

# ***PRACTICAL GUIDE***

## ***TO CONTRACT PROCEDURES FOR EC EXTERNAL ACTIONS - 2008***

EuropeAid/G7



# SUMMARY OF CHANGES TO THE PRAG

- Chapter 1, Introduction
  - **10th EDF – Modification of annex IV of the Cotonou Agreement:** alignment to procedures applicable to projects financed from the EC general Budget
- Chapter 2, Basic Rules
  - Management mode/method of implementation: Essential elements for the financing decision
  - Eligibility EDF: experts engaged by tenderer may be of any nationality
  - EDF: local market purchases up to €60.000
  - Additional advice on verification of certificates of origin

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 2, Basic Rules (cont.)
  - Exclusion criteria: clarifications concerning entities which due to its nature cannot fall into some of the situations; clarifications regarding natural persons representing legal entities
  - Visibility measures: also applicable in delegated management
  - Clarification of the use of the suspensive clause (Budget/EDF)
  - Record keeping: timelimits for different documents
  - **Greener AIDCO action plan**: consideration to environmental aspects
  - EDF: procurement procedures and thresholds aligned with those of the EC general budget
  - Competitive dialogue: award criteria must be best value for money
  - Amendments: clarification that award conditions may not be altered

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 2, Basic Rules (cont.)
  - Cancelled procedures: clarification that in case of division into lots, possible to cancel only one lot and not necessarily the whole procedure
  - Appeals: reminder of the possibility of hierarchical appeals
  - EDF: introduction of expenditure verification in service contracts
  - Terms of reference/technical specifications: reminder to consider environmental aspects + to ensure neutrality. Backbone strategy on Technical Cooperation: approval by beneficiary country of ToR/TS, participation in evaluation committees (centralised management)
  - Procedural rules and arbitration: reminder of the rules applicable for the EC general budget
  - Nomination of evaluation committees in decentralised ex-post

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 3, Service contracts

- EDF: alignment with procedures and thresholds for EC general budget
- **Backbone Strategy on Technical Cooperation:** TA contracts usually decentralised; beneficiary country approval of tender dossier; beneficiary country voting member; beneficiary country approval of experts (incl replacements); telephone interviews standard practise
- Negotiated procedures: reference to new annex on crisis and emergency situations; clarification of unsuccessful use of a framework contract
- Selection criteria should be possible to prove
- EDF: possible to proceed even with less than 4 shortlisted candidates
- EDF: prefinancing guarantee only required above €150.000

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 3, Service contracts (cont)
  - Most economically advantageous tender = best value for money
  - Evaluation Committee: cross-reference to section 2.8
  - Technical evaluation: further practical advice provided
  - Variants: framework for use of variants provided
  - Framework contract: advice to extend 14 day tender period to improve quality of experts
  - Competitive negotiated procedure: reminder of the possibility to use the simplified tender dossier; EDF: one compliant offer sufficient
  - Modification of contracts: clarifications & cross-references introduced, complementary services may be done through an addendum
  - Experts: clarification regarding evaluation of experts

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 4, Supply contracts

- EDF: alignment with procedures and thresholds for EC general budget
- Negotiated procedures: reference to new annex on crisis and emergency situations;
- Beneficiary country; approval of the tender dossier and voting member (centralised management)
- Reference to variants deleted (can only be used where the award criteria is best value for money whereas the award criteria for supplies is lowest price)

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 4, Supply contracts (cont)
  - Cancellation of tender procedure: introduced cross-reference to 2.4.13
  - Reminder of the possibility to use the simplified tender dossier for local tenders and thresholds below
  - Competitive negotiated procedure: EDF: one compliant offer sufficient
  - EDF: guarantee for prefinancing only required above €150.000
  - Evaluation committee: cross-reference to section 2.8. introduced
  - Modification to contracts: further precisions given for additional deliveries; clarification of administrative orders for variations

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 5, Works contracts
  - EDF: alignment with procedures and thresholds for EC general budget
  - Negotiated procedures: reference to new annex on crisis and emergency situations;
  - Reference to variants deleted (can only be used where the award criteria is best value for money whereas the award criteria for supplies is lowest price)
  - Beneficiary country; approval of the tender dossier and voting member (centralised management)
  - Further advice on price revision formulas

