1 of the ENI CBC IRs on requirements for the auditors or the competent public officer.</p>	<p>➤ In programmes involving many countries with different systems of expenditure verification, it is not possible to include in the grant contract all details of this process. Additional guidelines or country specific sections in the web-site may be</p>

envisaged, as well as a separate document with the requirements on the performance of auditors;

- Role of the CCP may be stated in the grant contract, so that the beneficiaries are aware of the involvement of this body in the control activities of the programme;
- In case of unsatisfactory performance of an auditor performing the expenditure verification, there should be a possibility for the MA to reject the report, and ask the auditor to re-perform. The auditor can be also excluded from the list (if decided at country level) or from further work for projects. The grant contract should have a clause that the MA can reject the auditor (as was the case in the 2007-2013 grant contracts), without any financial compensation;
- On-the-spot checks to be performed by the MA may be now used not only to verify the beneficiaries' performance but also to check whether the work carried out by auditors was done accordingly. The whole process shall be well documented;
- There is no requirement to provide a single consolidated expenditure verification report, and it is up to the programmes to define if they request it or receive only the individual reports for each project beneficiary.

<p>Payments</p>	<p>Payment options adjusted to programme/ beneficiaries needs taking into consideration factors like the character of the project (infrastructure, soft), the duration, its size (total budget) the legal status and the financial sustainability of the potential beneficiaries;</p> <p>Requirements for the submission of the expenditure verification reports/ financial guarantees, adjusted to the programme needs;</p> <p>Rule(s) for currency conversion in line with the one(s) mentioned in the programme document, in conformity with article 67 of the ENI CBC IRs.</p>	<ul style="list-style-type: none"> ➤ For short projects (up to 12 months), the first pre-financing payment shall be big enough (for example: 80% of the grant value) to ensure an appropriate “cash liquidity” and a smooth project implementation. In case of larger projects, the first pre-financing may be linked to the estimated budget for the first 12 months (for example, 100 % of the part of the estimated budget for the first 12 months); further installments directly linked with the speed of funds absorption. ➤ In case of infrastructure/ investment projects, payment options may be directly linked with the schedule of the most important procurement procedures (e.g., a small initial pre-financing to start project implementation and further pre-financing payments upon successful completion of procurement procedures by beneficiaries). ➤ MAs may also consider requesting financial guarantees to secure pre-financing payments (partially or totally) paid to non-public lead beneficiaries, which may be also used in case the necessity to recover funds paid in excess⁵ appears. This possibility should be combined with an adequate risk assessment on the
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⁵ The measures proposed by the programme shall be commensurate and programmes need to consider carefully how the limitations and requested guarantees shall affect the programme. Certain measures may result in the exclusion of key beneficiaries, such as NGOs in CBC Partner Countries. Partial guarantees may be also taken into account in cases where obtaining a financial guarantee for a full amount of pre-financings might be impossible.

		consequences of requesting such guarantees. A “may” and not a “shall” is recommended.
Accounts and technical and financial checks	<ul style="list-style-type: none"> ➤ Requirements regarding the setting up a separate accounting system or a suitable accounting code in line with Article 26.5 (b) of the ENI CBC IRs, provisions in relation to the on-the-spot checks by the Managing Authority and other controls, obligation to provide documents and information, period for record-keeping by the beneficiaries. 	Taking into consideration that the record-keeping period is linked to the balance payment for the programme, grant contracts could include an obligation by the MA of informing the beneficiaries when the balance payment takes place.
Recovery procedures	<ul style="list-style-type: none"> ➤ Procedures for recovering unduly spent funds, in accordance with article 75 of the ENI CBC IRs; ➤ Information on how long the lead beneficiary should try to recover from other beneficiaries and how long the MA shall claim the amount until the recovery is considered as unsuccessful; ➤ Possibility for the MA to formally notify beneficiaries to repay unduly paid amount to the lead beneficiary⁶; ➤ A clause allowing the EC or the participating countries to recover any amounts due to the MA in accordance with 75(5) of the ENI CBC IRs and with the relevant provisions of the Financing agreement(s). 	<ul style="list-style-type: none"> ➤ As the lead beneficiary has the overall responsibility in case of recoveries, the relevant provisions need to be regulated clearly in the partnership agreement allowing the MA, the lead beneficiary, the EC and the country to recover amounts unduly paid from the beneficiaries; ➤ The grant contract, based on the deadlines set in the DMCS and programme procedures, needs to stipulate the timing of each step in the recovery process, differentiating between three moments: time of initial request; contentious recovery when timing is not respected and unsuccessful recovery when MA reaches to the conclusion that it is impossible to get the money. For example, the process of the “normal”

⁶ The lack of legal basis for the Managing Authority to directly address project partners in ENPI CBC programmes has been an obstacle on this matter. Some programmes may even decide that the grant contract is signed by all beneficiaries, and not only the lead beneficiary, in order to avoid this problem.

