DELEGATION AGREEMENT
BETWEEN THE EUROPEAN UNION,
REPRESENTED BY THE EUROPEAN COMMISSION

AND

THE EUROPEAN DEFENCE AGENCY

ON THE IMPLEMENTATION OF A PREPARATORY ACTION ON DEFENCE RESEARCH (PADR)

31 May 2017
DELEGATION AGREEMENT

This agreement is concluded between

The European Union (hereinafter referred to as ‘the Union’), represented by the European Commission (hereinafter referred to as ‘the Commission’), represented for the purposes of signing this Delegation Agreement by Ms Lowri Evans, Director-General, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

on the one part,

and

the European Defence Agency, established by Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency, represented by Mr Jorge Domecq, its Chief Executive, hereinafter referred to as "EDA"

on the other part,

hereinafter collectively referred to as ‘the Parties’

HAVE AGREED

to the Terms and Conditions and the following Annexes:

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which form an integral part of this Delegation Agreement, hereinafter referred to as ‘the Agreement’.

The provisions in the Terms and Conditions of this Agreement take precedence over its Annexes.
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Article 1 – Subject of the Agreement

The Commission has decided to entrust budget implementation tasks (‘the entrusted tasks’) to EDA, in line with the Commission Decision C(2017) 2262.

The purpose of this Agreement is to define the entrusted tasks, to lay down the rules applicable to their implementation and to define the rights and obligations of the Parties in their implementation.

Article 2 – Description of the entrusted tasks

The tasks entrusted to EDA are described in Annex I.

Article 3 – Estimated budget for the entrusted tasks

The estimated budget for the entrusted tasks is set out in Annex II.

It contains the estimated expenditure for the implementation of the entrusted tasks and the estimated remuneration for their implementation.

Article 4 – Entry into force of the Agreement, duration and deadline for contracting

4.1 The Agreement shall enter into force on the date on which the last Party signs.

4.2 The entrusted tasks shall be carried out within a period of six years as of the first day of the month following the date when the last Party signs the Agreement.

4.3 Individual contracts and grant agreements which implement this Agreement shall be signed by the date defined in the Transfer of funds agreement but not later than 31 December 2020.

Article 5 – Union financial contribution

5.1 The indicative total maximum amount of the Union contribution for the implementation of the entrusted tasks is EUR 91,406,000.00 (ninety one million four hundred six thousand euro), subject to the adoption of the budget and financing decision1. The maximum amount of the Union contribution for the implementation of the entrusted tasks shall be defined in the Transfer of funds agreements to be concluded between the Parties.

The Union contribution shall cover:

(i) expenditure incurred for the implementation of the entrusted tasks and accepted by the Commission;
(ii) EDA remuneration in the form of a lump sum for the implementation of the entrusted tasks.

The indicative total EDA remuneration for the duration of the implementation of the entrusted tasks shall be a maximum amount of EUR 4,765,140.00 (four million seven hundred sixty five thousand one hundred forty euro).

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1 The delegated amounts in 2018 and 2019 are subject to the approval by the Council and the Parliament in budgetary procedure and the agreement of the EFTA countries on the corresponding contribution of Norway. Subject to amendment of Protocol 31 to the EEA Agreement, Norway may contribute additional resources to the Preparatory Action on Defence Research (PADR). The amount of the contribution of Norway shall be 2.34% of the EU budget commitment appropriations allocated to the PADR for the same year.
The remuneration of EDA shall be specified in the Transfer of funds agreement and shall not exceed 7% of the estimated expenditure to be incurred for the implementation of the entrusted tasks approved by the Commission.

For 2017, EDA remuneration shall not exceed 5% of the amount budgeted for estimated expenditure to be incurred for the implementation of the entrusted tasks, as indicated under “direct costs” in annex II.

Notwithstanding the ceilings set out above, the remuneration will be reviewed by the Parties if the Union contribution is lower than the amount indicated in Article 5.1.

The Union contribution shall be used solely for the purposes of the implementation of this Agreement.

5.2 Determination of the final amount of the Union contribution

The final amount of the Union contribution depends on the actual extent to which the entrusted tasks are implemented in accordance with the Agreement.

The final amount is determined by the Commission when the payment of the balance is made and shall correspond to the lower of the following two amounts:

- the sum of the expenditure incurred for the implementation of the entrusted tasks accepted by the Commission and of the remuneration for their implementation, after:
  (i) excluding in full expenditure not compliant with the conditions set out in Article 6;
  (ii) applying any financial corrections in accordance with Article 25.

or

- the maximum Union contribution set out in Article 5.1 and the Transfer of funds agreement.

The Commission shall formally notify to EDA the amount of expenditure accepted before paying the balance.

Before excluding expenditure under point (i), the Commission shall formally notify its intention to EDA:

- specifying the amount it intends to exclude from Union financing and the reasons for the exclusion; and
- inviting it to submit observations within 30 days of receiving notification.

If the Commission does not receive any observations or decides to exclude expenditure regardless of the observations it has received, it shall formally notify confirmation together with the amount of expenditure accepted.

Article 6 – Conditions for the acceptance of expenditure

6.1 The Commission shall accept expenditure which meets the following criteria:

a) it is actually incurred by EDA. Amounts recovered by EDA in accordance with Article 15 shall not be considered as actually incurred. In case EDA is unable to recover an amount, it should prove to the Commission that it took all the necessary
measures to recover the due amount. The amount not recovered by EDA may otherwise not be accepted as expenditure;
b) it is incurred in the period set out in Article 4.2;
c) it is indicated in the estimated budget in Annex II;
d) it is directly linked to the implementation of the entrusted tasks;
e) it is identifiable and verifiable, in particular being recorded in the accounts of EDA and determined according to the usual cost accounting practices of the entrusted entity;
f) it complies with the requirements of applicable tax and social legislation;
g) it is reasonable, justified and complies with the principles of sound financial management.

6.2 The Commission shall not accept the following as expenditure incurred for the implementation of entrusted tasks:

a) Costs not compliant with Article 6.1, in particular:
   (i) Debt and debt service charges (interest);
   (ii) Provisions for future losses and debts;
   (iii) Exchange losses;
   (iv) Bank costs charged by EDA's bank for the transfers from the Commission;
   (v) Expenditure resulting from commitments made during suspension of the implementation of the Agreement;
   (vi) Deductible VAT;
   (vii) Contributions in kind.

b) Expenditure declared under another Union or Euratom funding instrument.

c) Costs incurred by EDA for the management of the funding referred to in Article 6.1.

6.3 This Article does not apply to the remuneration of EDA for the implementation of the entrusted tasks foreseen in Article 5.

Article 7 – Obligations of the entrusted entity or person for the implementation of the entrusted tasks

EDA shall perform the entrusted tasks in accordance with the principles of sound financial management, transparency and non-discrimination. It shall:

a) carry out, under its own responsibility, the entrusted tasks in accordance with the Agreement;

b) ensure the visibility of Union funding in accordance with Article 8;

c) set up and ensure the functioning of an internal control system that is effective and efficient;

d) use an accounting system that provides accurate, complete and reliable information in a timely manner;

e) be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of it;
f) ensure the ex post publication of information on recipients of Union funds in accordance with Article 9;

g) ensure a reasonable protection of personal data as laid down in Directive 95/46/EC and Regulation (EC) No 45/2001 in accordance with Article 10;

h) apply appropriate rules and procedures for the management of funding as procurement and grants in accordance with Article 11 and 12;

i) carry out controls, in accordance with Article 14;

j) recover funds unduly paid in accordance with Article 15;

k) take appropriate measures to prevent, detect and correct irregularities and fraud;

l) report to the Commission on the implementation of the entrusted tasks in accordance with Article 21, 21 bis, 21quater and 21 quinquies.

Article 8 – Visibility of Union funding

Unless the Commission requests or agrees otherwise, any communication or publication related to the implementation of the entrusted tasks, made by EDA, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall indicate Union support and shall display the European Union emblem.

When displayed in association with another logo, the European Union emblem must have appropriate prominence.

The obligation to display the European Union emblem does not confer to EDA right of exclusive use. EDA shall not appropriate the European Union emblem or any similar trademark or logo, either by registration or by any other means.

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, EDA is authorised to use the European Union emblem without prior permission from the Commission.

Any communication or publication related to the implementation of the entrusted tasks, made by EDA in any form and using any means, shall indicate that it reflects only the author's view and that the Commission is not responsible for any use that may be made of the information it contains.

Article 9 – Publication of information on the recipients of Union funding

EDA shall publish annually on its website information on the recipients of Union funds in the form of:

a) grants;

b) contracts with a value equal to or higher than EUR 15,000.

The following information shall be published with due observance of the requirements of confidentiality and security, in particular the protection of personal data:

a) the name of the recipient;

b) the locality of the recipient;

c) the amount awarded;
d) the nature and purpose of the measure.

For the purpose of point (b) the term 'locality' shall mean:

(i) when the recipient is a legal person, its address;
(ii) when the recipient is a natural person, the region at NUTS 2 level or, in the case of third countries, the equivalent to the region at NUTS 2 level.

As far as personal data referring to natural persons are concerned, the information published shall be removed two years after the end of the financial year in which the funds were awarded. The same shall apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

The publication shall be waived if such disclosure risks (1) threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or (2) would harm the commercial interests of the recipients or (3) for security considerations.