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 5, Works contracts (cont)
  - EDF: guarantee for prefinancing only required above €150.000
  - Evaluation committee: cross-reference to section 2.8. introduced
  - Cancellation of tender procedure: introduced cross-reference to 2.4.13
  - Competitive negotiated procedure: EDF: one compliant offer sufficient
  - Modification to contracts: extensive clarifications as regards measurements and price revisions, explanation when modification of contract is needed and by what means, administrative orders vs addenda, execution period

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 6, Grants

- Clarification of the difference between grants and joint management
- Additional information about PADOR
- CRIS call for proposals module obligatory for the registration of applications as from 1 January 2009
- Clarification about the use and scope of exceptions to the nationality rule
- Operating grants: reminder that they shall be gradually reduced when renewed. EDF: award within 6 months after the start of the budgetary year of the beneficiary
- Exceptions to the non-profit rule

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 6, Grants (cont)
  - Direct award: reference to new annex on crisis and emergency situations
  - Submission deadline: advice how to deal with late arriving applications
  - Elaborated information about PADOR
  - Call managed by HQ: concerned EC-delegation(s) to be consulted even when assessors are not used
  - Regional calls: HQ may take the role as coordinator for comments from concerned EC-delegations
  - External assessors: the appropriate procedure for service contracts to be used

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 6, Grants (cont)
  - Clear separation between administrative and eligibility criteria
  - Reminder that the Contracting Authority has the right not to undertake the concept note evaluation if justified
  - Expenditure verification must be attached to the final report for grants of more than €100.000
  - Clarification of the difference between grants and joint management
  - Extensive elaboration on grants to international organisations

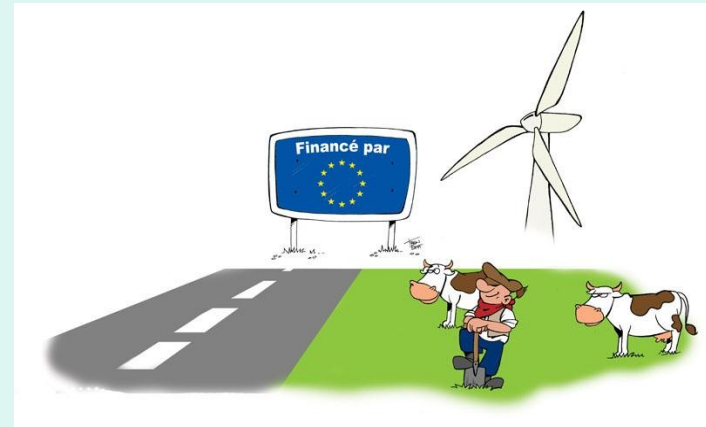
# SUMMARY OF CHANGES TO THE PRAG

- Chapter 7, Relations with International Organisations, Member States, Beneficiary Countries and other donors: Delegated Cooperation and Co-financing
  - The chapter has been entirely redrafted; it outlines the applicable rules and provides detailed guidance on delegated cooperation and co-financing
- Chapter 8, Legal text
  - Adapted to the new legal framework for EDF (10th EDF + revised annex IV of the Cotonou Agreement)

# SUMMARY OF CHANGES TO THE PRAG

- Chapter 9, List of annexes
  - New annexes:
    - Guidelines (crisis situations, drafting technical specifications for IT equipment, office furniture and vehicles)
    - EDF: conciliation & arbitration rules
    - Summary procurement notice for services (local publication)
    - Terms of Reference for global price contracts
    - Simplified tender dossiers (services & supplies)
    - Delegation agreement (special & general conditions)
    - Transfer agreement

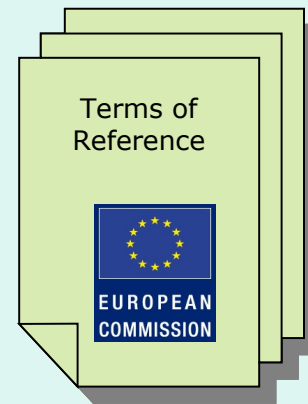
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



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- General annexes
  - A1 glossary: extended glossary
  - A2 Eligibility EC programmes: modified EDF legal framework, updated OECD-DAC list on developing countries (applicable from 1 January 2009)
  - A8 notification letter: waiver of supporting documents if submitted for another procedure less than 1 year ago; language of supporting documents; copies of documents; declaration if concerned entity cannot fall into any of the exclusion situations, reminder that contract implementation may not start before contract signature
  - A10 negotiation report: in decentralised management, EWS must be verified with the European Commission
  - New annexes: e.g guidelines, co-financing agreements etc

