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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Annex to the Commission decision on the Internal Rules on the implementation of the general budget of the European Union (European Commission section) for the attention of the Commission departments Guidance on the provision of services to other EU Institutions, Agencies and Bodies

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Delegations will find attached document C(2017) 2113 final/ANNEX 2.

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EUROPEAN  
COMMISSION

Brussels, 31.3.2017  
C(2017) 2113 final

ANNEX 2

**ANNEX**

*to the*

**COMMISSION DECISION**

**on the Internal Rules on the implementation of the general budget of the  
European Union (European Commission section) for the attention of the  
Commission departments**

**Guidance on the provision of services to other EU Institutions, Agencies and Bodies**



# **Guidance on the provision of services to other EU Institutions, Agencies and Bodies**

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## INTRODUCTION

### *Context*

For their operations, the EU institutions, agencies and bodies rely on the availability of goods and services. Services can be acquired by various means. They can either be developed in-house, purchased from external providers or made available through interinstitutional administrative cooperation.

In the current context of limited administrative appropriations, it is essential to foresee transparent mechanisms that enable the EU institutions, agencies and bodies to pool resources in order to achieve better services at a lesser cost. Such cooperation will be indeed a source of efficiency as know-how, capacities and resources developed for an EU institution, agency or body can be made available for a fraction of what it would cost developing them internally or procuring them in the open market. Smaller EU institutions, agencies and bodies will benefit from economies of scale. They will also be able to use goods and services that may not be available off-the-shelf.

Such cooperation can take various forms.

First, services can be mutualised between EU institutions, agencies and bodies either through the setting up of interinstitutional offices with a common governance structure in which these EU institutions, agencies and bodies are represented and which receive the necessary appropriations. This form of cooperation remains possible, but it is not the subject of the current Guidance.

Secondly, one EU institution, agency or body may request another institution, agency or body to put at its disposal services already provided internally. In this context, a flexible and transparent cost-recovery system needs to be foreseen.

### *Purpose and status*

The purpose of the present Guidance is to set up a common framework which the Commission services shall respect<sup>1</sup> when recovering the costs incurred for the services they provide to departments in other EU institutions, agencies and bodies. The Guidance, adopted as an annex to the Internal Rules for the budget implementation, will have to be followed by Commission's departments and services. They cannot bind other EU institutions, agencies and bodies but the Commission invites the latter to apply the same principles on the basis of reciprocity for services provided to the Commission.

Until now, the specific conditions for the provision of services and the modalities to compensate for them have been negotiated between service providers and client departments in a non-coordinated manner. Over time, this has resulted in countless administrative arrangements between each of the various Commission departments and their clients; often several with the same client, covering each one single service. These arrangements contain diverging provisions, namely on service scope, pricing, costing methods, periods of reference and reporting requirements.

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<sup>1</sup> The Guidance is compulsory for the Commission services as it is part of the Commission Decision C(2016)769 of 12 February 2016 on the Internal Rules on the implementation of the general budget of the European Union (European Commission section) for the attention of the Commission departments.

The present Guidance is intended to address the core issues flexibly and avoiding unnecessary administrative burden. It aims to add value both for the Commission and for the other EU institutions, agencies and bodies while reasonably ensuring fairness, transparency and the necessary proportionality between the expected benefits and the cost of implementing its provisions.

The principles and discipline in the Guidance are the same as those of the internal Commission Guidance for the provision of services among its own departments.

In summary, the document is intended to create the basic conditions which would facilitate a genuine collaborative attitude, which is necessary to reap in full the promised benefits of interinstitutional cooperation.

## 1. SCOPE

This Guidance applies to any kind of provision of services by Commission departments to other EU institutions, agencies and bodies. It applies as well to the exceptional cases where departments provide services to third parties.

This Guidance does not apply to:

- Services provided by Commission departments compulsory under EU legal provisions. In such cases, it is understood that the corresponding budget is made available to the Commission.
- Services provided by Commission departments to other EU institutions, agencies and bodies within Heading 5 of the Multiannual Financial Framework, which are recurrent and stable in terms of volume and for which the corresponding budget is made available to the Commission.
- Services provided by Commission departments to the European External Action Service following Article 3, 2<sup>nd</sup> paragraph<sup>2</sup> of the Administrative Agreement between both institutions of 13 December 2010.
- Services of a competitive nature provided by JRC under the conditions laid down in Article 183 of the Financial Regulation (FR), except activities of the JRC on behalf of third parties (Article 183(2)(b) FR which are included in the scope of this Guidance.
- Services provided following an organised interinstitutional cooperation under a common governance structure in which the EU institutions, agencies and bodies are represented and which receive the necessary appropriations, unless the EU institutions, agencies and bodies concerned agree to apply the present Guidance.