EDA shall provide the Commission with the address of the website where this information can be found. A reference to the address of the website will be made on the website of the Commission. The Commission is authorised to publish directly the relevant information on its website.

Article 10 – Processing of personal data by EDA

10.1 Where the implementation of the entrusted tasks requires the processing of personal data by EDA, it shall be processed by EDA pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data.

Such data shall be processed by the "data controllers", involved in their respective data process treatment, solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of the applicable rules.

The contractors and beneficiaries shall have the right of access to their personal data and the right to rectify any such data. Should they have any queries concerning the processing of their personal data, they shall address them to the data controllers.

The data controllers shall also supervise the processing of personal data by the beneficiaries, if the contracts and grant agreements require the processing of personal data by them.

The contractors and beneficiaries shall have the right of recourse at any time to the European Data Protection Supervisor.

10.2 EDA shall ensure that the following conditions are applicable to contractors and beneficiaries receiving funding under the Agreement when they process personal data included in the corresponding grant agreements and/or contracts.

The contractors or beneficiaries must process personal data under the contract or grant agreement with EDA in compliance with applicable Union and national law on data protection (including authorisations or notification requirements).
The contractors or beneficiaries may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the contract or grant agreement.

The contractors or beneficiaries must inform the personnel whose personal data are collected and processed by EDA and by the Commission.

**Article 11 – Procurement rules and procedures**

All the contracts awarded as a result of the implementation of the entrusted tasks shall be signed before the date set out in Article 4.3.

EDA shall apply its own rules and procedures for the award of such contracts.

EDA shall not participate in procurement procedures launched by it under this Delegation Agreement.

In applying its own rules and procedures, EDA shall:

a) apply the principle of broad competition of tenderers to obtain the best value for money and limit negotiated procedures to reasonable amounts or duly justified cases;

b) ensure adequate ex ante publication, in particular of calls for tenders;

c) ensure equal treatment, proportionality and non-discrimination;

d) prevent conflicts of interests throughout the entire procurement procedure;

e) apply transparent, non-discriminatory, efficient and effective review procedures.

EDA shall exclude entities which are in one of the following situations from participation in the procurement procedure or from being awarded the contract:

(i) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(ii) they or persons having powers of representation, decision-making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;

(iii) they or persons having powers of representation, decision-making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union’s financial interests;

(iv) are subject to a conflict of interests;

(v) are guilty of misrepresenting the information required as a condition of participation in the procurement procedure or fail to supply that information.

EDA shall ensure that the conditions applicable to it under Articles 8, 17, 24, 34, 35 are also applicable to contractors and to their subcontractors receiving funding under the Agreement and the Transfer of funds agreements.
Article 12 – Grant rules and procedures

All the agreements for the grants awarded as a result of the implementation of the entrusted tasks shall be signed before the date set out in Article 4.3. EDA shall use a model grant agreement provided to it by the Commission.

EDA shall apply the Title VI of the Financial Regulation\(^2\) for the award of such grants in accordance with the guidelines and implementing provisions developed by the Commission and the provision of Commission Decision C(2017) 2262.

EDA shall not participate (as coordinator, partner, sub-contractor, third party or other) in proposals submitted in calls for proposals launched by it under this Delegation Agreement.

EDA shall ensure that the conditions applicable to it under Articles 8, 17, 24, 34, 35 are also applicable to beneficiaries receiving funding under the Agreement and, within the framework of the implementation of the grant, to the beneficiary’s contractors, subcontractors and recipients of financial support.

Article 13 – Prize rules and procedures

NOT APPLICABLE

Article 14 – Controls by EDA

EDA shall carry out ex ante and ex post controls in accordance with Articles 7.c and 7.k, including, where appropriate, on-the-spot checks on risk-based samples of transactions to ensure that underlying transactions are legal and regular and that actions financed from the Union budget are effectively carried out and implemented correctly.

EDA shall take account of risk and cost-efficiency considerations when designing its control approach. The sample of transactions shall include a risk-based part and a random part. The sample of on-the-spot checks shall be large enough in order to provide reasonable assurance as to the legality and regularity and sound financial management of the underlying transactions, including the prevention, detection and correction of fraud.

Article 15 – Recovery by EDA

EDA shall recover from contractors and beneficiaries any amount that was paid to them but is not due under the terms of the contracts or grant agreements.

Where funds have been unduly paid to or incorrectly used by Contractors or Grant Beneficiaries, EDA shall take all applicable measures in accordance with its own Regulations and Rules to recover those funds, including, where appropriate, by bringing legal proceedings and by endeavouring to assign claims against its Contractors or Grant Beneficiaries to the European Commission. Where EDA has exhausted such measures and the non-recovery is not the result of error or negligence on the part of EDA, the Commission will consider the amounts that could not be recovered from Contractors and/or Grant Beneficiaries as eligible costs of the Action.

\(^2\) Regulation (EU, Euratom) No 966/2012.
Article 16 – Central exclusion database

16.1 EDA shall designate a person responsible for relations with the Commission as regards all issues related to the central exclusion database.

16.2 The Commission shall provide EDA, through the designated person, with access to the information contained in the central exclusion database for the purpose of implementing the entrusted funds.

16.3 EDA shall, through the designated person, communicate to the Commission information on candidates and applicants if they, or persons having powers of representation, decision-making or control over them, have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such conduct was detrimental to the Union’s financial interests.

The designated person shall transmit the information within three months of the issue of the judgment, using the standard template[^3]. A copy of the definitive judgement shall also be provided.

The designated person shall inform the Commission, without delay, whenever information transmitted needs to be modified or updated.

Article 17 – Conflict of interests

EDA shall take all necessary measures to prevent any situation where the impartial and objective implementation of the entrusted tasks is compromised for reasons involving economic interest, political or national affinity, family or emotional life or any other direct or indirect interest (‘conflict of interests’).

Any situation constituting or likely to lead to a conflict of interests during the implementation of the entrusted tasks shall be notified to the Commission in writing without delay. EDA shall immediately take all the necessary steps to rectify this situation. The Commission reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

Article 18 – Intellectual property rights

Intellectual Property Rights applicable to grants shall be determined in the Calls for Proposals. The Intellectual Property Rights applicable to procurement shall be determined in the Call for Tenders.

Article 19 – Evaluation by EDA

If EDA carries out or commissions an evaluation of the impact of the implementation of the entrusted tasks, it shall provide the Commission with a copy of the evaluation report.

Article 20 – Obligation to inform the Commission

EDA shall provide any information requested by the Commission in order to verify compliance with the Agreement.

EDA shall also inform the Commission without delay of:

a) any substantial changes to its systems, rules or procedures that relate to the management of the entrusted Union funds;

b) any substantial change in its legal, financial, technical, organisational or ownership situation;

c) any fraud or irregularity which comes to its attention and any situation which may give rise thereto and the measures taken;

d) any event that may harm the Union financial interests;

e) any event which may delay or jeopardize performance of the tasks entrusted to it under this Agreement.

Article 21 – Annual Reporting

21.1 By 31 January of the year N, EDA shall transmit the following preliminary financial information as required by the Commission to comply with its accounting closure requirements for the year N-1 including:

a) an estimate of the costs incurred in the year N-1;

b) an updated forecast of the costs expected for the year N;

c) information on the balance of the PADR bank account specified in Article 22.7 of the Agreement and the amount of interest yielded on the bank account in the year N-1, supported by a bank statement dated 31 December year N-1.

21.2 By 15 February of the year N, EDA shall submit to the Commission an Annual Implementation Report on the actions of the year N-1 indicating at least:

a) a summary description of the performance of the entrusted tasks and the use of the funds allocated to it, covering technical, schedule and financial aspects;

b) a table detailing per grant the commitments, costs and payments in the year N-1 incurred in the implementation of the entrusted tasks; a calculation for the cumulative commitments, costs and payments incurred from the start of the Agreement and a detailed breakdown of the costs of the past year with a clear distinction between costs per grant; other costs incurred for the implementation of the PADR tasks (experts);

c) a summary of the controls carried out and their main findings, if applicable;

d) the estimated yearly amount of commitments, payments, costs and pre-financings for the overall duration of the Agreement;

e) an overview of the content of the risk register including the results of the effectiveness of any risk analysis and mitigation actions, as well as, if appropriate, the recommendations for possible improvements of the overall risk management approach.
A more detailed list of topics is included in Annex I of this Agreement and a reporting manual shall be agreed by the Parties before the first submission of the annual reporting.

21.3 The Annual Implementation Report shall be accompanied by a management declaration to be drawn in accordance with the template in Annex IV confirming that, in the opinion of those in charge of the management of the entrusted funds:

a) the information is properly presented, complete and accurate;
b) the expenditure was used for the intended purpose as defined in this Agreement;
c) the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

21.4 The Annual Implementation Report referred to in Article 21.2 shall be accompanied by an opinion of an independent audit body to be provided to the Commission no later than 15 June. The opinion shall be drawn up in accordance with internationally accepted audit standards. The opinion shall establish whether:

a) the accounts give a true and fair view, and the eligibility requirements have been respected;
b) the control systems put in place function properly;
c) the underlying transactions are legal and regular;
d) the audit work puts in doubt the assertions made in the management declaration.

21.5 The Commission shall have 30 calendar days from receipt of the Annual Implementation Report to approve or reject it or to request any supporting documentation or additional information.

