Aide-memoire for the preparation of the

Bilateral Arrangement

on

Indirect Management Implementation

IPA II CBC programme

<IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>

*This is an aide-memoire to help the IPA II beneficiaries to prepare the Bilateral Arrangements referred to in Article 69 of the Framework Agreements (FWA). Therefore, the structure and content can be modified and the text proposed can be amended, changed or deleted as per decision of the partner countries, the only obligation being the compliance with the minimum content requirements specified in Article 69 of the FWA.*

*Instructions for using this aide-memoire (subject to the disclaimer above):*

*The text in italics and with blue background is guidance to fill the appropriate sections and should not be kept in the final draft. The text with* yellow background *must be completed as required.*

*The phrases within [Where applicable] should only be included if appropriate.*

*Examples are provided in [grey italics].*

*Please remember to delete this box, any other text in italics and all the brackets in the final version.*

*The IPA II Beneficiary XXX represents the IPA II Beneficiary where the Contracting Authority is located. The IPA II Beneficiary YYY represents the partner IPA II Beneficiary participating in the CBC programme.*

Proposal

Version of 27/02/2015

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**Between**

< the IPA II Beneficiary xxx where the Contracting Authority will be located>

On the one part

**and**

<the IPA II IPA II Beneficiary yyy where the Contracting Authority of the programme is not located>

On the other part

from now onwards referred as **“the Parties”**,

in compliance with Article 69 of the IPA II Framework Agreement (FWA) concluded between the Government of the <IPA II Beneficiary xxx> and the European Commission and the Government of<IPA II Beneficiary yyy> and the European Commission, which establishes that under indirect management the Parties shall conclude for the whole duration of the cross-border cooperation programme a bilateral arrangement setting out the measures agreed between the Parties in order to allow <IPA II Beneficiary xxx> to exercise its duties and comply with the rules for indirect management as defined in Section II and Section V Title II of the FWA,

**HAVE AGREED AS FOLLOWS**

Article 1 - The National Authorising Officer and management structure

1. In accordance with Article 74 of the FWA the National Authorising Officer (NAO) and the management structure of the <IPA II Beneficiary xxx> are the NAO and the management structure of the CBC programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>.
2. <IPA II Beneficiary yyy> commits to cooperate with the NAO and the management structure of < IPA II Beneficiary xxx> in order to ensure that they can carry out their respective responsibilities as spelled out in the FWA.

Article 2 – The Operating Structures

*[This section provides a description of the two Operating Structures involved in the programme: a) the Operating Structure in the IPA II Beneficiary xxx (i.e. CBC body and Contracting Authority in IPA I terms), b) the Operating Structure in the IPA II Beneficiary yyy (i.e. the CBC body, in IPA I terms), including inter alia:*

* *Identification and location, and staffing arrangements*
* *How the Operating Structures are practically going to carry out the responsibilities defined in Article 76 of the FWA*
* *Arrangements for regular communication between the OSs.]*
1. The Parties have set up Operating Structures in accordance with Article 76 of the FWA.
2. The Operating Structure of <IPA II Beneficiary xxx> is composed of [insert text] located in [insert text] and a Contracting Authority located in [insert text]. The [Contracting Authority] is in charge of the selection of operations, under the cross-border cooperation programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>.
3. The Operating Structure of <IPA II Beneficiary yyy> is composed of [insert text] located in [insert text].
4. The Operating Structures commit to jointly fulfil the functions and responsibilities spelled out in Article 76 (3) of the FWA. In this sense there will be regular communication between the two Operating Structures [Add info on how this is going to be pursued]
5. [Where applicable- to be completed: Describe the process for fulfilling the tasks spelled out in 76 (3): who takes the lead, how you ensure consulting the partner country]

Examples:

*e.g. The Operating Structure, <IPA II Beneficiary xxx> will generally take the lead in the fulfilment of the join responsibilities spelled out in Articles […].*

*e.g. The annual report will be prepared by the JTS, who will transmit the draft to the Operating Structure, IPA II Beneficiary xxx>*

*e.g The Operating Structure, <IPA II Beneficiary xxx> will request the JTS to prepare an annual communication and visibility plan, which will be submitted to both Operating Structures, and the JMC for review and approval, etc.*

