

Harmonised implementation tools

Co-financing Contract

(Final version 1.0 - September 2021)

This is a co-financing contract template for standard projects applying for funds in any Interreg strand.

The main objective of this template is:

* to provide a harmonized legal document for approved Interreg projects

To reach a high level of harmonisation, the HIT tools should be used as much as possible as they are. The tools have been designed based on an agreed structure that avoids asking for similar information in different contexts.

If needed, the following flexibility principles can be applied:

* It is possible to change the order of main parts or questions within each part.
* Changes that don't disrupt the main logic of sections/questions are possible. The logic can be disrupted when one change influences some other part(s) of the tool.
* Optional elements (in yellow) can be left out, partially or fully.
* All overview tables can be customised. These are tables that take data from different fields to present it in different combinations.
* Multiple languages are possible by adding fields to enter the text in other languages.

Purpose and logic:

* This template is limited to the wider regulatory framework around Interreg Programmes and Projects.
* Any programme-specific rules should be integrated in a programme manual.
* All fields in grey should be automated in online systems.
* Programmes should define a cover page, including project name and project ID/ number

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###### Preamble

The following contract between

*Name of Organisation acting as Managing Authority*

*Address*

*Contact details*

- acting as Managing Authority (MA) of the programme name

and

*Name of Lead Partner*

Address

*Contact details*

- hereinafter referred to as Lead Partner (LP), for [project name from approved application form]

is concluded on the basis of the following legal provisions:

###### List of abbreviations:

Programme – Name of the programme

AA –Audit Authority

AF – Application form

EC - European Commission

ERDF – European Regional Development Fund

EU – European Union

IPA – Instrument for Pre-Accession

JS - Joint Secretariat

LP - Lead Partner

MA - Managing Authority

MC – Monitoring Committee

NA – National authority

NDICI – Neighbourhood, Development and International Cooperation Instrument

NEXT – Neighbourhood External

PP - Project Partner (PPs – Project Partners)

SC - Steering Committee

###### Articles

#### Article 1: Legal framework and contractual basis

#### 1. The following legal provisions and document constitute the contractual basis of this co-financing contract and the legal framework for the implementation of the project [project name]:

* The European Structural and Investment Funds Regulations, Delegated and Implementing Acts for the 2021-2027 period, as further specified below;
* The Interreg Programme XXX, approved by the European Commission on XXX (Decision No. XXX) setting the programme (hereinafter referred to as Interreg XXX programme);
* The laws of country name applicable to this contractual relationship;

2. The following laws and documents constitute the legal framework applicable to the rights and obligations of the parties to this contract:

* Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 966/2012, together with related Delegated or Implementing Acts;
* The European Structural and Investment Funds Regulations, Delegated and Implementing Acts for the 2021-2027 period, especially:
	+ Regulation (EU) No 2021/1060 of the European Parliament and of the Council of 24 June 2021, laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund, and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, and repealing Council Regulation (EC) No 1303/2013, and any amendment;
	+ Regulation (EU) No 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, and repealing Regulation (EC) No 1301/2013, and any amendment;
	+ Regulation (EU) No 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial goal (Interreg) supported by the European Regional Development Fund and external financing instruments, and repealing Regulation (EC) No 1299/2013, and any amendment;
* Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC (General Data Protection Regulation, GDPR);

For ENI programmes

* Regulation No 2021/947 of the European Parliament and of the Council of 9 June 2021, establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/ 2014/EU and repealing Regulation (EU) 2017/ 1601 and Council Regulation (EC; Euratom) No 480/2009;
* Regulation (EU) No 2021/1529 of the European Parliament and of the Council of 15 September 2021, establishing the instrument for Pre-Accession Assistnce (IPA III), hereinafter referred to as IPA III regulation;
* Articles 107 and 108 of the Treaty on the Functioning of the European Union, Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; Delegated and Implementing acts, as well as all applicable decisions and rulings in the field of state aid;
* All other EU legislation and the underlying principles applicable to the LP and the PPs, including the legislation laying down provisions on competition and entry into the markets, the protection of the environment, and equal opportunities between men and women;
* Financing agreements (updated by programmes), including date (for any programme including NDICI and/ or IPA funds);
* National rules applicable to the LP and its PPs and their activities;
* Project data, comprising but not limited to latest project documentation such as application form and all project information available in the electronic system;
* All manuals, guidelines and any other documents relevant for project implementation (e.g., application manuals, implementation manuals) in their latest version, as published on the programme website or handed over to the LP directly during the project implementation.