# SUMMARY OF CHANGES TO THE PRAG ANNEXES

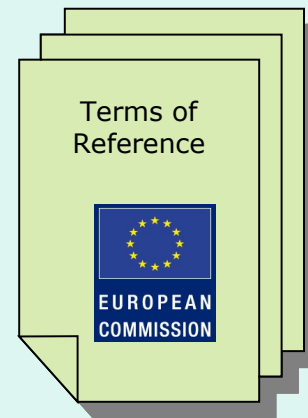


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- Services

- Merger of EDF & Budget annexes
- New annex b2\_b – summary procurement notice
- b2 procurement notice: elaborated instructions and clarifications to the standard text for selection criteria; example criteria for natural persons
- b3 application form: introduction of environmental aspects; clarifications to applicants which are public bodies; may be submitted in copy; reminder of submission of documentary proofs; clarification of possible financial penalties
- b5 shortlist report: EWS check in decentralised management: must be verified with the EC

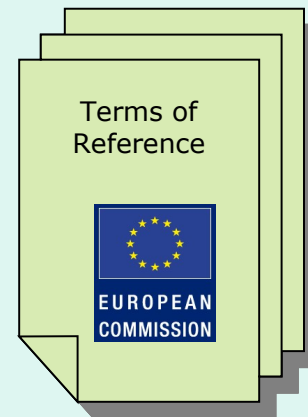
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Services (cont)

- b7 letter to non shortlisted entities: deleted "as well as those of the shortlisted candidates"
- b8 admin.grid: key experts is only present in one tender *as key experts*
- b8 general conditions: definitions moved to annex A1; assignees must not fall into exclusion situations; subcontractors may not subcontract unless agreed by the contracting authority (ref to art 34 and 36); general obligations added "for matters not governed by the contract"; added the range of possible administrative and financial penalties; new clause covering errors, irregularities or fraud; intellectual and industrial property rights (ref to art 7.4);

# SUMMARY OF CHANGES TO THE PRAG ANNEXES

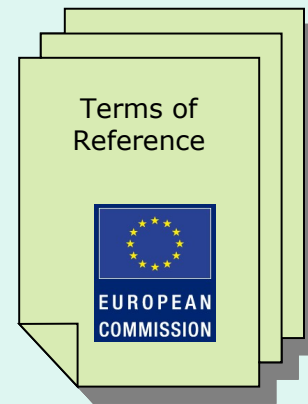


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- Services (cont)

- b8 general conditions (cont): beneficiary country approval in the case of replacement of experts; clarification in the text concerning amendment of contract; leave entitlement in fee based contracts; travel under the contract by most direct route may be working time; clarification to reporting requirements; invoice for the expenditure verification; clarifications to the checks of the expenditure verification and reference to the ToR for the same; clarifications to the payment schedule and late payment interest; release of the financial guarantee; clarification to recoveries; additional case of suspension and termination; introduced a general termination clause;

# SUMMARY OF CHANGES TO THE PRAG ANNEXES

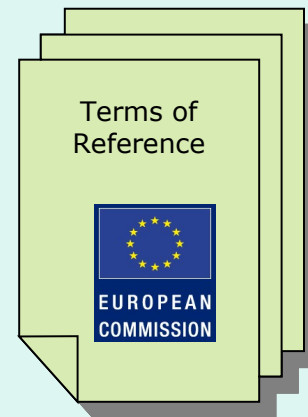


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- Services (cont)

- b8 general conditions (cont): clarification to the force majeure provision; extensive elaboration of settlement of disputes
- b8 terms of reference; further guidance on how to specify requirements for experts e.g local expertise, minimum vs preferred requirement; abolition of definition longterm/shortterm experts; clarification of how to budget administrative staff; clarification on incidental expenditure, e.g. acceptance of CO2 offsetting for missions under the contract; clarification to reporting requirements + beneficiary country approval; introduction of environmental considerations; specific ToR template elaborated for global price contracts

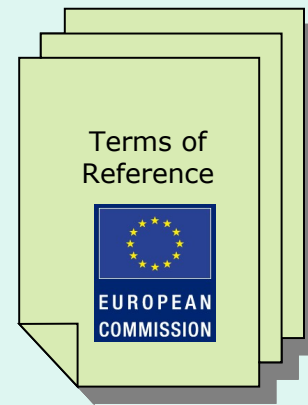
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