Article 3 – The Audit Authority

*[This section includes a description of the Audit Authority (AA) including inter alia the identification and location of the AA (which is always an institution from the IPA II Beneficiary xxx).*

*It also shall include information on the decision of the two Parties on whether the AA is authorised to carry out directly its functions in the whole programme territory.*

*If the AA does not have the authorisation to carry out its functions in the whole programme territory then the arrangements for setting up the group of auditors and a description on how it will work shall be part of this Article including a description on how they are planning to organise the audit work, by whom and how the results of the audits on the programme area will be transmitted to the AA, so that the latter may be in a position to perform its assessment. An alternative could be to leave this description to the rules of procedure]*

1. As stipulated in Article 77 of the FWA the <Audit Authority in IPA II Beneficiary xxx> is the Audit Authority of the CBC programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>.
2. The functions of the Audit Authority are those referred to in Clause 5 of Annex A of the FWA.
3. When submitting the reports and opinions referred to in paragraph (3) of Clause 5 of the FWA, the Audit Authority will also send a copy to the NIPAC of <IPA II Beneficiary yyy>

*OPTION 1 - the AA is authorised to carry out directly its functions in the whole of the territory:*

1. [The Audit Authority referred to in paragraph 1 has the authorisation to directly carry out its functions in the whole territory covered by the cross-border cooperation programme].
2. [where applicable Add any necessary arrangements]

OR

*OPTION 2 - the AA does not have the authorisation to carry out directly its functions over the whole territory covered by the programme:*

1. [The Audit Authority referred to in paragraph 1 is assisted by a group of auditors complying with internationally accepted auditing standards and comprising a representative of each Beneficiary participating in the cross-border cooperation programme. The group of auditors shall be chaired by the Audit Authority of the <IPA II Beneficiary xxx>.
2. The <IPA II Beneficiary yyy> will inform the NAO and Head of the Audit Authority of <IPA II Beneficiary xxx> about the name of the auditor appointed to fulfil this function in the territory of <IPA II Beneficiary yyy>, no later than three months of the entry into force of the first financing agreement related to the CBC programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>.

Option 1:

[The auditor can be a representative of the Audit Authority under indirect management in <IPA II Beneficiary yyy>]

OR

Option 2:

[A person or company member of a national auditing body or institution who is a member of the International Auditing and Assurance Standards Board (IAASB) or who commits himself or herself to undertake this engagement in accordance with the IAASB standards and ethics. This person or company is registered as a statutory auditor in the public register of a public oversight body in an EU Member State in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council, or in <IPA II Beneficiary yyy> and this register is subject to principles of public oversight as set out in the legislation of <IPA II Beneficiary yyy>].

1. The Audit Authority of the programme will issue instructions in writing to the auditor in <IPA II Beneficiary yyy> on
* How the latter will have to organise his or her work.
* How frequently and in which format the results of his or her verifications will be conveyed to the former as a contribution for the compilation of the reports mentioned in clause 5.3 (b) of the Annex A of the FWA.
* How the Audit Authority of the programme shall review, including sample re-performance of verifications, on a regular basis the functions delegated to confirm that the work performed is of satisfactory standard and that it is in compliance with the Agreements.

The ‘auditor’ in <Beneficiary yyy> shall provide access to the pieces of information in his or her possession to duly authorised agents or representatives of the Audit Authority of the programme or to the EC officer or authorized EC representatives, duly empowered to carry out on-the-spot audits and investigations, including the carrying out of checks on projects and recipients of aid and any other information they need for the execution of their tasks.

Article 4 – The Joint Monitoring Committee

*[This section may include a description of the JMC including the procedures and deadlines for the nomination of JMC members and identification of the Chair (which shall be from the country not having the Contracting Authority, as specified in Article 78 (4)).*

*JMC members’ responsibilities & definition of JMC members' impartiality (conflict of interest).*

*Deadline for adoption of the Rules of Procedure.*

*Depending on the situation in each country, if there is a need to have the procedural aspects established in written as regards the responsibilities stated in art. 78 (8) from the FWA, that could be developed here.]*