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<sup>2</sup> “Dans les cas où il a été décidé que les ressources humaines et/ou budgétaires nécessaires à l’accomplissement d’un service dont le SEAE a besoin restent dans les services de la Commission européenne ou dans un office, le SEAE aura droit, sans remboursement des conséquences budgétaires, au service fourni par le service concerné de la Commission ou l’office concerné à concurrence du volume de travail existant dans ces services ou offices avant la création du SEAE. Cette règle s’applique mutatis mutandis aux situations où c’est le SEAE qui preste un service à l’égard des services de la Commission ou d’un office. Les modalités d’application, notamment la fixation du volume de travail à prester sans remboursement des conséquences budgétaires, sont précisées dans les conditions particulières.”

## 2. GENERAL PRINCIPLES

The following principles shall apply to the provision of services under the present Guidance:

- The parties shall ensure the compliance with applicable financial rules and regulations, in particular with the principles of annuality, specification, sound financial management and transparency established in the Financial Regulation<sup>3</sup>.
- Service providers shall apply this Guidance consistently to all clients and ensure their equal treatment.
- The cost recovery and reporting processes must reasonably ensure that the provision of services does not result in a surplus for the service provider nor for the client ("no-profit rule").
- Negligible costs shall not be recovered ("*de minimis* rule").
- Service providers will not charge twice (either to the same or to several clients) for the same service delivered ("no double funding").
- The administrative costs of implementing the provisions of the present Guidance should be kept to a minimum ("administrative cost-efficiency").
- Commission services provide the same services to the EU institutions, agencies and bodies as those provided internally in terms of quality, timing and deliverables.
- Arrangements agreed among service providers and clients must aim to ensure transparency and predictability in the use of resources, namely by making budget forecasts available to clients on time and avoiding sudden and substantive price revisions. Any significant adjustment must be implemented over an appropriate period of time so as to take it in consideration during the ensuing budgetary procedure. If not communicated in time to be taken into account in the client's annual draft budget established in Year N-1, the increase will only be effective in the Year N+1.
- The authorising officers of all EU institutions, agencies and bodies involved remain accountable for the implementation of the actions and appropriations for which they are responsible under the cost recovery process<sup>4</sup> in accordance with existing rules. Each remains responsible for its actions and omissions.
- As a rule, the funds recovered will be earmarked as assigned revenue on the budget lines of the Commission initially supporting the costs<sup>5</sup>. In specific cases, service providers may deviate from this general rule with the prior consent of DG Budget.

## 3. GOVERNANCE

**Corporate Management Board (CMB)**<sup>6</sup> – oversees and steers the implementation of the guidance; it also provides guidance on the allocation of resources resulting from the

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<sup>3</sup> Financial Regulation, Part One, Title II, Chapters 2, 6, 7 and 8 respectively.

<sup>4</sup> The client is responsible for the definition of the service requested and for the control of the service delivered; the service provider for the good implementation of the action and the appropriate use of resources received in exchange.

<sup>5</sup> Article 21 FR.

cost recovery process and on the scope and evolution of the services provided to clients. This oversight is intended to ensure adherence to the general principles outlined in the previous section. It is based on the monitoring and observations of DG Budget and DG HR on the annual reports submitted by service providers. In case of disagreement between service providers or with one or several clients, one or several service providers, SG, DG Budget or DG HR can refer the matter to the CMB for its guidance.

**DG Budget** – is responsible for the steering of the budget allocation process, develops a framework for the cost recovery process, to be endorsed by the College, provides advice to the Commission services and reviews the reports submitted by service providers.

**DG Human Resources and Security (DG HR)** – is responsible for reporting on staff involved in interinstitutional services in the job screening report and for monitoring the staff movements in return for services provided by the Commission (transfers of posts, secondments, mise à disposition).

**Secretariat General (SG)** – is responsible for the general coordination and relations with other EU institutions, agencies and bodies.