Should the above-mentioned legal norms and documents, and any other documents or data of relevance for the contractual relationship be amended, the latest version shall apply.

#### Article 2: Award of co-financing and general conditions

1. The purpose of the contract is the award of co-financing by the MA to finance the implementation of the following project as stated in the Preamble within Interreg [project name], in accordance with the decision of the MC (or SC) of [insert date] and following decision by MA (if relevant – programme specific, also including date).

2. The LP accepts the awarded co-financing and assumes the responsibility to coordinate the implementation of the project, in due time, according to the provisions of the present contract.

3. The co-financing is awarded exclusively for the project as described by the latest version of the project data available in the programme's electronic system, as referred to in Article 1 of this document.

4. The maximum co-financing is stipulated in the latest version of the project data available in the electronic system, as referred to in Article 1 of this co-financing contract.

OPTIONAL: overview table

|  |  |  |
| --- | --- | --- |
|  | Amount, in Euro  | Co-financing rate, up to % |
| Maximum amount of ERDF co-financing awarded | *In Euro*  |  |
| *Amount of EU partner's contribution*  | *In Euro* |  |
| **Total ERDF budget**  | ***In Euro*** |  |
| Maximum amount of [other fund] co-financing awarded  | *In Euro* |  |
| Amount of [other fund] partner's contribution | *In Euro* |  |
| **Total [other fund] budget**  | In Euro |  |
| **Total project budget**  | ***In Euro*** |  |

6. The actual ERDF co-financing and, if relevant, co-financing from other funds or sources will be calculated on the basis of reported eligible expenditure only. The total amount to be paid by the MA to the LP cannot exceed the maximum amounts of co-financing approved.

7. Disbursement of the co-financing is subject to the condition that the EC and [XXX countries] make the funds available. In the case of non-availability of funds, The MA is entitled to terminate this contract or reduce the awarded amount of co-financing. In these cases, any claim by the LP or PPs against the MA is excluded. In such a case, the LP will be duly notified by the MA and guided on the respective steps to be taken.

8. In case of delays in the availability of funds, the MA can withhold payments until such time as the funds are made available, and cannot be held liable for delays in payments to the project. In this case, any claim by the LP or PPs against the MA is excluded.

9. Should it become evident that the project will not spend the maximum amount of programme co-financing awarded, the relevant programme body/ies may decide to reduce the award accordingly, following the procedure as specified in the programme manual.

10. Should a project fail to respect the contractual arrangements on timeliness as indicated in the spending plan, budget absorption, visibility requirements and achievement of outputs and results, as set out in the project data, corrective measures may be put in place to ensure the project performance, as well as minimize the impact at programme level (e.g., adaptation of the project to the changed situation), following the procedures specified in the programme manual. The programme may also reduce the programme co-financing allocated to the project or, if necessary, stop the project by terminating the co-financing contract as determined in Article 12 of this document.

#### Article 3: Eligibility of expenditure

1. Expenditure which qualifies for co-financing from the programme consists exclusively of eligible expenditure. Rules for eligibility of project expenditure qualifying for co-financing from the programme are laid down in the programme manual.

2. To be co-financed by the programme, project expenditure has to comply with the methods for determining the costs of the project (real costs or simplified cost options) for each cost category as defined in the programme manual and project data.

3. It is hereby made explicit that the project must not make use of funds from other programmes co-financed by the EU to finance the eligible costs reported to the present project.

For Interreg NEXT/ IPA programmes

It is hereby made explicit that the project must not make use of funds from other programmes co-financed by the EC and [XXX countries] to finance the present project.

4. The eligibility period for costs incurred by the project is defined in the programme manual and/or the project data, and must be respected by the project.

#### Article 4: Reporting obligations and payment

#### 1. The LP is entitled to request payments from the MA by following the reporting procedures defined in the programme manual. Upon satisfactory completion of reporting, co-financing will be disbursed by the relevant programme body/ies to one or multiple accounts indicated in the project data. Co-financing will be disbursed in Euro (EUR, €). Any exchange rate risk for transfer to the partners will be borne by the LP.