1. The Parties agree to constitute the JMC which should assume the role of a sector monitoring committee in accordance with Article 74 (2) of the FWA. All provisions of Article 78 of the FWA dealing with the purpose and functions of the JMC shall be respected without exception.
2. The JMC shall be established [by <date> OR no later than six months after the coming into effect of the first financing agreement related to the CBC programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>].
3. Each Party shall appoint its representatives to the JMC. The NIPAC of <IPA II Beneficiary xxx will send the nomination of its JMC members to the NIPAC of <IPA II Beneficiary yyy> before the first meeting of the JMC. In accordance with Article 78 (7) of the FWA each Party has equal voting rights regardless of the number of representatives it has appointed.
4. In accordance with Article 78 (4) of the FWA a representative of <IPA II Beneficiary yyy> shall chair the JMC.
5. In accordance with Article 78 (9) of the FWA the JMC will report to the IPA Monitoring Committee of <IPA II Beneficiary xxx>.
6. The JMC shall adopt its rules of procedure at its first meeting. These rules shall be drawn up by the Operating Structures of <IPA II Beneficiary xxx> and <IPA II Beneficiary yyy> in consultation with the European Commission.
7. In order to carry out its mandate, the JMC is supported by a Joint Technical Secretariat (JTS).

Article 5 – The Joint Technical Secretariat

*[This section provides information on the location of the JTS and the antenna office (if applicable). Also, if the countries decide to add their own financial contribution to the TA allocation, the way in which this will be organised shall be spelled out here.]*

1. The composition and the tasks of JTS are described in Articles 79 (3) and 76 (6) of the FWA.
2. The main office of the JTS of the programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy> will be located in <name of the city>, <IPA II Beneficiary xxx>. The JTS will have an antenna office in <name of the city>, <IPA II Beneficiary yyy>.
3. The operation of the JTS shall be financed from the technical assistance budget. [where applicable- In addition, the JTS may be financed by budgetary resources of <IPA II Beneficiary xxx> and <IPA II Beneficiary yyy>. This will be carried out in a coordinated and transparent way between the Parties as set out below- add info on how this will happen].
4. The Parties shall ensure that the JTS is staffed with nationals from <IPA II Beneficiary xxx> and <IPA II Beneficiary yyy>.

Article 6 – Selection of operations

*[This section may include information on how the selection of operations is going to be carried out, both for operations selected through calls for proposals (including what the procedure will be for deciding on the specific focus of the call, and also the process for deciding on how the JMC will be involved in the examination of the list of operations selected in accordance with Article 78 (8) (b).*

*The section can also include information on the composition of the evaluation committee as per Article 76 (4) (a) referring to the need to have one more evaluator from <Beneficiary yyy>.*

*The Parties can decide to include here also information about the selection of assessors but this may be left out and included in the rules of procedure for the evaluation committees.]*

1. The operations under the CBC programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy> will be selected in accordance with the provisions of Article 70 of the FWA.
2. Operations shall be selected by the contracting authority through calls for proposal covering the whole eligible area. The Parties shall do their utmost to carry out the procedure for selecting operations through calls for proposal in a maximum of 6 months.
3. In accordance with Article 78 (8) (a) of the FWA, the JMC shall be responsible for identifying the thematic priorities, specific objectives, target beneficiaries and specific focus of the call for proposals which shall be endorsed by the Commission.
4. [Explain the process for deciding on priorities, e.g. proposals from the Contracting Authority, decision by the JMC]
5. Following a call for proposals, when the JMC has to examine and provide an advisory opinion on the list of operations selected before the grant award decision in accordance with Article 78 (8) (b) of the FWA, any JMC member with a potential conflict of interest will be excluded from the proceedings.
6. [Explain the process for the examination and advisory opinion procedure]. The <Contracting Authority> shall adopt the final decision on the awards of grants.
7. The Parties may also identify operations outside call for proposals. In that event, once these operations are specifically mentioned in the CBC programme, the Parties [ explain the process for selecting operations outside calls for proposal ]
8. The Operating Structure of <IPA II Beneficiary xxx> nominates the chair, the secretary and the voting members of the evaluation committee, after having received the names of the voting members proposed by <IPA II Beneficiary yyy>, ensuring that the evaluation committee includes one more voting member from <IPA II Beneficiary yyy>.
9. The Operating Structures shall make sure that the members of the evaluation committee are available during the scheduled evaluation period.
10. Every voting member must have a reasonable command of English language and the technical and administrative ability to give an informed opinion on the grant applications.