**Service providers** – are the Commission departments that provide chargeable services as provided in the dedicated Service Level Agreements (SLAs). They are responsible for implementing the present Guidance and, notably, for providing the services, for assessing and recovering the costs and for the correctness and completeness of their reporting. In case the service provided by the Commission is delivered jointly by several departments and to the extent that the administrative management of the relevant services becomes more efficient, a DG "chef de file" will be designated as the single point of contact for the client.

**Clients** – are other EU institutions, agencies and bodies which entrust the implementation of some of their activities to Commission departments, as provided in the dedicated SLAs. For one-off provision of services and for services provided to third parties, lighter ways of contracting can be used, provided that the same cost-recovery principles and rules apply.

The Secretariat General, DG Budget and DG Human Resources and Security (jointly "central services") will meet regularly to monitor the implementation of the Guidance by the departments. Any deviation from the Guidance will be signalled to the central services by the relevant DG before signing the corresponding agreement. Should the central services find it necessary, the deviation will be submitted to the CMB for approval.

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<sup>6</sup> Former "ABM Steering Committee" - See SEC(2001)1197/7, Technical Note 5, p. 16-17 of 25/7/2001.



## 4. IMPLEMENTATION GUIDELINES

### 4.1. Legal base - financing decision

The client is the sole responsible to ensure that the service to be provided falls within the scope of the corresponding basic act or falls within the exceptions as laid down in Article 54(2) FR.

### 4.2. Catalogues of services

Commission departments which regularly provide services to clients will make available the **catalogues of services offered**. Such catalogues will identify both **baseline services** to clients (*i.e.* those offered free of charge following a specific EU legal provision and those which are recurrent and stable in volume, for which the budget has been allocated to a service provider) and **chargeable services**. These catalogues will be rendered accessible on line to all the interested clients, to ensure the necessary transparency for efficient decision making.

The modalities of the provision of services offered in the catalogue shall be agreed by the parties in a SLA.

The services provided correspond to the standard level of services available within the Commission unless exceptionally agreed otherwise between the parties. The service provider has no obligation to develop tailor-made services. However, service providers will make efforts to satisfy the provision of specific services which are consistent with the interinstitutional standardisation and harmonisation. Whenever a legal requirement imposed on an EU institution, agency or body requires the adaptation of a provided service, the service provider will analyse the request with the view to satisfy the technical requirements and, in that case, will recover the costs incurred. The demand for the development of any non-standardised functionality specific to the client shall entail additional costs ("service à la carte").

### 4.3. Service level agreement with the client

Upon adoption by the College of the present Guidance the Commission service providers will invite each client to enter into a SLA in line with the template in Annex IV. The SLA sets down the respective rights and obligations of the service provider and the client.

The SLA is composed of two parts: general conditions and special conditions.

The general conditions should not be changed and, in normal circumstances, are incorporated without amendment. Should a service provider consider it necessary to adapt the general conditions to the specific subject and circumstances, DG Budget and the Legal Service should be consulted on the changes made.

The special conditions are the variable part of the SLA. They shall contain the following elements to be agreed between the service provider and the client before the service delivery starts:

- description and scope of the service;
- timeline of the service delivery (with milestones if required/necessary);
- amount(s) to be recovered including the basis for their calculation if deviating from the costing models in Annex I, as well as the maximum amount foreseen in case unit prices are used;
- modalities for recovery of funds;

- modalities to amend any of the above elements;
- duration and modalities for termination of the arrangement, with an advance notice of at least 12 months, unless specified otherwise in the respective SLA.

SLAs will enter into force as agreed between both parties.

Any pre-existing written agreements shall be registered in Ares and filed in a file below a specified common Heading in NomCom. Service providers within the Commission will undertake a process aimed to revise or renew the pre-existing written agreements (SLAs, MoUs, or any other arrangement) in order to harmonise and consolidate them in accordance with the present Guidance. Pre-existing written agreements will be phased out or replaced by new SLAs in line with the present Guidance at their date of expiration. Service providers having signed several written agreements with the same client will consolidate them in a single SLA. The process of revision of the pre-existing written agreements should be completed before 31 December 2018.

In order to ensure completeness and transparency, service providers shall register in Ares and file as described above each SLA together with the exchange of letters with the client within 15 days of its agreement or renewal.

For ad hoc scientific and technical services provided by the JRC under Article 183(2) (b) of the FR the model contract used by JRC, which contains the elements required above for the SLAs, is considered sufficient to regulate the service provider/client relationship.