21.6 If additional information or document is requested within the above mentioned terms, the time-limit for scrutiny shall be suspended and shall resume once the documents or information concerned has been received by the Commission. EDA shall supply the requested information or the revised documents within 30 calendar days of the request or, if required, within any other time-limit agreed by the Commission. Approval of the report shall not imply recognition of the legality and regularity of the underlying expenditure or of the authenticity, completeness and correctness of the declaration and information they contain.

21.7 If EDA fails to submit the documents referred to in paragraphs 21.1 and 21.2 or the requested information or the revised documents referred to in paragraph 21.3 by the set deadline or if the submitted new documents are not properly revised, the Commission reserves the right to suspend payments in accordance with Article 28, to suspend implementation of the entrusted tasks in accordance with Article 29 or to terminate the Agreement and the Transfer of funds agreements in accordance with Article 30.
Article 21 bis – Half-year Reporting

21bis.1 During the period of execution of this Agreement, EDA shall submit to the Commission a mid-year report at the latest 30 calendar days after the expiry of the relevant reporting periods occurring end of June.

21bis.2 The half-year implementation report shall consist of two parts:

a) a section on the performance of the tasks under the Agreement summarising programmatic, technical and contractual aspects;

b) a section on the use of funds transferred to EDA under the Agreement providing a breakdown of the expenditure with:

   (i) the actual operational commitments, costs and payments per grant;

   (ii) the actual costs related to the experts;

   (iii) a forecast of the future commitment, cost and payment projections for the overall duration of the agreement.

A more detailed list of topics is included in Annex I of this Agreement and a reporting manual shall be agreed by the Parties before the first submission of the annual reporting.

21bis.3 The Commission shall have 30 calendar days from receipt of the half-year report to approve or reject it or to request any supporting documentation or additional information.

Article 21 ter – Mid-Term Reporting

A Technical Synthesis Reports shall be prepared by EDA at the project mid-term reviews. The report shall include the evaluation of the achievements and make recommendations to the Commission.

Article 21 quater – Final Reporting

21quater.1 EDA shall submit to the Commission, as soon as possible and at the latest 90 calendar days after completion of the entrusted tasks under this Agreement or termination thereof, a Final Report, which shall contain in particular:

a) a description of the results generated in the performance of this Agreement with respect to the expected achievements (as defined in particular in the work programme);

b) the total amount of costs incurred under this Agreement, including:

   (i) the total amount per grant or contract actually committed and paid by EDA to beneficiaries for the grant or contractors for procurement activities;

   (ii) the total amount of costs per grant incurred by EDA;

 c) the control and audit measures to which EDA itself has been subjected or will be subjected;

d) the following annexes shall be attached to the Final Report:

   (i) a summary table setting out the final amount of each grant or contract related for each grant and the reference of the related implementation report for each action;
(ii) a summary report indicating the number and results of on-the-spot checks and ex-post audits carried out by EDA, accompanied, if appropriate, by current information on measures taken to remedy any problems identified;

A more detailed list of topics is included in Annex I of this Agreement and a reporting manual shall be agreed by the Parties before the first submission of the annual reporting.

21quater.2 The Commission has 60 calendar days from receipt of the Final Report to approve or reject it or to request any supporting documentation or additional information. If additional information or documentation is requested within the 60 days period mentioned above, the time-limit for scrutiny shall be suspended and shall start again once the documentation or information concerned has been received by the Commission. EDA shall supply the requested information within 30 calendar days of the request.

**Article 21 quinquies - Ad-hoc Reporting**

Whenever it is deemed necessary, the Commission may ask for information and ad-hoc reports necessary for the performance of the tasks delegated. EDA shall supply additional information within 15 calendar days of the request and ad-hoc reports within 30 calendar days of the request.

**Article 22 – Requests for payment and payments**

**22.1 Pre-financing payments**

Pre-financing split in several instalments and further pre-financing payments triggered by the end of an implementation period:

A first pre-financing payment of an amount specified in the first Transfer of funds shall be paid to EDA within 30 days of the entry into force of this first Transfer of funds agreement, except if the payments are suspended in accordance with Article 28.

EDA shall submit a request for a further pre-financing payment within 60 days following the end of the following periods of implementation:

- First period: from the entry into force of the first Transfer of Funds Agreement to the 31st December 2017;
- Second period: from 01 January 2018 to the 31st December 2018
- Third period: from 01 January 2019 to the 31st December 2019
- Fourth period: from 01 January 2020 to the 31st December 2020
- Fifth period: from 01 January 2021 to the 31st December 2021

The request for a further pre-financing payment shall be accompanied by the documents referred to in Article 21.2 for the relevant period.

The amount of the further pre-financing payments shall be defined in the corresponding Transfer of Funds Agreements, based on the available payment appropriations for this PADR.

Each further pre-financing payment shall be paid to EDA within 60 days of receipt of the request for payment and accompanying documents, provided that the reports referred to in
Art. 21.2 are approved, except if the payment deadline or the payments are suspended in accordance with Articles 27 and 28.

22.2 Interest generated by pre-financing payment[s]

Interest generated by pre-financing payments shall be used for the implementation of the entrusted tasks.

Interest generated shall be reported to the Commission in the context of the annual reporting foreseen in Article 21.1.

22.3 Interim payments

NOT APPLICABLE

22.4 Payment of the balance

The payment of the balance reimburses the remaining part of the expenditure incurred for the implementation of the entrusted tasks and covers the remaining part of the remuneration for their implementation.

EDA shall submit a request for payment of the balance by 15 February of the year following the end of the period set out in the Transfer of funds agreement.

The request for payment of the balance shall be accompanied by the documents referred to in Articles 21.2 for the last year of implementation of the entrusted tasks and 21 quarter.

The amount of the balance shall be determined following approval of the request for payment of the balance and of the accompanying documents by deducting the earlier payments from the final amount of the Union contribution determined in accordance with Article 5.2. Approval of the request for payment of the balance and of the accompanying documents shall not imply recognition of the legality and regularity of the underlying expenditure or of the authenticity, completeness and correctness of the declarations and information they contain. Approval shall be without prejudice to any checks and audits which may be carried out in accordance with Article 24.

If the balance is negative, the payment of the balance takes the form of recovery.

If the balance is positive, the Commission shall pay it within 60 days from receiving the request for payment of the balance, except if the payment deadline or the payments are suspended in accordance with Articles 27 and 28.

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

22.6 Late-payment interest

If the Commission does not pay within the payment deadlines, EDA is entitled to late-payment interest at the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros ("the reference rate"), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the Official Journal of the European Union.

If the late-payment interest is lower than or equal to EUR 200, it will be paid to EDA only upon request submitted within two months of receiving the late payment.
Late-payment interest is not due to Member States of the Union (including regional and local government authorities or other public bodies acting on behalf of a Member State for the purpose of this Agreement).

Suspension of the payment deadline or payments in accordance with Articles 27 and 28 shall not be considered as late payment.

Late-payment interest covers the period running from the day following the due date for payment up to and including the date of payment.

Late-payment interest is not considered for the purposes of calculating the final amount of the Union contribution.

22.7 Bank account

All payments shall be made to EDA's bank account as indicated below:

Name of bank: ING
Address of branch: Rond Point Robert Schuman 5, 1040 Brussels
Precise denomination of the account holder: European Defence Agency

Full account number (including bank codes):
IBAN code: BE44 3631 6690 8445
Code BIC: BBRUBEBB

The bank account mentioned above should allow the related interest yielded to be identified. Otherwise, the accounting methods of EDA must make it possible to identify the funds paid by the Union and the interest or other benefits yielded by those funds.

Article 23 – Currency

23.1 Payments shall be made by the Commission in euro.

23.2 The documents and the requests for payments referred to in Articles 21 and 22 shall be submitted in euro.

Where EDA keeps its accounts in a currency other than the euro, it shall convert expenditure incurred in another currency into euro at the average of the daily exchange rates published in the C series of the Official Journal of the European Union⁴, determined over the corresponding reporting period.

Where no daily euro exchange rate is published in the Official Journal of the European Union for the currency in question, conversion shall be made at the average of the monthly accounting rates established by the Commission and published on its website⁵, determined over the corresponding reporting period.

Where EDA keeps its accounts in euro, it shall convert expenditure incurred in another currency into euro according to its usual accounting practices.

⁵ http://ec.europa.eu/budget/contracts_grants/info_contracts/infouro-infouro_en.cfm
Article 24 – Checks, audits, investigations and evaluation by the Commission, OLAF and the Court of Auditors

24.1 The Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors may at any time during the implementation of the entrusted tasks and up to five years after the payment of the balance carry out checks and audits on the implementation of the entrusted tasks.

In addition, the Commission may carry out interim or final evaluation of the impact of the implementation of the entrusted tasks measured against the objectives of the Union programme concerned.

24.2 EDA shall keep all original documents, especially accounting and tax records stored on any appropriate medium, including digitalised originals when they are authorised by the applicable rules and under the conditions laid down therein, for a period of five years after the payment of the balance.

This period set out in the first subparagraph shall be longer if there are on-going investigations, audits, appeals, litigation or pursuit of claims concerning the Agreement. In such cases, EDA shall keep the documents until such investigations, audits, appeals, litigation or pursuit of claims are closed.

24.3 EDA shall provide any information, including information in electronic format, requested by the Commission or by any outside persons authorised by it, in the context of checks, audits or evaluations.