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- Services (cont)
  - b8 financial guarantee; introduction of temporary substitution in (decentralised management)
  - b8 ToR expenditure verification: clarifications & modification following an evaluation by unit G2
  - b8 contract: late payment interest;
  - b8 invitation: reference to deadline and address in the instructions to tenderers
  - b8 instructions to tenderers: range of financial penalties; precisions on subcontracting; environmental considerations; clarification on the exclusivity of key experts; experts subject to the approval of the beneficiary country; only proven experience may be considered; clarifications to documentary evidence (e.g copies acceptable, when declaration, rely on previous documents)

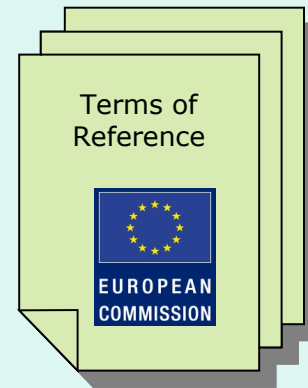
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Services (cont)

- b8 instructions to tenderers (cont): currency of contract = currency of payment; budget of expenditure verification and incidental expenditure to be prefilled in the budget template; guidance on variants; submission deadline to be specified; interviews (by phone) standard practise; suspension/cancellation in case of irregularities, fraud etc; text referring to the simplified environment moved to the simplified tender dossier; reference to the PRAG for appeals.
- b8 tender form: acceptable in copy; environmental considerations; clarified exclusion situations and possible penalties; precisions to the Statement of Availability and Exclusivity (key-expert, part-time, conflict of interest etc)

# SUMMARY OF CHANGES TO THE PRAG ANNEXES

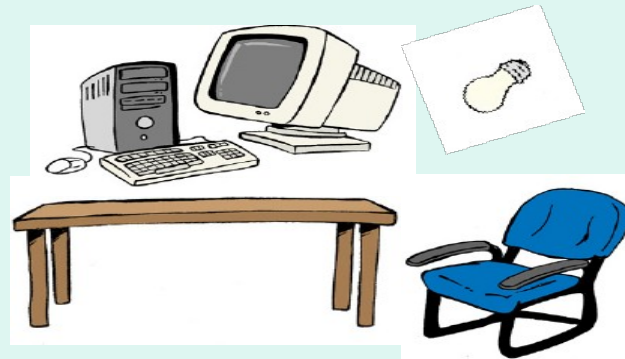


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- Services (cont)

- b11 evaluation report: EWS check in decentralised management: must be verified with the EC; EDF preferential rules
- b12 evaluator's grid: revised scores must be justified in the evaluation report
- b14 award notice: extension of information to be provided
- b8 simplified tender dossier: updated with changes to the standard tender dossier

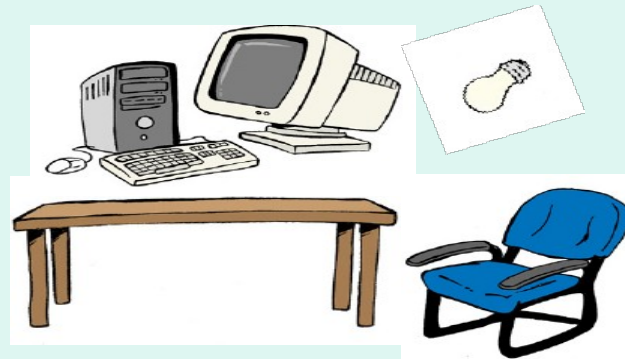
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Supplies

- Merger of EDF & Budget annexes
- c2 procurement notice: elaborated instructions and clarifications to the standard text for selection criteria; example criteria for natural persons; minor changes to be published on the internet
- c4 general conditions: definitions moved to annex A1; assignees must not fall into exclusion situations; general obligations added "for matters not governed by the contract"; provisions for tax and customs arrangement to be laid down in the special conditions; clarification to implementation periods in case of lots/same contractor; clarification to recoveries and interest rates; extensive elaboration of settlement of disputes; new clause covering errors, irregularities or fraud; general termination clause; added the range of possible administrative and financial penalties;