		<p>recovery by the MA could last for 45 days, and if it is not solved within this time period, the recovery becomes “contentious”, and the period of this process could last up to one year;</p> <p>➤ As to the recoveries from the beneficiaries, the MA has to exercise due diligence to ensure reimbursement, <u>but it is not itself financially liable</u>. The liability in this case stays with the beneficiary, lead beneficiary and the country of the “concerned beneficiary”, but never the country of the lead beneficiary, when a partner from another country is the one not paying the recovery.</p>
<p>Financial liabilities</p>	<p>In relation to all parties of the grant contract as well as arrangements in case of suspension of payments by the EC.</p>	
<p>Administrative and financial penalty clauses</p>	<p>➤ In case there is a need to use financial corrections to the project because of partial or poor implementation, a direct reference to Articles 109 and 131(4) 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 may be included in the main body of the grant contract indicating lead beneficiary’s liability towards the MA;</p> <p>➤ The grant contract has to set the measures to be used in such cases, starting with the suspension of payments as the first step and the termination of the contract as the final one.</p>	<p>➤ The definition of financial penalties in case of partial or poor performance needs to be clearly linked to the monitoring activities by the MA/JTS and should be based on negotiations with the project and definition of clear deliverables, milestones and output indicators for project implementation. In any case the principle of proportionality shall be respected;</p> <p>➤ The original financial deductions and the period of exclusion stipulated in the Financial Regulation may be extended according to the programme needs;</p> <p>➤ Without prejudice to the right of the MA to</p>

	<ul style="list-style-type: none"> ➤ Additional provisions shall be added in case the lead beneficiary committed substantial errors, irregularities, fraud, made false declarations in supplying required information at the moment of the submission of the application, failing to supply such information during the implementation of the grant, or has been found in serious breach of its obligations under the Contract. 	<p>terminate the grant contract, and without prejudice to the right of the MA to apply penalties already stipulated, other financial penalties may be considered as well (e.g., a percentage deduction may be applied to the total amount of the grant);</p> <ul style="list-style-type: none"> ➤ The existing COCOF guidance can be used as a source of inspiration for the definition of the penalties, (e.g., for non-compliance with visibility requirements).
<p>Closure arrangements</p>	<ul style="list-style-type: none"> ➤ For example: financing for final reporting activities, project evaluation and post-implementation obligations, such as record and document keeping. 	
<p>Programme manuals</p>	<ul style="list-style-type: none"> ➤ In addition to the standard provisions of the grant contracts, programmes may also consider introducing non-standard articles, for example providing the legal basis for the MA to require from the beneficiaries the application of manuals developed at programme level. 	<p>The grant contract may include information on:</p> <ul style="list-style-type: none"> ➤ publishing by the Managing Authority manuals, such as: a Project Implementation Manual and/or a Communication and Visibility Manual; ➤ if the case, all manuals shall be made publicly available and shall constitute an additional legal basis for all beneficiaries; ➤ any changes introduced to the manuals shall be announced well in advance to the lead beneficiaries who shall inform other beneficiaries accordingly; ➤ in any case, if there is a contradiction between the manual in question and the grant contract, provisions of the later shall take precedence.

A) ANNEX 2 Partnership agreement

The list of indicative components which may be considered while preparing the partnership agreement is presented below

Suggested component	Explanation
Parties to the agreement	All entities being a part of the agreement shall be listed.
Legal framework	Mention applicable EU rules, programme documents, Financing Agreement and relevant national provisions in force as well as a reference to the grant contract, its annexes and addendums.
Project objectives/ project title	It is important that all beneficiaries sign up to a common set of project objectives to ensure that they work towards achieving common goals. These can either be summarised in the partnership agreement or mentioned by means of reference to the respective project provisions.
Subject of the partnership agreement	This is a standard clause in most partnership agreements in which the lead beneficiary and the other beneficiaries define their working procedures and the relations that shall govern the transnational partnership set up in order to complete the project in question.
Duration of the agreement	This is a standard clause in most partnership agreements. A specific period of time to project duration will be indicated. The parties should consider the duration of the agreement having in mind that this legal link needs to remain valid during the period of record keeping and the open-to-control period (Article 70 of the ENI CBC IRs).