During an on-the-spot visit, EDA shall grant Commission staff and outside persons authorised by it access to its sites and premises and to all the necessary information, including information in electronic format. It shall ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form, including original documents as necessary.

24.4 On the basis of the audit findings, the Commission may take the measures which it considers necessary, including financial corrections and recovery of all or part of the payments made.

24.5 OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) \(^6\) and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities \(^7\) with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with the implementation of the entrusted tasks.

To that end, EDA shall provide OLAF with all the facilities and the information and documentation on operations concerned to comprehensively exercise its competences. OLAF shall have the same rights as the Commission, notably the right of access and

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\(^6\) OJ L 248, 18.9.2013, p. 1

\(^7\) OJ L 292, 15.11.1996, p.2.
the right to request the handing-over of original documents, for the purpose of carrying out on-the-spot checks and inspections.

Where appropriate, OLAF findings may lead to financial corrections and recovery by the Commission.

EDA shall designate a contact point which shall have the appropriate powers to cooperate directly with OLAF in order to facilitate the latter's operational activities. It shall inform the Commission of the designated contact point within one month from the entry into force of the Agreement. EDA shall inform without delay of any changes of the above mentioned contact point.

24.6 The European Court of Auditors shall have the same rights as the Commission, notably right of access, for the purpose of audits.

Article 25 – Financial corrections

If EDA has breached any of its obligations under the Agreement, the Commission may apply financial corrections by excluding expenditure from Union financing, reducing remuneration, or both, in proportion to the seriousness of the breach.

Before applying financial corrections, the Commission shall formally notify its intention to EDA:

- specifying the corrections it intends to apply and the reasons and;
- inviting it to submit observations within 30 days of receiving notification.

If the Commission does not receive any observations or decides to apply the financial corrections regardless of observations it has received, it shall formally notify confirmation of the corrections.

Article 26 – Recovery by the Commission

26.1 If any amount is to be recovered under the terms of this Agreement, EDA shall repay the Commission the amount in question.

Before recovery, the Commission shall formally notify EDA of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and inviting EDA to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by EDA, the Commission decides to pursue the recovery procedure, the Commission may confirm recovery by formally notifying a debit note (“debit note”), specifying the terms and the date for payment.

If payment has not been made by the date specified in the debit note, the Commission shall recover the amount due:

a) by offsetting it against any amounts owed to EDA by the Union or the European Atomic Energy Community (Euratom) (“offsetting”); in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Commission may recover by offsetting before the due date; EDA's prior consent shall not be required; an action may be brought against such
offsetting before the General Court of the European Union pursuant to Article 263 TFEU;

b) by taking legal action in accordance with Article 33.

26.2 If payment has not been made by the date set out in the debit note, the amount due shall bear interest at the rate established in Article 22.6. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when the Commission actually receives payment in full of the outstanding amount.

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

26.3 Bank charges


26.4 The Commission may only waive recovery of all or part of amounts to be repaid by EDA if the conditions set out in Article 80 of 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 are met.

Article 27 – Suspension of the payment deadlines

27.1 The Commission may suspend the payment deadline at any time by formally notifying EDA that its request for payment cannot be met because:

a) it does not comply with the provisions of this Agreement;

b) the appropriate documents as referred to in Article 21.1 have not been produced. The payment deadline for the settlement of the balance may also be suspended because the audit opinion as referred in Article 21.2 has not been produced within 30 days following the receipt of the request for payment;

c) there is doubt about the acceptability of the underlying expenditure; or

d) information comes to the notice of the Commission indicating a significant deficiency in the functioning of the internal control system or that the expenditure certified by EDA is linked to a serious irregularity and has not been corrected. In this case, the Commission may suspend the payment deadline only if it is necessary to prevent significant damage to the financial interests of the Union.

EDA shall be notified as soon as possible of any such suspension, together with the reasons thereof.

Suspension shall take effect on the date when notification is sent by the Commission. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further checks, including on-the-spot checks, are carried out.

If the suspension exceeds two months, EDA may request the Commission to review whether the suspension is to be continued.
Article 28 – Suspension of payments

28.1 The Commission may suspend payments:

a) if it has evidence that EDA has committed substantial errors, irregularities or fraud during the assessment by the Commission of its rules and procedures, its selection procedure by the Commission or the implementation of the entrusted tasks, or if EDA fails to comply with its obligations under this Agreement;

b) if it has evidence that EDA has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under the present or other agreements funded by Union funds which call into question the reliability of its internal control system or the legality and regularity of the underlying expenditure;

c) if it suspects substantial errors, irregularities, fraud or breach of obligations committed by EDA in its selection procedure or the implementation of the entrusted tasks and needs to check whether they have occurred.

28.2 Before suspending payments, the Commission shall formally notify EDA of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a) and (b) of Article 28.1, the necessary conditions for resuming payments. EDA shall be invited to make any observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by EDA the Commission decides to stop the procedure of payment suspension, the Commission shall formally notify EDA thereof.

If no observations have been submitted or if, despite the observations submitted by EDA, the Commission decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying EDA specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of Article 28.1, the definitive conditions for resuming payments or, in the case referred to in point (c) of Article 28.1, the indicative date of completion of the necessary checks.

The suspension of payments shall take effect on the date when the notification is sent by the Commission.

In order to resume payments, EDA shall endeavour to meet the notified conditions as soon as possible and shall inform the Commission of any progress made in this respect.

The Commission shall, as soon as it considers that the conditions for resuming payments have been met or the necessary checks, including on-the-spot checks, have been carried out, formally notify EDA thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation in accordance with Article 29 or to terminate the Agreement in accordance with Article 30, EDA is not entitled to submit any requests for payments referred to in Article 22.

The corresponding requests for payments may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments.
Article 29 – Suspension of implementation of the entrusted tasks

29.1 Suspension of the implementation of the entrusted tasks by EDA

EDA may suspend the implementation of all or part of the entrusted tasks if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of force majeure. EDA shall inform the Commission without delay, giving the necessary reasons and details and the foreseeable date of resumption. Unless the Agreement is terminated in accordance with Article 30, EDA shall, once the circumstances allow resuming the implementation of the entrusted tasks, inform the Commission immediately.

29.2 Suspension of the implementation of the entrusted tasks by the Commission

The Commission may suspend the implementation of the entrusted tasks in full or in part if:

a) it has evidence that EDA has committed substantial errors, irregularities or fraud during the assessment by the Commission of its rules and procedures, its selection procedure by the Commission or the implementation of the entrusted tasks or if EDA fails to comply with its obligations under the Agreement;

b) it has evidence that EDA has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under the present or other agreements funded by Union funds which call into question the reliability of its internal control system or the legality and regularity of the underlying expenditure;

c) it suspects substantial errors, irregularities, fraud or breach of obligations committed by EDA in its selection procedure by the Commission or the implementation of the entrusted tasks and needs to check whether they have occurred.

Before suspension, the Commission shall formally notify EDA of its intention to suspend, specifying the reasons thereof and in the cases referred to in points (a) and (b) of the first paragraph, the necessary conditions for resuming the implementation. EDA shall be invited to submit observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by EDA, the Commission decides to stop the suspension procedure, it shall formally notify EDA thereof.

If no observations have been submitted, or if, despite the observations submitted by EDA, the Commission decides to pursue the suspension procedure, it may proceed with the suspension by formally notifying EDA thereof, specifying the reasons for the suspension, and in the cases referred to in points (a) and (b) of the first paragraph the definitive conditions for resuming the implementation or, in the case referred to in point (c) of the first paragraph, the indicative date of completion of the necessary checks.

The suspension shall take effect on the day of the receipt of the notification by EDA or on a later date, where the notification so provides.

In order to resume the implementation, EDA shall endeavour to meet the notified conditions as soon as possible and shall inform the Commission of any progress made in this respect.

Unless the Agreement is terminated under Article 30, the Commission shall as soon as it considers that the conditions for resuming the implementation have been met or the necessary checks, including on-the-spot checks, have been carried out, formally notify EDA thereof.
29.3 Any expenditure resulting from commitments made by EDA during the period of suspension shall not be reimbursed.

Article 30 – Termination of the Agreement

30.1 If either Party believes that the Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by formally notifying the other Party thereof. Termination shall take effect 60 days from receipt of the notification, unless agreed otherwise by the Parties.

30.2 The Commission may also decide to terminate the Agreement in the following circumstances:

a) EDA has undergone changes in its legal, financial, technical, organisational or ownership situation or in its systems, rules or procedures which are likely to substantially affect the implementation of the entrusted tasks or call into question the outcome of the assessment by the Commission of its rules and procedures or its selection by the Commission;

b) EDA has failed to comply with its obligations under the Agreement;

c) in the event of force majeure notified in accordance with Article 31 or in the event of suspension of the implementation of the entrusted tasks by EDA, where resuming implementation is impossible or would call into question the outcome of the assessment by the Commission of its rules and procedures or its selection by the Commission;

d) if EDA is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into arrangements with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulation;

e) if EDA or any related person has been found guilty of professional misconduct proven by any means;

f) if the Commission has evidence that EDA or any related person has committed fraud, corruption or is involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;

g) if the Commission has evidence that EDA or any related person has committed substantial errors, irregularities or fraud in the implementation of the entrusted tasks, including in the event of submission of false information during the assessment by the Commission of its rules and procedures or its selection procedure by the Commission;

h) if the Commission has evidence that EDA has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other agreements funded by Union funds which call into question the reliability of its internal control system or the legality and regularity of the underlying expenditure.