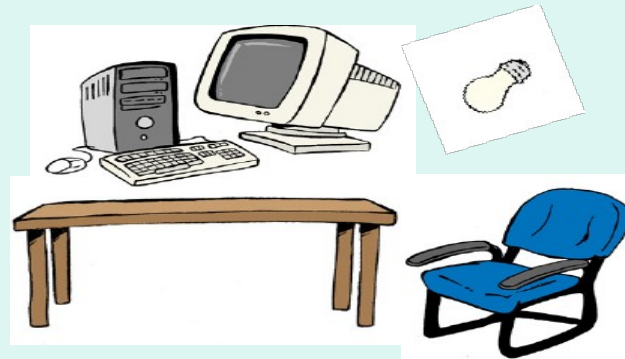
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Supplies (cont)

- c4 evaluation grid: reminder that selection criteria must be assessed before the technical evaluation
- c4 instructions to tenderers: elaborated instruction text on supplies to be provided; variants removed where award criteria is the price; clarification of exclusion criteria; precisions regarding subcontracting; currency of contract= currency of payment; clarification of the validity period; clarification of the language of the offers and supporting documents; introduction of environmental considerations; text referring to the simplified environment moved to the simplified tender dossier; contractor must respect labour standards; suspension/cancellation in case of irregularities, fraud etc. reference to PRAG for appeals.

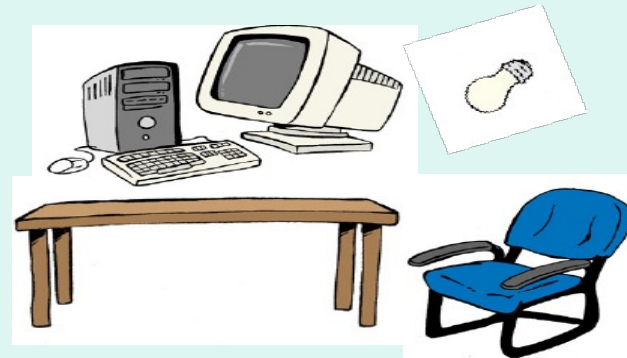
# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Supplies (cont)

- c4 performance guarantee, pre-financing guarantee: decentralised management: the HoD must countersign requests to pay; temporary substitution by the Commission.
- c4 special conditions: price revision formula (if applicable); tax and customs arrangements; delayed payments; settlements of disputes;
- c4 tender form: copies acceptable; environmental considerations; clarified exclusion situations and possible penalties;
- c5 opening checklist: added that tenderers representatives must sign the presence list

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



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- Supplies (cont)
  - c7 evaluation report: table for discounts and spareparts; EWS check in decentralised management: must be verified with the EC; preferential rules for EDF
  - c8 letter to unsuccessful tenderer: return of the original tender guarantee
  - c9 award notice: extension of information to be provided
  - c4 simplified tender dossier: updated with changes to the standard tender dossier

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



## • Works

- Merger of EDF & Budget annexes
- d2 procurement notice: minor changes to be published on the internet
- d4 financial offer: addition of a detailed price breakdown
- D4 administrative and evaluation grid: now 2 separate files
- d4 instructions to tenderers: completely restructured and redrafted
- d4 performance-, pre-financing- and retention guarantees: decentralised management: the HoD must countersign requests to pay; temporary substitution by the Commission.
- d4 special conditions: alignment with the new general conditions; price revision formula; delayed payments; settlements of disputes; origin

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Works (cont)
  - d4 general conditions: extensive revision based on the ex-EDF version (e.g texts moved from ITT/Special Conditions to GC); definitions moved to annex A1; clarification of administrative orders; subcontractors and assignees may not be in an exclusion situation; clarification of timing for supply of documents, guarantees, programme for implementation of tasks and approval of the latter; integration of the EU visibility requirements; respect of labour standards; provisions for design & build contracts; address of contractor's representative; issuing entity of financial guarantees do not need to respect the eligibility rules of the contract; release of performance guarantee; detailed breakdown of prices; contractor's drawings and approvals & changes of these;

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Works (cont)
  - d4 general conditions (cont): overlapping contracts; clarification to implementation periods in case of lots/same contractor; extensions to the period of implementation of tasks; clarification of contract modifications; origin of supplies & materials; payments; release of retention guarantee; final statement of account; end date; maintenance obligations renamed to defects liability; termination clauses; loss or damages limited to 10% of contract price; settlement of disputes; ethics clauses; administrative and financial penalties; new clause covering errors, irregularities or fraud; checks and audits;
  - d4 techofferform 4.4: financial figures to be provided for the past 3 years