Article 7 – Programme Monitoring

*[This section may include information on the arrangements for programme level monitoring, including a description on how the necessary field data will be collected (involvement of the JTS)]*

The Operating Structures of the programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy> shall put in place a system to collect data relating to the progress of the programme in achieving its objectives and targets, as well as a system to gather reliable information on the programme implementation in accordance with Articles 76 (3) (h) and (i).

The Parties will [please add information on how you are planning to arrange for the programme level monitoring].The contribution of the JTS in data collection for the compilation of these reports will be instrumental.

Article 8 – Monitoring of operations

*[This Article shall include information on the arrangements for contract/project level monitoring- i.e. involvement of the JTS, communication between countries, etc.]*

The JTS will conduct project level monitoring.

The JTS will monitor 100% of the operations, at least one time for each 12 months implementation period. If necessary, additional monitoring might be organised.

The JTS will communicate the results of the monitoring to the two Operating Structures

The Operating Structure of <IPA II Beneficiary xxx> might decide to carry out additional monitoring.

[Where applicable - When the Operating Structure of <IPA II Beneficiary xxx> decides to undertake additional monitoring, the Parties agree to carry out the monitoring in the following way [add info on how monitoring will take place]

*e.g. The Operating Structure of <IPA II Beneficiary xxx> will carry out monitoring in the whole territory of the programme*

*e.g. The Operating Structure of <IPA II Beneficiary yyy> will assist the Contracting Authority in carrying out the monitoring in the following way [ add info on how]*

Article 9 – Management verifications

*[This Article should provide a description on how the management verification referred to in Clause 4(3)(b)(x) of the Annex A of the FWA will be undertaken, spelling out the role of <the Beneficiary yyy> in the verifications (if any).*

*If it is agreed that the Operating Structure of IPA II Beneficiary xxx can carry out the verifications throughout the whole programme area, this needs to be specified clearly in this Article.*

*If the Operating Structure of IPA II Beneficiary xxx cannot carry out verifications throughout the whole programme area, the arrangements for conducting such verifications in particular as regards verifications in the IPA II Beneficiary yyy shall be spelled out in this Article].*

1. The Operating Structure of <IPA II Beneficiary xxx> shall carry out management verifications as referred to in Article 76 (5) and clause 4(3)(b)(x) of Annex A of the FWA. These verifications cover administrative, financial, technical and physical aspects of each action and include :
* Full administrative verification (100%) of the supporting documents in respect of each commitment and payment;
* Physical on-the-spot checks on a sample of activities and expenses based both on the type of operation and on the type of Beneficiary, selected following the sampling strategy of the control procedure.

[OPTION 1 - The OS of the IPA II Beneficiary xxx can carry out the verifications directly tthroughout the programme territory]:

1. [The Parties agree that the Operating Structure of <IPA II Beneficiary xxx> carries out the management verifications referred to in paragraph 1 throughout the programme area].
2. [In order to ensure that <IPA II Beneficiary xxx> can carry out the functions indicated in paragraph 1 [Where applicable- add any necessary arrangements]

[OPTION 2 - the OS of the IPA II Beneficiary xxx cannot carry out the verifications throughout the programme territory]

1. [As it is not possible for the Operating Structure of <IPA II Beneficiary xxx> to carry out the management verifications referred to in paragraph 1 throughout the programme area, the following arrangements [insert information on the arrangements]

Examples:

e.g. IPA II Beneficiary yyy shall ensure that IPA II Beneficiary xxx will received adequate assistance to carry out the management verifications, by assigning the necessary staff to assist in carrying out physical and on-the-spot checks verifications. If necessary they shall also be available for assisting in carrying out the administrative verifications. [include as much info as necessary on the procedure]

e.g. The Operating Structure of <IPA II Beneficiary yyy> will cooperate with the management structure of <IPA II Beneficiary xxx> to adopt a control manual for the programme <IPA II Beneficiary xxx> - <IPA II Beneficiary yyy>.