<p>Lead beneficiary</p>	<p>The lead beneficiary has a key role to play and this role should be clearly defined, both in relation to the MA and the other partners.</p> <p>The definition of the lead beneficiary's role should as a minimum cover: overall management of the project, financial management, preparation and implementation of the project work plan together with reporting requirements.</p> <p>For more details, please refer to article 46.3 of the ENI CBC IRs on the lead beneficiaries' obligations.</p>
<p>Beneficiaries</p>	<p>Beneficiaries are the organisations that are responsible for carrying out specific project activities to achieve a set of outputs, results and impacts within a limited time frame and budget. Their role should be defined in a way that is consistent with the approved application, and appropriate monitoring provisions should be established.</p> <p>Given that CBC projects can involve a considerable number of beneficiaries, the partnership agreement may be limited to a general description of their roles while a reference can be made to the application form and/or a work plan for a more detailed description of tasks.</p> <p>It is important that all beneficiaries are familiar with the grant contract provisions and the approved application (budget, action plan and logframe) which is signed by the lead beneficiary on behalf of the whole partnership.</p> <p>For more details, please refer to Article 46.2 of the ENI CBC IRs on beneficiaries' obligations.</p>
<p>Specific activities and contribution to project outputs</p>	<p>The article should list all specific activities planned to be carried out by beneficiaries, and their contribution to project outputs. This can be done as follows: a) If the tasks are relatively straightforward they can be simply summarised in partnership agreement itself or alternatively b) the roles of the lead beneficiary and other beneficiaries for specific project-related tasks can be defined in a separate project work plan appended to the partnership agreement.</p> <p>Another possibility is to simply require beneficiaries to adhere to the timetable, actions and outputs detailed in the approved application.</p>



<p>Organisational structure of the partnership</p>	<p>A partnership agreement may as a minimum require setting up a project steering group defining its role, membership and frequency of meetings (e.g., once a month/quarter).</p> <p>The key benefit of establishing a project steering group is to provide a structure for a proper monitoring of project implementation.</p>
<p>Procurement and co-operation with third parties</p>	<p>At least basic applicable procurement procedures should be reminded in the partnership agreement, in particular the rule of nationality and origin. Exceptions in terms of national preferences in the case of Russia (Financing Agreement, art. 7.3) should be stated. Likewise, the partnership agreement should recall the obligation by beneficiaries to ensure, when subcontracting, that grant contract provisions applicable to subcontractors (e.g. confidentiality, checks etc.) are properly included. For more details, it can be referred to the grant contract provisions and its relevant annex(es).</p> <p>Most CBC projects will involve sub-contracting of some tasks to third parties (e.g., consultants) and the partnership agreement shall include a clause on this. The key message that shall be underlined here is that the ultimate responsibility remains within the partnership.</p>
<p>Project budget and eligible expenditure</p>	<p>The partnership agreement should at least provide a basic description of eligible expenditures and/or make a reference to the definition of eligible expenditure in the ENI CBC IRs/guidelines for applicants or grant contract.</p> <p>The provisions of the partnership agreement can be also supported by a detailed project budget that is appended to the document along with the work plan.</p>
<p>Sources of financing including the agreed amount of co-financing</p>	<p>Details regarding the participation of each partner in providing co-financing to the project shall be specified (amounts, schedule of payment, etc.).</p>



<p>Agreement on payments and transfers of funds</p>	<p>The provision refers to payment procedures and an indicative schedule of payments within the partnership (when and on which conditions the lead beneficiary shall transfer pre-financings to the rest of beneficiaries, including the documents that the partners must provide to the lead beneficiary as a pre-requirement to receive the funds).</p>
<p>Monitoring, reporting, accounting principles and expenditure verification</p>	<p>It is desirable that the reporting obligations of both the lead beneficiary and other beneficiaries are defined in the partnership agreement. The monitoring provisions should be likewise specified, including the gathering of indicators values and the review of risks and assumptions necessary for updating the logframe. Otherwise, it could be difficult for the lead beneficiary to fulfil its obligations vis-à-vis the MA.</p> <p>Similar requirements shall refer to the accounting and expenditure verification procedures, which shall be in line with grant contract provisions.</p> <p>It is also important to mention that reports sent by the lead beneficiary to the MA should be copied to the beneficiaries to ensure joint ownership of the project and a common view on the progress towards project objectives.</p>
<p>Financial control and audits</p>	<p>This is a standard clause in partnership agreements which shall combine the agreement and willingness of all beneficiaries to be subject to control and audit in accordance with ECs/programme rules.</p> <p>As control can take place for up to five years after the payment of the balance for the programme (article 70 of the ENI CBC IRs), the legal link between all beneficiaries needs to remain in effect for the whole period.</p>
<p>Visibility requirements</p>	<p>All beneficiaries must take all necessary steps to publicise the fact that the EU has co-financed the project. Such measures must comply with the EC/programme visibility requirements specified in the grant contract and, if available, in the programme communication guidelines.</p>