#### **4.4. Costs, amounts to be charged**

In application of the "no-profit" rule, the total amount to be recovered will be equal to the best estimation of the actual costs incurred for the provision of the services during the financial year. For a given year, this implies that:

- only annual costs incurred by Commission for providing services to external clients are to be shared on an annual basis. Historical costs and the proportion of depreciation on past investments are excluded;
- the principle of equal treatment of clients implies that all costs are shared among all users pro rata the use of the service: for a newcomer historical costs are not recovered but it shares the annual costs with the existing users.

Service providers are to use the methodology defined in Annex I and the average costs in Annex II for the estimation of the costs incurred.

On an exceptional basis, alternative and more adequate methodologies can be used, provided the above general principles are respected. These could refer to unit prices, average costs, budgeted costs or accrued costs; or to the use of differentiated<sup>7</sup> staff costing rates. Exceptions will be reviewed after one year of application of this Guidance.

If the cost recovery for services provided takes a form of human resources transfer, the equivalent FTEs should be deducted in the cost calculation.

In application of the *de minimis* and the administrative cost efficiency rules, negligible costs shall not be recovered. In the absence of an agreement between the parties on a

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<sup>7</sup> Established in accordance with the generally accepted accounting principles. Staff costs could be differentiated on the basis of staff categories AD and AST average costs and CA FG IV or FG I, II and III average costs.

lower threshold, when the estimated annual costs of the services provided to a specific client do not exceed EUR 10 000 they will be deemed to be negligible.

#### **4.5. Mechanisms for cost recovery**

Under the current structure of the budget, which precludes co-delegation and cross subdelegation between the EU institutions, agencies and bodies, the only accounting mechanism to make budgetary resources available under cost recovery for external clients is a recovery order. The service providers must comply with Article 77(1) FR which requests to make an estimate of amount receivable (“Forecast of Revenue”) as soon as they have sufficient and reliable information on it. The service provider should make a global annual estimate of the costs to be recovered.

As a general rule an advance payment corresponding up to 100% of the amount of estimated costs for Year N must be executed by the end of the first quarter of Year N. No later than 1<sup>st</sup> October each year, the service provider will inform clients of the final estimated costs for the year, and will regularise the advance payment by issuing a recovery order or a payment order with the difference. In case the final costs for Year N as reported following section 5 below deviate from the amounts recovered, the balance must be settled with the subsequent payments in Year N+1.

In duly justified cases, the service provider and the client may agree on a different advance payment path, provided the above general principles are respected in particular the principle of administrative cost efficiency.

In the exceptional case of application of provisional twelfths (Article 16 FR), the above rules will be adapted accordingly. Commission departments and clients will cooperate in order to ensure smooth business continuity.

The scientific and technical services provided under Article 183(2)(b) FR on behalf of third parties to non-EU public and private clients are governed by a contract signed by JRC and its client. The contractual payment conditions have priority over this Guidance.

The authorising officer in charge of the service provider can decide for a reason of sound financial management, after a comparison between the cost of issuing a recovery order and the amount to charge, not to recover the costs from the external client as foreseen in Article 91 RAP.

## **5. REPORTING AND MONITORING ARRANGEMENTS**

### **5.1. Internal to the Commission**

With a view to ensure overall compliance with the general principles outlined in section 2, Commission departments shall submit during the first quarter each year to the CMB a report as per the requirements in Annex III – Reporting Requirements.

DG Budget and DG HR will screen the reports submitted by service providers and summarise the key observations that they will draw to the attention of the CMB.

In case revenue resulting from cost recovery for services (internal and external to the Commission) represents more than 5% of the total budget allocation (C1 credits) of the service provider, the Authorising Officer by Delegation (AOD) must disclose these

amounts separately in her or his Annual Activity Report (AAR) overview table of the financial resources available for the financial year.

Detailed reporting requirements and a template are provided in Annex III.

## **5.2. Reporting to clients**

Service providers shall report annually on the amounts recovered and on the use of resources made available through the cost recovery process.

To this effect they make available to the client a report with the information concerning this specific client contained in the annual reports mentioned under point 5.1. This information will be made available as per the SLA/arrangements concluded with the client, and in any case with a periodicity not exceeding three years. Clients may require more frequent reporting, not inferior to one year.

In the framework of this reporting, service provider will inform clients on the modifications and evolutions foreseen to its catalogue of services for the coming year(s).

For scientific and technical services provided under Article 183(2)(b) FR on behalf of third parties to non-EU public and private clients, the reporting requirements are governed by the contract signed by the JRC and its client.