For the purposes of points (e), (f) and (g), any related person shall mean any natural person that has the power to represent EDA or to take decisions on its behalf.

Before terminating the Agreement, the Commission shall formally notify EDA of its intention to terminate, specifying the reasons thereof and inviting EDA, within 45
calendar days from receipt of the notification, to submit observations and, in the case of point (b), to inform the Commission about the measures taken to ensure that it continues to fulfil its obligations under the agreement concerned.

If, after examination of the observations submitted by EDA, the Commission decides to stop the termination procedure, it shall formally notify EDA thereof.

If no observations have been submitted or if, despite the observations submitted by EDA, the Commission decides to pursue the termination procedure, it may terminate the Agreement by formally notifying EDA thereof, specifying the reasons for the termination.

In the cases referred to in points (a), (b) and (d), the formal notification shall specify the date on which the termination takes effect.

In the cases referred to in points (c), (e), (f), (g) and (h), the termination shall take effect on the day following the date on which the formal notification was received by EDA.

When the Commission terminates this Agreement it undertakes to honour the legal obligations arising from the implementation of the Agreement whose entry into force precedes the date on which the termination of the Agreement takes effect.

### 30.3 Effects of termination

Where the Agreement is terminated, EDA shall submit a request for payment of the balance in accordance with Article 22.

On that basis, the Commission shall determine the final amount of the Union contribution in accordance with Article 5. The Commission shall not accept expenditure relating to grant agreements which are not completed at the date of termination, unless EDA cannot reasonably terminate them on legal grounds.

If no request for payment of the balance is received by the date specified in Article 22.4, the Commission shall not take account of expenditure not included in accounts submitted in accordance with Article 21.

Neither Party shall be entitled to claim compensation by the other Party on account of a termination of the Agreement.

### Article 31 - Force majeure

'Force majeure' shall mean any unforeseeable exceptional situation or event beyond the Parties' control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part or on the part of any third Parties and which proves to be inevitable in spite of exercising all due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure.

A Party faced with force majeure shall formally notify the other Party without delay, stating the nature, likely duration and foreseeable effects.

The Parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the implementation of the entrusted tasks as soon as possible.

The Party faced with force majeure shall not be held to be in breach of its obligations under the Agreement if it has been prevented from fulfilling them by force majeure.
Article 32 – Communication details of the Parties

Any communication relating to the Agreement or to the implementation of the entrusted tasks shall be made in writing, using the following addresses:

For the Commission

European Commission
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Directorate Space Policy, Copernicus and Defence
Unit 14
1040, Brussels, Belgium
E-mail address: GROW-14@ec.europa.eu

and

Financial management of Space programmes
Unit 02
1040, Brussels, Belgium
E-mail address: GROW-02@ec.europa.eu

For EDA

European Defence Agency
Directorate European Synergy and Innovation
Rue des Drapiers 17-23, 1050 Brussels
E-mail address: esi@eda.europa.eu

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by any of the Parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

Formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

Any communication is deemed to have been made when it is received by the receiving Party, unless the Agreement refers to the date when the communication was sent.

Electronic communication is deemed to have been received by the receiving Party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed above. Dispatch shall be deemed unsuccessful if the sending Party receives a message of non-delivery. In this case, the sending Party shall immediately send again such communication to any of the other addresses listed above. In case of unsuccessful dispatch, the sending Party shall not be held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Commission using the postal services is considered to have been received by the Commission on the date on which it is registered by the department identified above.
Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving Party on the date of receipt indicated on the return receipt or equivalent.

Article 33 – Applicable law and settlement of disputes

The Agreement is governed by Union law complemented, where necessary, by the law of Belgium.

The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or validity of the Agreement.

Any dispute which cannot be settled amicably shall be submitted to the jurisdiction of the General Court or, on appeal, the Court of Justice of the European Union.

Article 34 – Liability

34.1 The Commission shall not, in any circumstances, be held liable for any damage caused or sustained by EDA, including any damage caused to third parties as a consequence of or during the implementation of the entrusted tasks.

34.2 Except in cases of force majeure, EDA shall compensate the Commission for any damage sustained by it as a result of the implementation of the entrusted tasks.

Article 35 – Confidentiality

The Parties shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the entrusted tasks and which are explicitly indicated in writing as confidential.

EDA shall not use confidential information and documents for any reason other than fulfilling its obligations under the Agreement, unless otherwise agreed with the Commission in writing.

The Parties shall be bound by the obligation referred to in the above paragraph during the implementation of the Agreement and for a period of five years starting from the date of its termination, unless:

a) the concerned Party agrees to release the other Party from the confidentiality obligations earlier;

b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;

c) the disclosure of the confidential information is required by law.

EDA enjoys the right to use the information generated by the projects, including their results, for the purpose of developing, implementing and monitoring its policies or programmes and limited to a non-commercial and non-competitive use. Such information shall be made available exclusively to EDA staff\(^8\), on a need-to-know basis and under the strict obligation of non-disclosure.

\(^8\) EDA staff means personnel directly employed by EDA, including Seconded National Experts, and explicitly excludes all the representatives of the Member States or the defence industry in EDA Boards, working groups, captechs or other groups of consultation, technical or other assistance,
Article 36 – Security Aspects

1. The implementation of the entrusted tasks shall be subject to security rules, with which the Parties undertake to comply in carrying out their activities or responsibilities pursuant to this Agreement.

2. Classified information exchanged or produced in the context of the PADR shall be handled in accordance with:
   - the Commission Decision (EU, Euratom) 444/2015 and EDA security rules both being considered equivalent;
   - the Common approach on sharing EU Classified Information with EU institutions, agencies, offices and bodies and the corresponding arrangement between the General Secretariat of the Council, the Commission and the European External Action Service, on the one part, and EDA, on the other;
   - the PADR Programme Security Instructions (PSI).

Unclassified information exchanged or produced in the context of the PADR shall be handled in accordance with the PADR Programme Security Instructions.

For the handling of classified information, the need-to-know principle shall be applied by EDA.

In the context of the PADR, access to classified information exchanged or produced in the PADR shall be strictly limited to the staff members of EDA and the Commission, to the appointed representatives at the expert group "As-if Programme Committee" and to the contractors/beneficiaries of the Commission and EDA involved in the PADR, subject to personnel security clearance requirement in accordance with Commission Decision (EU, Euratom) 444/2015. Access to and use of this information in any other context shall be decided by the Commission, after consultation with EDA.

3. With the exception of the functions of Article 42.2.(b) of the Commission Decision (EU, Euratom) 444/2015 on determining the security classification of any information to be provided to candidates or created by contractors, all other security functions envisaged for the 'contracting authority' within the meaning of Chapter 6 (Industrial Security) of the Commission Decision (EU, Euratom) 444/2015 are delegated to EDA, including the preparation of a Security Classification Guide for each classified project, as provided in Annex I point 6.2 of this Delegation Agreement.

4. With regard to EUCI created or handled by the contractors or beneficiaries, the Commission shall be considered to be the originator, and the rights incumbent on the originator shall be exercised by the Commission.

decision making or with any other objective, which takes place under the authority or with the participation of EDA.


12 To be adopted by the EU institutions and EDA.

13 The PADR PSI adoption pending.
5. All communication of EDA with the National Security Authorities which is necessary for the implementation of the entrusted tasks, as provided in the Commission Decision (EU, Euratom) 444/2015 and the PADR PSI, shall be conducted through the Commission Security Authority.\(^\text{14}\)

**Article 37 – Processing of personal data by the Commission**

Any personal data included in the Agreement shall be processed by the Commission pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data.

Such data shall be processed by the following data controller, Alain Alexis, solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

EDA shall have the right of access to its personal data and the right to rectify any such data. Should it have any queries concerning the processing of its personal data, it shall address them to the data controller.

EDA shall have the right of recourse at any time to the European Data Protection Supervisor.

**Article 38 – Assignment of claims for payments to third parties**

Claims for payments of EDA against the Commission may not be assigned to third parties, except in duly justified cases where the situation warrants it.

The assignment shall only be enforceable against the Commission if it has accepted the assignment on the basis of a written and reasoned request to that effect made by EDA. In the absence of such acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Commission.

In no circumstances shall such an assignment release EDA from its obligations towards the Commission.

**Article 39 – Language**

All requests for payments, reports and documents referred to in Articles 21 and 22 shall be transmitted in English.

**Article 40 – Amendments to the Agreement**

Any amendment to the Agreement shall be made in writing.

An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the outcome of the assessment by the Commission of EDA's rules and procedures or its selection by the Commission.

Any request for amendment shall be duly justified and shall be sent to the other Party in due time before it is due to take effect, except in cases duly substantiated by the Party requesting the amendment and accepted by the other Party.

\(^{14}\) See Articles 42, 44, 45 and 47 of the Commission Decision (EU, Euratom) 2015/444.
Amendments shall enter into force on the date on which the last Party signs or on the date of approval of the request for amendment.