<p>Dissemination of project results/ communication and publicity</p>	<p>The lead beneficiary and the other beneficiaries shall grant the MA and EU the right to use freely and as it sees fit, in particular publish or communicate by any medium, all documents deriving from the project whatever their form, provided it does not breach the intellectual or industrial property rights of the beneficiaries. Further requirements may apply, in particular if provided in the Financing agreement.</p> <p>Beneficiaries shall also commit to playing an active role in any actions organised to capitalise and disseminate the results of the project.</p>
<p>Ownership of results/intellectual and industrial property rights</p>	<p>Provisions regarding ownership of all project results shall be coherent with the grant contract provisions, while the partnership agreement should specify the ownership rights of the Lead beneficiary and of each beneficiary on the project outputs (in particular as regards infrastructure) as well as, inter alia, intellectual rights on joint documents and reports.</p> <p>The lead beneficiary and the beneficiaries shall ensure that all products developed within the framework of the project are subject to the provisions of national laws, regarding in particular intellectual property rights.</p>
<p>Confidentiality requirements</p>	<p>The beneficiaries may agree that any information they obtain during the execution of the partnership agreement or exchange with the project steering committee is confidential, provided that one beneficiary or the project steering committee explicitly requests such. The same may apply to all documentation classified as “confidential”.</p>
<p>Modifications, withdrawals and disputes</p>	<p>Partnership agreements may include a clause setting out procedures for changes to the membership of the partnership, if this may be allowed by the MA and the JMC.</p> <p>Similarly, partnership agreements shall specify procedures for settling disputes between beneficiaries. The general idea behind this reasoning is that disputes shall be settled by partners themselves. If this is not possible, they may be settled through recourse to the jurisdiction of the country where the lead beneficiary is domiciled (this possibility needs to be further consulted with the national authorities of the countries represented in the partnership). The partnership agreement may also specify requirements to inform the MA/JTS or other beneficiaries about a dispute.</p>

<p>Non-execution of obligations and recovery of the amounts unduly spent</p>	<p>In the event of total or partial incompleteness of the obligations of any of the beneficiaries in the effective execution of the project, two situations may apply:</p> <ul style="list-style-type: none"> a) each cosignatory of the partnership agreement shall undertake to reimburse the lead beneficiary any funds that have been unduly received within the deadline set in the partnership agreement for <u>reasons attributable to it</u>; b) each cosignatory of the partnership agreement shall undertake to reimburse the lead beneficiary any funds that have been unduly received within the deadline set in the partnership agreement for <u>reasons attributable to the entire partnership</u>, in accordance with an agreed apportionment of liabilities. <p>Please also refer to article 46.3 c) of the ENI CBC IRs. A clause allowing the EC or the participating countries to recover any amounts due to the MA directly from a beneficiary should be included as well, in accordance with ENI CBC IRs articles 74.4 and 74.5 and relevant provisions of the Financing agreement(s).</p>
<p>Working language</p>	<p>The Lead Beneficiary and beneficiaries may agree on the working language(s) to be used, in particular as regards beneficiaries' contributions to reporting. It is recommended that the partnership agreement is drafted in the same language as the one in the grant contract in order to ensure a sufficient consistency between the two documents.</p>
<p>Legislation and force majeure</p>	<p>The binding law for governing the partnership agreement shall be specified, and the provision on the lack of liability of any party in case of force majeure may be mentioned as well.</p>
<p>Amendment of the partnership agreement</p>	<p>The provisions for possible amendments of the partnership agreement shall be specified (e.g., only written amendment signed by all beneficiaries may be applied).</p>
<p>Conditions for terminating the agreement</p>	<p>The conditions for partnership termination shall be specified (e.g., withdrawal of the lead beneficiary from the project implementation).</p>