#### For Interreg NEXT programmes

#### The LP is entitled to request payments from the MA by following the reporting procedures defined in the programme manual. Upon satisfactory completion of reporting, the corresponding advance or balance payment will be disbursed by the MA to [one or multiple accounts indicated by the LP]. Payments will be disbursed in Euro (EUR, €). Any exchange rate risk for transfers to the project partners will be borne by the LP.

2. The MA reserves the right not to accept – in part or in full – expenditure validated by controllers if – as a result of its own checks and/or controls or audits performed by another authority – the validation or the facts stated therein prove to be incorrect, or if the underlying activities or expenditure are not in line with the legal framework as set out in this co-financing contract.

If the project budget is co-financed from several funds, disbursement per fund may be made in separate instalments.

3. The MA ensures that the project receives payments of the co-financing from the programme in time and in full. No deduction or retention of further specific charges which would reduce the amount of the payment must be made without prejudice of the provisions outlined above in this article. Conversely, the ERDF contribution paid by the MA must not exceed the share of ERDF resulting from the eligible amount verified by each responsible control authority, in compliance with the articles of this contract.

For Interreg NEXT programmes

The MA ensures that the project receives payments from the programme in time and in full. No deduction or retention of further specific charges which would reduce the amount of the payment must be made without prejudice of the provisions outlined above in this article.

#### Article 5: Modifications to the project

1. Modifications in the project must be introduced by the LP according to the rules and procedures stated in the programme manual. Where relevant, in order to come into effect, these modifications must be approved by the relevant programme body/ies.

#### Article 6: Document keeping, audit and evaluation

1. Programme bodies, national bodies, as well as any relevant EU body, are entitled to audit the use of funds by the PPs or to arrange for such an audit to be carried out by authorised persons.

2. The LP must provide all documents required for the audit, as well as all necessary information, and give access to its business premises, as well as project-related locations.

3. The LP must also provide all necessary information and access to documents for the purpose of carrying out programme or project evaluations to any authorised evaluator.

4. The LP is obliged to ensure that all files, documents and data related to the project are retained for audit purposes. The documents must be kept for at least a 5-year retention period from 31 December of the year in which the last payment by the MA to the project is made. Longer retention periods may apply in case of State Aid or in accordance with national rules.

5. Should this co-financing contract have been terminated, the rights and duties stipulated in this article must, however, persist.

6. The MA has the right to withhold the payments to the LP until all required information and documentation has been delivered or made available otherwise in the required way.

7. The MA has the right to conduct sample checks in addition to the national financial control bodies' checks.

8. The MA, assisted by the joint secretariat, can at any moment request additional information and supporting documents from the LP and PP, in order to perform its certifying tasks.

9. The MA has the right to suspend payments should the project become subject to controls or audits by the MA/JS, AA or relevant EU bodies until these controls or audits have been completed. Should the AA issue statements on the national control systems and identify problems of a systemic character, the MA has the right to suspend payments to the LP until the case has been resolved.

#### Article 7: Roles and responsibilities, liability

1. The LP undertakes to comply with the body of rules and regulations referred to in Article 1 of this co-financing contract (including any amendments made to these rules and regulations), as well as relevant national regulations and all other rules applicable to the LP.

2. The LP must assume all responsibilities laid down in the programme manual; in particular, the main responsibilities of the LP and the responsibilities after the project closure.

3. The LP must make sure that the project implementation is in line with the work plan, the time schedule and the approved budget, as indicated in the project data.

4. The LP must lay down the arrangements for its relations with the PPs and liabilities in a partnership agreement that fulfils the minimum requirements stipulated in the programme manual.

5. The LP undertakes to inform the MA immediately about any circumstances that delay, hinder or make impossible the realisation of the project, as well as all circumstances that mean a change of the disbursement conditions, or which would entitle the MA to terminate this co-financing contract, to discontinue payments or to demand repayment of the co-financing, in full or in part.

6. The LP is responsible for providing the MA with any information required and requested in terms of the project, without delay.