Amendments shall take effect on a date agreed by the Parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

SIGNATURES

For the Commission,
Lowri Evans, Director-General
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
On behalf of the European Union

For EDA
Jorge Domecq, Chief Executive

Done at Brussels,
Done at Brussels, 31st May 2017

In duplicate in English
ANNEX I

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1 Purpose of the document

This document outlines the description of the obligations and tasks, the management and the interface processes between EDA and the Commission for the work of the entrusted tasks.
2 Work Programme

The research and technology (R&T) programme of the Preparatory Action on Defence Research (PADR) will be implemented through annual work programmes. The annual work programme is the operational document detailing sufficiently the research activities to be funded under each Financing Decision. It will be composed of R&T projects in the area of defence-related technologies and products.

The Commission will adopt the annual work programme and transmit it to EDA, which will publish it on a dedicated website.

Funding may take the form of grants or procurement as provided for by Regulation (EU, Euratom) No 966/2012. Grants may take any of the forms provided for in Article 123 of Regulation (EU, Euratom) No 966/2012, taking into account the objectives of the action.
3 Publication of Calls

EDA shall publish open calls for proposals or calls for tenders for the delegated tasks of the Work Programme, in line with the principles of sound financial management, non-discrimination and transparency. The publication shall be done in the Research and Innovation Participant Portal of the Commission.

In accordance with the relevant modalities of Regulation (EU, Euratom) No 966/2012 and Regulation (EU) No 1268/2012, sufficient time periods for preparing proposals shall be provided, with reasonable notice of upcoming calls for proposals through the publication of a work programme and a reasonable time period between the publication of a call for proposals and the deadline for submitting a proposal.

EDA shall specify in calls for proposals the planned date by which all applicants will be informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements, in accordance with Article 128(2) of Regulation (EU, Euratom) No 966/2012.

A Calls Package shall be transmitted as an annex to the Transfer of Funds Agreement to EDA by the Commission after the adoption of the financing decision for each year. The Calls Package shall include the Calls Text and the General Annexes\(^1\) to be published with the Call.

Once finalised by EDA, the draft calls of proposals or tenders shall be submitted for approval to the Commission prior to publication.

The Commission will have to propose amendments or approve the draft calls for proposals or tenders within 10 working days from the date of submission. In case of amendments, EDA shall provide the updated documents to the Commission within 10 working days from the request date.

No Commission reaction within the time limit may be deemed as tacit consent.

Once the approval of the Commission is granted, EDA shall issue the calls. EDA may organise an info day related to the Calls for Proposals together with the Commission.

EDA shall ensure that sufficient guidance and information is made available to all potential applicants at the time of publication of the call for proposals, in particular the applicable model grant agreement.

\(^1\) The annexes will include information such as the list of countries eligible for participation and funding, the standard admissibility conditions and related requirements, the standard eligibility conditions, the types of action, the specific provisions and funding rates, the technology readiness levels (TRL), the evaluation rules, budgetary flexibility, actions involving classified information, provisions on rights and obligations of applicants and intellectual property rights and a general template of the Special Report.
4 Evaluation of Proposals

Evaluation Committee

In accordance with the relevant articles\(^2\) of the Financial Regulation, EDA shall establish an Evaluation Committee composed of at least 3 (three) persons, 2 (two) of which coming from bodies which are set up under the TFEU or Euratom Treaty and with no hierarchical link between them. An official of EDA in charge of the evaluation shall moderate the Evaluation Committee.

The Evaluation Committee shall be assisted by independent technical experts. EDA shall establish a database of independent experts in defence research or related areas for the evaluation of the proposals. Such database shall be established on the basis of calls for applications organised by EDA. EDA shall select out of these experts the necessary number of independent technical experts to assist the Evaluation Committee of a given call for proposals or tenders. The appointment of technical experts shall be \textit{ad personam}.

Independent technical experts shall be chosen on the basis of their skills, experience and knowledge appropriate to carry out the tasks assigned to them. Personnel Security Clearance at the level \textit{SECRET UE/EU SECRET} shall be required before appointment. All candidates included in the database shall be required to be validated by the Member State that has issued their Personnel Security Clearance.

EDA shall take appropriate measure to seek a balanced composition within the technical experts group in terms of relevant skills, experience, knowledge, geographical diversity and gender and taking into account the situation in the field of the action.

EDA shall ensure that an expert faced with a conflict of interest in relation to a matter on which the expert is required to provide an opinion does not advise or assist on the specific matter in question.

The list of independent experts will be submitted to the Commission for approval. The Commission may ask modification of the list within 5 working days from the receipt of the list. No Commission reaction within the time limit may be deemed as tacit consent.

Publication or other communication of the names of the technical experts shall be done in accordance with Regulation (EC) No 45/2001 and after agreement of the Commission.

EDA shall designate an independent observer to provide recommendations to EDA and the Commission on the overall evaluation process. Such expert will be selected from the database of independent experts. The expenses of such observer shall be covered by the PADR budget dedicated for contracting experts. Commission officers may also participate in the evaluation as observers.

All exchanges with independent experts, including the conclusion of contracts for their appointment and any amendment thereto, may be done through electronic exchange systems set up by EDA as stipulated in Article 287(4) of Regulation (EU) No. 1268/2012.


\(^3\) Experts participating at the technical experts group assisting the Evaluation Committee regarding proposals of a specific Call shall not be appointed in an Elsa review panel for the same Call.
Evaluation

All proposals received by EDA will be recorded in a register indicating the date and time of receipt. The evaluation will then proceed in 2 stages: admissibility and eligibility check, and an evaluation of the proposal by the Evaluation Committee.

Admissibility and eligibility check will verify compliance with the criteria and provisions in the general annexes of the Calls Package (see chapter 3 of this annex).

If any of the information is missing or incorrect, the proposal may be rejected.

All proposals accepted after the eligibility check will be assessed by the Evaluation Committee on the basis of the general annexes of the Calls Package.

The scoring, weighing and thresholds for the evaluation criteria are defined in the general annexes of the Calls Package.

The independent technical experts shall first conduct a technical scrutiny of proposals and prepare detailed recommendations for each proposal, according to the evaluation criteria, for the Evaluation Committee in the form of reports.

The scrutiny starts with the individual assessment by independent technical experts followed by consensus meetings during which they will come to a common view on the proposals, thereby awarding scores on all evaluation criteria. The Evaluation Committee preliminary ranks the proposals based on these scores. Based on the consensus reports, the Evaluation Committee prepares the draft Evaluation Summary Reports.

The Evaluation Committee organises the Panel meeting with some or all of the experts involved in the consensus stage of the technical scrutiny. It appoints a Chair and a Rapporteur. The Panel may change the comments and/or scores of proposals as a result of checking inconsistencies, calibrating proposals among different areas/subtopics (benchmarking), resolving minority views and/or cross-reading proposals with equal scores. All changes of scores or content should be reflected in the Evaluation Summary Reports and documented, with reasons, in the Panel Report.

EDA shall submit to the Commission the ranking list, together with the Panel Report and the Evaluation Summary Reports, for information purposes. In addition, in case EDA intends to adopt a decision not in line with the recommendations of the Evaluation Committee, it should receive the approval of the Commission before further action is taken, after which EDA shall be able to start preparations for the grant agreement or contract.

With the exception of classified information, all exchanges with technical experts and the Evaluation Committee shall be made through an electronic exchange system.

All applicants will be informed in writing of the outcome of the evaluation of the proposal by EDA, three months after the deadline for submission of proposals at the latest.

All applicants shall have the right to submit a request for review of the evaluation of their proposal. The coordinator of the proposal shall submit the request within 15 days of the date on which the EDA has informed the coordinator of the evaluation results. EDA shall notify to the Commission any such request. EDA shall organise the examination of the request no later than 15 days from the date of the notification. The examination shall cover only the procedural aspects of the evaluation, and not the merits of the proposal. The review shall be conducted by an evaluation review committee composed of EDA officers. It shall be chaired by an official from a department other than that responsible for the call for proposals. The committee may recommend one of the following:
(a) re-evaluation of the proposal primarily by evaluators not involved in the previous evaluation;

(b) confirmation of the initial evaluation.

On the basis of such recommendation, a decision shall be taken by EDA and notified to the coordinator of the proposal. EDA shall take such decision without undue delay. If (a) is recommended, EDA shall organize the re-evaluation within 1 month from the date of notification of such recommendation.

The review procedure shall not delay the selection process of proposals which are not the subject of requests for review.

The review procedure shall not preclude any other actions the applicant may take in accordance with Union law.
5 Ethical, Legal and Societal Aspects (ELSA) reviews, checks and audits

EDA will carry out the review of ethical, legal and societal aspects of the proposals submitted in the context of the PADR, as well as perform checks and audits of funded projects in which such aspects were identified.

EDA shall make the process of the review of ethical, legal and societal aspects as transparent as possible and ensure that it is carried out in a timely manner avoiding, where possible, the resubmission of documents.

The ELSA review procedure focusses on the compliance with ethical rules and standards, relevant European legislation international law binding upon the Union, national authorisations and ELSA approvals, proportionality of the research methods and the applicants' awareness of the ethical and legal aspects, as well as social impact of the planned research.

The PADR ELSA procedures are based on the ethics appraisal procedure established in the context of Horizon 2020 yet simplified and with important differences to comply with the specificities of defence research. The Commission will provide EDA with more detailed information on how to conduct ELSA reviews before the first review is organised.

ELSA experts

EDA shall establish a database of experts in military ethical and legal issues. Such database shall be established on the basis of call(s) for applications organised by EDA. EDA shall select out of these experts 3 (three) to 5 (five) experts to be appointed to the ELSA review panel. The appointment of experts to the review panel shall be *ad personam*.