Article 10 – Remedial measures in case of implementation difficulties

*[This section may include information on the arrangements between the two countries in case of implementation difficulties]*

1. [ Add as appropriate ]

Article 11 – Irregularities, including recovery of amounts unduly paid

*[This section may include information on the how the Beneficiary yyy will help the Beneficiary xxx to detect irregularities and fraud. It will also include information on how the Beneficiary yyy will support the Beneficiary xxx to recover funds from final/grant beneficiaries/contractors in country yyy, when that recovery is necessary in accordance with Articles 41 and 51 (5) of the FWA]*

1. In accordance with Article 51 of the FWA the <IPA II Beneficiary xxx> shall prevent detect and correct irregularities and fraud and shall also recover funds unduly paid and bring legal proceedings where necessary.
2. The Operating Structure of <IPA II Beneficiary yyy>, whenever irregularities or fraud are detected in the transactions of a Beneficiary established in its territory, is responsible for reporting to the Operating Structure of <IPA II Beneficiary xxx>, which will immediately inform the EC.
3. In case the Operating Structure of <IPA Beneficiary xxx> would encounter difficulties to recover unjustified funding from the Lead Beneficiary/Coordinator in <country yyy>, the <IPA II Beneficiary yyy> shall do its utmost to support the <IPA II Beneficiary xxx> including through judicial proceedings.
4. [where applicable- add further info , specific cases]

Article 12 – Granting of facilities and taxation

*[This section may include information on the necessary arrangement between the Parties to guarantee that Articles 27 and 28 of the FWA are complied with.]*

* + - * 1. The provisions of Articles 27 and 28 of the FWA shall be applicable for both <IPA II Beneficiary xxx> and <IPA II Beneficiary yyy>.
				2. [Add info on the arrangements for exemption of taxes]

Article 13 – Interpretation

1. The terms used in this bilateral arrangement shall bear the same meaning as attributed to them in the text of the FWA, and the relevant Financing Agreement. In case of divergence, the FWA and Financing Agreement prevail.

Article 14 – Review and amendment

1. Any amendment agreed by the Parties will be in writing and will be part of this bilateral arrangement. Such amendment shall come into effect on the date determined by the Parties.

Article 15 – Termination

1. This Bilateral Arrangement shall terminate at the date of closure of the programme.
2. The Operating Structure of <IPA II Beneficiary xxx> shall inform the Operating Structure of <IPA II Beneficiary yyy> about the programme’s closure within two months from the notice received by the EC.

Article 16 – Settlement of differences

1. Differences arising from the interpretation and implementation of this Bilateral Arrangement will be settled amicably through consultation between the Parties.
2. In the absence of amicable settlement, each Party may refer the matter to arbitration in accordance with the *Optional Rules for Arbitration Involving International Organisations and States* in force at the date of this Bilateral Arrangement at the *Permanent Court of Arbitration*.
3. The language to be used in the arbitration proceedings shall be English. The appointing authority shall be an independent and recognized institution from any of the Parties involved or the Secretary General of the Permanent Court of Arbitration following a written request submitted by each Party. The Arbitrator’s decision shall be binding on all Parties and there shall be no appeal.

Article 17 – Notices

1. All communication in connection with this Bilateral Arrangement shall be made in writing, duly signed and be supplied as an original document or scanned original document.
2. All communication must be in <<complete >> language.
3. Any communication related to this Bilateral Arrangement must be sent to the following addresses:

[NIPAC of IPA II Beneficiary xxx]

[The NAO of IPA II Beneficiary xxx]

[The HOS of IPA II Beneficiary xxx]

[Head of the Audit Authority of IPA II Beneficiary xxx]

[The Head of the Contracting Authority of IPA II Beneficiary xxx]

[NIPAC of IPA II Beneficiary yyy]

[The HOS of IPA II Beneficiary yyy]

Article 18 – Entry into force

This Bilateral Arrangement shall enter into force on the day on which the last of the Parties informs the other one in writing of its approval in accordance with the national legislation or procedure of the Party.

Signatories:

|  |  |
| --- | --- |
| <Name of the signatory 1> | <Name of the signatory 3> |
| <Function: NIPAC of IPA II Beneficiary xxx> | <Function: NIPAC of IPA II Beneficiary yyy> |
| Signature:  | Signature:  |
| Date:  | Date:  |
| <Name of the signatory 2> | <Name of signatory 4> |
| <Function: NAO of IPA II Beneficiary xxx > | <Function: HOS of IPA II Beneficiary yyy > |
| Signature: | Signature:  |
| Date: | Date:  |