#### Article 8: Recoveries and unduly paid out funds

1. If any programme body, national body or any relevant EU body should discover any unduly paid out funds, or should the MA be notified of such cases, it must, if necessary in consultation with the relevant national bodies of the participating countries concerned and by informing the relevant programme bodies, demand repayment of the co-financing in whole or in part from the LP.

2. The LP ensures that, if applicable, the PP involved repays the LP any amounts unduly paid in accordance with the partnership agreement and the programme manual. The amount to be repaid can be withdrawn from the next payment to the LP or, where applicable, remaining payments can be suspended. In the case of closed projects or upon request by the MA for ongoing projects, the LP is obligated to transfer the unduly paid out funds to the MA.

OPTIONAL: If the LP or a PP involved in this project fails to repay unduly paid funds in another project funded by the programme, the MA has the right to withdraw the corresponding funds relating to the LP or PP in question from any open payment in this project.

#### Article 9: Information and communication, publicity and intellectual property rights

1. The LP ensures that the PPs comply with all publicity, communication and branding obligations according to the regulations listed in Article 1 of this document, and as further specified in the programme manual.

2. The LP takes full responsibility for the content of any notice, publication or publicity product provided to the MA which has been developed by the LP, any of the PPs, or third parties on behalf of the LP or the PPs. Should a third party claim compensation for damages (e.g., due to an infringement of intellectual property rights), the LP will indemnify the MA should the MA suffer any damage because of the content of the publicity and information material.

3. On behalf of the programme bodies and of other programme promoters at national level, the MA is entitled to use the outputs of the project in order to guarantee a wide spread of the project deliverables and outputs, and to make them available to the public. The LP agrees that the outputs are forwarded by the MA to other programme authorities, as well as the countries participating in the programme, to use this material to showcase how the co-financing is used.

4. Any communication campaign, media appearance or other publicity of the project must be communicated to the MA for potential website updates or showcases.

5. In the spirit of cooperation and exchange, the LP and the PPs must ensure that all the outputs and results produced as a result of the project are in the public interest and publicly available. They should be accessible and available to the general public in a usable format. The MA/JS and any other relevant programme, EU and national body can use them for information and communication purposes in the framework of the programme.

6. The LP ensures that it has all rights to use any pre-existing intellectual property rights, if necessary for the implementation of the project.

7. The LP must inform the MA if there is any sensitive or confidential information, or any pre-existing intellectual property rights related to the project that must be respected.

8. The project must comply with the web platform requirements described in the programme manual.

9. The LP authorises the MA to use communication and visibility material produced by the project to showcase how the co-financing is used. Furthermore, the LP authorises the relevant programme body/ies to forward this material to other programme bodies, programme promoters at national level, as well as Union institutions, bodies, offices or agencies. For this purpose, the LP ensures that a royalty-free, non-exclusive and irrevocable licence to use such material and any pre-existing rights attached to it is granted to the aforementioned Programme and Union bodies in accordance with Annex IX of (EU) 2021/ 1060 and further specified in the programme manual.

10. The MA must be authorised to publish, in whatever form and on or by whatever medium, including the Internet, (parts of) the project data in order to fulfil its own reporting, communication and visibility obligations arising from the body of rules and regulations listed in Article 1. Personal data must be processed in line with the GDPR (cf. Article 13 of this document).

#### Article 10: Assignment, legal succession

1. The MA is entitled at any time to assign its rights to third parties under the co-financing contract. Should the MA decide to do so, it will immediately inform the LP.

2. The LP is allowed to assign its duties and rights to third parties under the co-financing contract only after prior written consent from the MA.

3. In the event of legal succession, the LP must transfer all rights and duties under this co-financing contract to its legal successor and inform the MA of this legal succession. The same applies in the case of legal succession for one or more of the PPs.

#### Article 11: Complaints and litigation

1. The LP is entitled to file a formal complaint on behalf of the partnership against any act and/or decision by the JS/MA/programme bodies related to the execution of the co-financing contract.

2. This contract is governed by and construed in accordance with the laws of [country of the MA]. Thus, the laws of [country of the MA] shall apply to all legal relations arising in connection with this contract.

3. Should a dispute arise between the MA and the LP, amicable solutions or mediation procedures must be used prior to legal proceedings. The procedure to follow must be laid down in part of the programme manual.