Personnel Security Clearance at the level SECRET UE/EU SECRET shall be required before appointment. All experts shall be required to be validated by the Member State that has issued their Personnel Security Clearance.

ELSA Review Procedure

All proposals considered for funding will undergo an ELSA review. The project officer of EDA in charge of the review shall moderate the ELSA panel but shall not provide an opinion on the substance.

EDA shall designate an independent observer to provide recommendations to EDA and the Commission on the process. Such expert will be selected from the database of independent experts. The expenses of such observer shall be covered by the PADR budget dedicated for contracting experts. Commission officers may also participate as observers.

The review starts with an ELSA individual screening by independent experts followed by a consensus meeting during which they will come to a common view on ethical, legal and societal aspects related to the proposals. When appropriate the ELSA experts can formulate recommendations in their ELSA assessment consensus report.

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4 EDA may organise one single call for applications for evaluation and ELSA review experts. In such case, the tasks and the requirements for each category of experts should be clearly described.

5 Experts appointed in an ELSA review panel regarding proposals of a specific Call shall not be appointed independent technical experts assisting the Evaluation Committee for the same Call.
EDA takes these recommendations into consideration during the grant preparation phase, e.g.,
by requesting additional information/documents to the Consortium, or including ELSA
deliverables in Annex I.

ELSA Checks, Reviews and Audits

If necessary, EDA or the Commission can perform checks, reviews and audits on ELSA
during and after the termination of the projects in accordance with Article 22 of the Grant
Agreement.
6 Security scrutiny

All research activities carried out under the PADR, including those implemented by EDA under this delegation agreement, shall be subject to a security scrutiny in order to identify items that may involve EU Classified Information.

The security scrutiny procedure will be carried out by the Commission, assisted by a group of governmental experts appointed by the National Security Authorities of the EU Member States and Norway. EDA shall also appoint one expert to this group.

6.1 Security Classification

Information which is not sensitive shall not be specifically marked.

Information which is sensitive, but not classified can be marked as 'Limited'.

Information which is classified shall be of one of the following security classification levels:

- RESTREINT UE/EU RESTRICTED;
- CONFIDENTIEL UE/EU CONFIDENTIAL;
- SECRET UE/ EU SECRET.

6.2 Security scrutiny procedure

The Commission, assisted by a group of governmental experts, will carry out the security scrutiny to determine the required level of protection of the following items:

1. All actions included in the annual work programmes;
2. The proposals submitted in response to a call for proposals or tender;
3. All the results of the research activities funded under the PADR.

Security classification

The Commission will determine in advance the security classification in the annual work programmes per topic and per project. Calls for proposals should be treated according to their pre-defined security classification level. In the case of a call for proposals/tenders requiring the use of classified information in the tendering/proposal submission process, such information shall be contained in a separate document classified at the appropriate level. This classified document shall be made accessible to candidates fulfilling all the relevant requirements according to the provisions of the PADR Programme Security Instruction (PADR PSI).

Security scrutiny on proposals submitted

The Commission shall scrutinise proposals submitted with a view of identifying the expected security classification level, and proper protection, of grant deliverables. Such security scrutiny shall be conducted only on proposals which after the evaluation procedure may be eligible for funding. EDA may recommend to the Commission a classification level for the
results of the proposals for consideration based on possible recommendations of the technical experts during the phase of the evaluation of proposals. The Commission shall determine in advance the level of protection of the projects and their deliverables. For each classified project a Security Aspects Letter (SAL) including a Security Classification Guide (SCG) will be issued by EDA for the proposals, according to the PADR PSI. EDA shall prepare the SCG accompanying the SAL of classified projects on the basis of the Commission decision on the classification of the project and the related instructions.

**Security scrutiny on results**

The results of projects under this delegation agreement may require additional or different security protection than the tenders or proposals. The Commission shall apply the security scrutiny to all the projects' results after the completion of the projects' implementation.

EDA may recommend a review of the classification level of specific results at any stage of the project implementation, if it considers that the information contained or to be contained in these results may need a different level of protection.
7 Grant agreement

In the context of signature of the grant agreement, EDA shall make requests for information and documentation as promptly as possible. Where possible, resubmission of documents shall be avoided. EDA shall give applicants reasonable time to submit the information and documentation required for the signature of the grant agreement.

EDA shall use a model grant agreement provided to it by the Commission.
8 Management processes

This chapter provides details on the specific requirements for the management processes of the research activities defined in the Work Programme.

8.1 Budget

Within the Financial Decision, the financial follow-up by the Commission aims at controlling the budget and its deviation and ensuring that payments to EDA are properly monitored and documented.

EDA shall maintain and report on the budget through the reports (Annex I, Chapter 9).

8.2 Documentation management

EDA shall enable the Commission to have access to all the documents related to the research actions.

EDA shall grant continuous and real-time access to all the documentation of the research activities related to the present Delegation Agreement through the establishment of a shared registry with the Commission containing:

- the tenders and calls for proposals documentation;
- the tenders and proposals evaluation reports;
- the call evaluation reports;
- the reports of the independent observers;
- the projects mid-term reports;
- the activity reports and the corresponding financial statements made by the beneficiaries in support for their request for payment;
- the technical reports and the corresponding invoices supplied by the contractors in support of their request for payment;
- the amendments to the research actions;
- any technical, monitoring, contractual or financial information produced during the lifetime of the project;
- the research actions deliverables;
- the technical synthesis reports elaborated by EDA at the mid-term reviews and at the end of the research and coordination and support actions, and contracts;
- the review reports produced by independent experts designated by the Agency to review the projects.

In addition, for every scrutiny process, EDA will also send to the Commission relevant documents as specified in Chapter 7.3.
8.3 Commission scrutiny process

The Commission may exercise the scrutiny rights in the projects funded by the PADR.

The purpose of the scrutiny is to obtain the Commission's consent on the technical scope of the grants/contracts.

The Commission may exercise the scrutiny during project work. EDA shall:

- invite the Commission authorised representatives as observers in the mid-term reviews of the projects;

- prepare and send to the Commission for consent, a Technical Synthesis Report (see Annex I, 8.2), on the basis of the Mid Term Review of the project, including recommendations for follow-on project activities.

Time limits for scrutiny

The Commission shall have 10 working days from the receipt of the documents to give its consent. If required the time limit may be extended by a written notice to EDA.

The Commission's consent may be subject to conditions. In such cases, EDA shall provide the updated documents to the Commission within 10 working days from the request date.

No Commission reaction within the time limit may be deemed as tacit consent.
9 Reports

This section describes the different reports that are to be prepared and delivered by EDA to the Commission in order to support the overall programme execution:

- Call Evaluation Reports;
- Technical Synthesis Reports;
- Annual Implementation Reports (AIR);
- Half-year Report;
- Final Report.

The AIR, the Half-year Report and the Final Report shall be drafted according to a template provided in a reporting manual to be agreed by the Parties before the first submission of the annual reporting.

9.1 Call Evaluation Reports

Upon finalisation of the evaluation of a Call, EDA will provide a detailed overview of the evaluation organised for the Call according to a template provided in a reporting manual to be agreed by the Parties before the first submission of the annual reporting.

9.2 Technical synthesis report

Technical synthesis reports will be prepared by EDA at the projects mid-term reviews and at the end of the projects/studies.

The reports will include the evaluation of the achievements and make recommendations to the Commission.

9.3 Annual Implementation Report (AIR)

The Annual Implementation Report (AIR) is to be submitted on an annual basis by EDA to the Commission as stated in Article 21 (2) of the Delegation Agreement.

The following topics are to be embedded in the report as a minimum:

- a summary of the tasks performed;
- the total amount of the grants awarded and the total amounts paid and the balance due to be paid to the beneficiaries;
- the calls for tender and calls for proposals published, grant agreements signed, compliance with deadlines imposed by the Financial Regulation and in particular time to inform, time to grant and time to pay, number and amount of negotiated procedures and the evaluation review results;
- number of on-going projects, their state of play, monitoring of deadlines;
- overview of the received and evaluated proposals, experts contracts and payments made to the experts;
- information on the operation of the internal control and financial circuits of the Agency, including an assessment of the entries in the registers for exceptions, non-compliance events and internal control weaknesses reported;

- list of alleged irregularities or fraud, OLAF investigations, cases referred to the Ombudsman, actions brought against the acts of the Agency, requests for documents and parliamentary questions about the Agency;

- security management work;

- issues and difficulties encountered during evaluation and work of projects;

- the amount of the EDA remuneration;

- lessons learnt from the closed or on-going projects;

- main achievements expected for the next 6 months.

### 9.4 Half-year Report

The Half-year Report is to be submitted by EDA to the Commission as stated in Article 21bis (1) of the Delegation Agreement.

The following topics are to be embedded in the report as a minimum:

- Main achievements over the reported period;

- Closed projects/grants;

- New launched procurements/grants;

- Schedule information: the schedule of all the activities per Work Programme with their interdependencies;

- Financial information (budget spent, contract signed, costs and payments)

- Issues and difficulties encountered during the reporting period;

- Main achievements expected for the next 6 months.

### 9.5 Final Report

The Final Report is to be submitted by EDA to the Commission as stated in Article 21quater (1) of the Delegation Agreement.