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Works (cont)
  - d4 tender form: copies acceptable; environmental considerations; clarified exclusion situations and possible penalties
  - d7 evaluation report: EWS check in decentralised management: must be verified with the EC; preferential rules for EDF
  - d8 letter to unsuccessful tenderer: return of the original tender guarantee
  - c9 award notice: extension of information to be provided

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



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- Grants

- e3a guidelines: reminder that standard text not to be modified without approved derogation; notice open/restricted calls; clarification and consistency of terminology; precisions regarding subgrants; number of applications; elaboration on PADOR incl supporting documents; concept note content; environmental considerations; receivability of applications; information during the procedure to applicants (website); introduction of environmental sustainability in the evaluation; automatic penalisation of points removed in case no partnership; reference to PRAG for appeals

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Grants (cont)

- e3b application form: environmental considerations; harmonisation and consistency of terminology; clear separation between administrative- & eligibility criteria and clarification on the assessment of these; full proposal: introduction of cover page, info already provided in the concept note form do not need to be repeated; adaptations to PADOR (family/network entity, sectors, experience during the last 7 years)
- e3h\_1 special conditions: execution period specified; clarification as regards the financing of the action (total cost of the action vs eligible costs); subgrants follow the nationality rules of the contract; eligibility of VAT; exceptions to the non-profit rule.

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



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- Grants (cont)

- e3h\_2 general conditions: definitions moved to the glossary in annex A1, deleted sentence in art 1.2 "The CA does not acknowledge any contractual link...", extended information to be published ex-post; clarifications as regards amendments to the contract; additional cases for termination of contract (e.g. irregularities and fraud); eligible costs: clarification of incurred costs; gross salaries; contribution in kind in kind may be accepted as co-financing but is not an eligible cost; approval of reports and suspension of timelimit for approvals; reference to ToR on expenditure verification; expenditure verification report required for final reports in case of grants above €100.000; auditor to examine revenue of the action

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Grants (cont)

- e3h\_2 general conditions (cont): clarifications to the payment schedule & interest on pre-financing; technical and financial checks: added external auditor "authorised by the Contracting Authority"; clarification of total costs vs eligible costs; clarifications concerning debit notes;
- e3h\_3 award procedures: alignment of procurement thresholds of Budget to EDF
- e3h\_5 interim report: introduction of an executive summary; report on planned activities that were not undertaken; link to logframe indicators.

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- Grants (cont)

- e3h\_6 final report: introduction of an executive summary; report on planned activities that were not undertaken; link to logframe indicators; materials produced
- e3h\_8 expenditure verification: clarifications
- e5a concept note evaluation grid: added "if applicable" for partners
- e5b proposal evaluation grid: added "if applicable" for partners; abolished automatic penalty of points if no partnership; introduced environmental sustainability as a criterion.
- e6a opening report: separation of administrative- and eligibility criteria; justification if recommendation not to undertake concept note evaluation

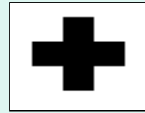
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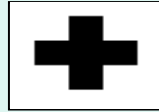
- Grants (cont)
  - e6b concept evaluation report: EWS check in decentralised management: must be verified with the EC
  - e6d final evaluation report: EWS check in decentralised management: must be verified with the EC; separation between administrative- and eligibility criteria
  - e9a letter submission admin check: for acceptance added " The above is without prejudice to any potential grounds for exclusion of your application which may be established during the further stages of the procedure"
  - e9b letter on preselection and e9c negative letter: redrafted following the application of PADOR
  - e11 publication: extension of information to be provided

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- International organisations, Members States and other donors
  - f1 contribution agreement general conditions: deleted “The Contracting Authority recognises no contractual link between..”; ex-post publication of beneficiaries; eligible costs: provisions in accordance with the organisation’s accounting rules in case of joint management); interest earned and accounting rules in case of multi-donor actions; clarifications regarding debit notes
  - f1 contribution agreement, special conditions: clarification of joint management and multi-donor actions; reference to the applicable framework agreement; clarifications to the financing of the action;

# SUMMARY OF CHANGES TO THE PRAG ANNEXES



- International organisations, Members States and other donors
  - New annex f4 delegation agreement (general- and special conditions)
  - New annex f5 transfer agreement