OPTIONAL: in the case of litigation, the court/ tribunal of [XXX] must be competent. Proceedings must be in the language of the country in which the litigation is taking place.

In the case of contradiction between translations of this document and the English version, the common intention must take precedence.

#### Article 12: Termination of the contract

1. The MA may terminate the co-financing contract and demand the repayment of programme co-financing, in full or in part, if:

a) the information the PPs were required to provide in the assessment and selection procedure, negotiation phase or the implementation of the project was false or incomplete;

b) the LP fails to fulfil any condition or obligation resulting from the co-financing contract;

c) a partner becomes insolvent, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of bankruptcy proceedings, or proceedings concerning those matters, or is in any other comparable situation;

d) the partners, or any related person, have committed fraud or are involved in any illegal activity detrimental to the EU’s financial interests;

e) the termination of the participation of a project partner or a change in a project partner’s status substantially affects the implementation of the project or puts into question the award decision;

f) the project has not been or cannot be fully implemented, or it has not been or cannot be implemented in due time;

g) the project significantly failed to reach the objectives, results and outputs planned in the

application form, unless duly justified;

h) the LP has failed to submit required reports, proof or necessary information requested by the programme bodies within the set deadline, provided that the LP has received at least one written reminder setting the deadline and specifying the legal consequences of a failure to comply with the requirements;

i) the programme co-financing has been partially or entirely applied for purposes other than those agreed upon;

j) the LP has impeded or prevented the auditing of the project, or failed to retain the project documentation required for the audit;

k) the LP has failed to immediately report events delaying or preventing the implementation of the project, or any circumstances leading to its modification;

l) EU legislation and/or national legislation has been violated;

n) the co-financing contract has not given rise to any payment within two years of its signature.

2. Upon termination of this contract by the MA, the LP must receive a written notice with necessary instruction regarding the closure of the project. Where termination of the contract is based on paragraph 1 of this article, the MA may request full or partial repayment of amounts already paid from the co-financing, in proportion to the gravity of the irregularity in question, after allowing the LP to submit its clarification. The MA must inform the LP by giving a [XXX] day written notice and without paying compensation of any kind.

3. In the case of force majeure; i.e., if exceptional circumstances make implementation of the project excessively difficult or dangerous, and if the co-financing contract can no longer be executed effectively and appropriately, the parties may terminate the co-financing contract by serving a [XXX]-day written notice, without being required to pay indemnity. The MA may reimburse the unavoidable residual expenditures incurred during the notice period (but only for activities and expenditures that have been properly executed).

4. The LP is entitled to request payments from the programme only for the part of the project carried out and activities executed before the termination of the contract.

OPTIONAL: Should factors behind the recovery procedure show a violation of the co-financing contract, the MA will consider the termination of the contract as a last resort. The partnership will be heard before taking a final decision on the termination of the contract.

6. The contract may be terminated by written mutual agreement between the LP and MA.

#### Article 13: Data management and data protection

1. Any personal data under the co-financing contract must be processed by the MA/ JS or other relevant programme bodies in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural person with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation/ GDPR).

2. In accordance with Article 4 of (EU) 1060/2021, the MA, other programme bodies and the Commission must be allowed to process personal data, where necessary for the purpose of carrying out their respective obligations under the body of rules and regulations referred to in Article 1, in particular for monitoring, reporting, communication, publication, evaluation, financial management, verifications and audits and, where applicable, for determining the eligibility of participants.

3. The MA may transfer project and /or personal data to relevant programme bodies and national authorities for the same purposes as listed in paragraph 2 of this article.

###### Final Provisions

1. This co-financing contract must enter into force on the date the last of its two parties, MA or LP, signs. In the case of project activities carried out in the phase after the day of the selection decision by the MC/SC but before the entry into force of this co-financing contract as defined above, the provisions of this co-financing contract must already apply to this phase of project implementation.

2. The execution period of this contract must end when the obligations set forth in the legal basis of this contract are fulfilled both by the Managing Authority and the Lead Beneficiary.

OPTIONAL: If any provision in this co-financing contract should be wholly or partly ineffective, the parties to the co-financing contract undertake to replace the ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision.

3. Amendments to the present contract must be made in writing.

###### Signatures

Ideally, this section should be handled in the online system.