The following topics are to be embedded in the report as a minimum:

- a summary of the tasks performed;

- the total amount of the grants awarded and the total amounts paid;
- the calls for tender and calls for proposals published, grant agreements signed, compliance with deadlines imposed by the Financial Regulation and in particular time to inform, time to grant and time to pay, number and amount of negotiated procedures and the evaluation review results;

- overview of the received and evaluated proposals, experts contracts and payments made to the experts;

- information on the operation of the internal control and financial circuits of the Agency, including an assessment of the entries in the registers for exceptions, non-compliance events and internal control weaknesses reported;

- list of alleged irregularities or fraud, OLAF investigations, cases referred to the Ombudsman, actions brought against the acts of the Agency, requests for documents and parliamentary questions about the Agency;

- security management work;

- issues and difficulties encountered during evaluation and work of projects;

- the amount of the EDA remuneration;

- lessons learnt from the projects.
10 Bi-lateral Project Meetings (BPM)

The bi-lateral project meetings (BPM) between the Commission and the EDA will be convened on the initiative of the Commission no later than one month after the comments have been exchanged on the AIR and the Half-year Report.

The scope of these meetings is to review the progress of the RTD activities the implementation of which has been delegated to EDA, establish actions, review actions taken by the parties at previous meetings, discuss and address difficulties of the action implementation and decide on further course of action.

A BPM Action Item List will be maintained by EDA and reviewed at each meeting.

Minutes of meeting (MOM) will be prepared and finalised by EDA and signed no later than one week after the date of the meeting. Decisions agreed in the MOM are considered binding by both parties and constitute a formal authorisation to proceed with the concerned course of action.

The following documentation shall be exchanged prior to the meeting:

- Submission by EDA of the AIR and the Half-year Report, including annexes;
- Submission by the Commission of corresponding questions for clarification;
- Submission by EDA of the answers to the questions by the Commission.

The meetings are chaired by the Commission Head of Unit in charge of the Preparatory Action on defence research or his/her authorised representative. EDA shall be represented by the Head of Unit in charge of the Preparatory Action on defence research or his/her authorised representative. A draft BPM agenda is proposed by EDA for EC endorsement prior to the meeting. The agenda shall address as priority:

- Changes to the RTD projects scope, schedule or costs;
- Difficulties encountered during the reporting period.
Boxes are in green color when input (to or from) or decision from the Commission is necessary.
Indicative EU Budget for Entrusted Tasks

TABLE OF INDICATIVE COMMITMENTS

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<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>TOTAL</th>
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<tr>
<td>I. DIRECT COSTS</td>
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<tr>
<td>I.a) GRANTS</td>
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<td>37.400</td>
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<td>0.30</td>
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<tr>
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<td>0.936</td>
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<td>II. INDIRECT COSTS</td>
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<tr>
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<td>25.485</td>
<td>91.406</td>
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1 Subject to amendment of Protocol 31 to the EEA Agreement, Norway may contribute additional resources to the Preparatory Action on Defence Research (PADR). The amount of the contribution of Norway shall be 2.34% of the EU budget commitment appropriations allocated to the PADR for the same year.

2 The delegated amounts for 2018 and 2019 are subject to the approval of the amount by the Council and the Parliament in budgetary procedure.

3 The delegated amounts for 2018 and 2019 are subject to the approval of the amount by the Council and the Parliament in budgetary procedure.
## TABLE OF INDICATIVE PAYMENTS

*All amounts in million €*

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<tr>
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<td>I.b) Expert reimbursement</td>
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<tr>
<td>I.c) additional GRANTS (if EFTA contribution validated, cf footnote 1)</td>
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<tr>
<td>Remuneration</td>
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<td>4.765</td>
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ANNEX III – MODEL TRANSFER OF FUNDS AGREEMENT

TRANSFER OF FUNDS AGREEMENT

Reference: [insert number]

The European Union (hereinafter referred to as ‘the Union’), represented by the European Commission (hereinafter referred to as ‘the Commission’), represented for the purposes of signing this Transfer of funds agreement by [function, DG/service, forename and surname] on the one part,

and

[full official name] [ACRONYM]
[official legal status or form]
[official registration No]³
[official address in full]
[VAT number]⁴

(hereinafter referred to as ‘[insert ACRONYM of the entrusted entity or person]’)

on the other part,

(hereinafter collectively referred to as ‘the Parties’)

In application of the Delegation Agreement [insert reference] (hereinafter 'the Delegation Agreement') signed between them,

HAVE AGREED

to the Terms and Conditions and the following Annex:

[Annex I Calls Package]⁵

which form integral part of this Transfer of funds agreement.

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¹ Model to be used in case the Delegation Agreement does not serve as the legal commitment within the meaning of Article 85 FR. In such a case, the Transfer of funds agreement, signed in principle annually, shall serve as the legal commitment within the meaning of the FR.

² The person representing the Commission must be an authorising officer (by delegation or sub-delegation) designated in accordance with document 6008 of 22.02.2001 'Mise en place de la Charte des ordonnateurs'.

³ To be filled in where applicable according to the legal status of the entrusted entity or person.

⁴ To be filled in where applicable according to the legal status of the entrusted entity or person.

⁵ A clear and exhaustive description of the entrusted tasks under the Transfer of funds agreement should be introduced.
For all the other provisions, reference should be made to the Terms and Conditions and to the Annexes of the above mentioned Delegation Agreement.

The provisions in the Terms and Conditions of this Transfer of funds agreement shall take precedence over those of the Terms and Conditions and of the Annexes to the Delegation Agreement. The terms set out in the Terms and Conditions of this Transfer of funds agreement shall take precedence over those in its Annexes.

TERMS AND CONDITIONS

Article 1 – Subject of the Transfer of funds agreement
This Transfer of funds agreement is concluded in the context of the Delegation Agreement signed between the Parties. It is drawn up in accordance with the relevant terms of the Delegation Agreement.

The purpose of this Transfer of funds agreement is to set out the maximum amount of the Union contribution for the implementation of the entrusted tasks for [the period [insert period]] [insert year] in accordance with Article 4 of the Delegation Agreement [and the tasks to be carried out by [insert Acronym of the entrusted entity or person]] for the period mentioned above.

Article 2 – Duration of the Transfer of funds agreement
The Transfer of funds agreement shall enter into force on the date on which the last Party signs.

The entrusted tasks shall be carried within a period of [insert period] as of [the first day of the month following] the date when the last Party signs the Transfer of funds agreement [insert date].

Article 3 – Union financial contribution
The maximum amount of the Union contribution for the implementation of the entrusted tasks under this Transfer of funds agreement is EUR [insert amount].

[The remuneration of [insert Acronym of the entrusted entity or person] shall be [up to] [insert percentage]% [of the final amount of the Union contribution]6 of the expenditure incurred for the implementation of the entrusted tasks approved by the Commission] [insert amount].]

SIGNATURES
For [Acronym of the entrusted entity or person], For the Commission,
[insert name, surname, function] [insert name, surname, function]

(signature) (signature)
Done at [Brussels], [date] Done at [Brussels], [date]

In duplicate in English

6 The amount of the remuneration may thus be adjusted at the time of payment of the balance.
ANNEX IV – MODEL MANAGEMENT DECLARATION

I, the undersigned, [insert forename and surname], in my capacity as [insert function in the entrusted entity or person],

Confirm, based on my own judgement and on the information at my disposal, including, inter alia, the results of the audits and controls carried out, that:

- The information submitted under Article 21.1 of the Delegation Agreement [insert reference of the Delegation Agreement] for the financial year 01/01/XXX to 31/12/XXX is properly presented, complete and accurate;
- The expenditure was used for its intended purpose as defined in the Delegation Agreement [and [insert reference to the relevant basic act]];
- The control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

[The Union contribution was used and accounted for in compliance with the obligations laid down in the Delegation Agreement and that [insert Acronym of the entrusted entity or person]:

- set up and ensures the functioning of an effective and efficient internal control system;
- uses an accounting system that provides accurate, complete and reliable information in a timely manner;
- is subject to an independent external audit, performed in accordance with internationally accepted auditing standards by a functionally independent audit service;
- applies appropriate rules and procedures for providing financing from Union funds through procurement [,,] [and] grants [and prizes]¹ in accordance with Articles 11[,] [and] 12 [and 13]² of the Delegation Agreement;
- ensures the ex post publication of information on recipients in accordance with Article 9 of the Delegation Agreement;
- ensures a reasonable protection of personal data in accordance with Article 10 of the Delegation Agreement.]³

Furthermore, I confirm that I am not aware of any undisclosed matter which could harm the interests of the Union.

¹ Option to be used in case it is foreseen that funding by the entrusted entity or person will take the form of the award of prizes.
² Option to be used in case it is foreseen that funding by the entrusted entity or person will take the form of the award of prizes.
³ To be used for international organisations and third countries. Please note that according to Article 60(5) FR the reporting obligations set out in that Article of the FR shall be without prejudice to agreements concluded with international organisations and third countries. Such agreements shall include at least the obligation of those international organisations and third countries to provide the Commission annually with a statement that, during the financial year concerned, the Union contribution was used and accounted for in compliance with the requirements set out in Article 60(2) FR and with the obligations laid down in such agreements. In the context of the negotiations with international organisations and third countries the Commission should try to obtain the maximum of the requirements set out in the first subparagraph of Article 60(5) FR.
[However, the following reservations should be noted:]^4.

[Insert place], [insert date]

...........

(signature)

[insert forename and surname]

^4 Option to be used in case of reservations.