The AODs of service providers are accountable for the management of the budget appropriations recovered (assigned revenue) and these appropriations fall within the scope of their annual declaration of assurance. Therefore, if requested, they will provide clients with a copy of the declaration of assurance and AAR covering the use of funds received for the provision of services. By no means will additional declaration of assurance be provided as the service providers are obliged to pursue efficiency and effectiveness for their whole budget, including the funds recovered or the personnel transferred between EU institutions, agencies and bodies.

## **6. TERMINATION OR MODIFICATION OF SERVICES**

If either the service provider or the client wishes to put an end or otherwise modify the terms of the service, he should inform the other party with a prior written notice asking for a date of termination or modification. The prior notice shall be of a sufficient duration to allow for the integration of any management or budgetary consequences caused by the termination into the management and budget plan of the two parties.

## **7. TRANSITIONAL PROVISION**

The service provider and the client may agree appropriate transitional provisions in order to ensure a progressive phasing in of the Guidance.

## ANNEX I – COSTING MODELS

The choice of the cost model to be applied should be guided by cost-effectiveness considerations.

The estimation of the annual costs incurred to deliver a service, must include direct and indirect costs as well as a proportionate provision to cover the overheads supported by service provider (*i.e.* charged to its budget allocation) and calculated in accordance with the principles outlined below.

**Direct costs** – are costs that can be directly attributed to the provided service. These must include:

- ***Staff cost*** of the ***personnel*** directly linked with the delivery of the service:

The starting point for calculating staff costs is the number of Full Time Equivalents (FTE) allocated to the delivery of the service. The total cost will be obtained in multiplying the FTE total by the corresponding annual average cost for the concerned officials and contract agents as outlined in Annex II. The annual average cost already includes a proportional charge for buildings, ICT and other administrative costs, the so-called *habillage*, calculated and communicated annually by DG Budget. According to the principle of no double funding, these shall therefore not be charged as part of the overheads.

- ***Externally contracted costs***:

Costs for the purchase of external services, such as the costs of experts, interpreters or other outsourced services incurred for the provision of the services must be included in the direct cost estimate. For these costs, the amount paid indicates the value to be considered.

The amounts recovered corresponding to these direct costs will be earmarked as assigned revenue on the budget lines of the Commission initially supporting the costs (see Annex II – Costs recovery).

**Indirect costs** – are costs that can be attributed to the provided service but, for organisational reasons, they are associated with entities which support a variety of programmes or processes and therefore cannot be directly assigned to a specific programme or process, *e.g.* a central IT security function. Indirect costs must be assigned to services following an appropriate allocation key which is fair and representative, *e.g.* number of users, number of pages for translation.

**Overheads** – are costs which cannot be attributed to a specific service, yet they are necessary for providing it and should be allocated in accordance with a reasonable key, namely proportional to the relative number of FTEs involved in the delivery of the service. Such costs must be calculated in accordance with the following principles:

- The estimated number of personnel directly linked with the delivery of the service is to be calculated by applying a percentage which reflects the cost of the administrative support borne by the DG. This percentage is calculated for the Commission as a whole and communicated annually by DG HR. It does not include coordination costs or those related to other horizontal processes which are not necessary for the provision of the service.

- No other overheads are to be included, namely overheads at the corporate level which are not borne by the department providing the service (*i.e.* costs of horizontal DGs and the College).

**Sunk costs** – Cost recovery must be limited to costs supported during the financial year. Costs supported in previous financial years to acquire or develop the resources and capacities necessary for the provision of the services must not be recovered.

**Negligible provision of services** – if the marginal costs of providing a service to clients are negligible, *i.e.* a service would have been developed irrespective of a client requesting it and there are no significant additional costs for making it available to other EU institutions, agencies and bodies, these will be provided at no cost. Service providers will reassess the costs annually to verify that they remain negligible, and will report as per Annex III – Reporting Requirements.

## ANNEX II – COSTS RECOVERY

When the cost recovery refers to financial resources, the mechanism will be the ordinary recovery order. Each time a DG/Service issues a recovery order, it must inform the budget line(s) receiving the assigned revenue. As a rule, these will be the budget line(s) initially supporting the costs (or the budget line(s) expected to support the costs if the recovery precedes the expenditure), as follows:

- *Staff cost*

The costs per FTE to be used and the budget lines receiving the assigned revenue are the following. The average FTE costs will be revised annually:

**Average FTE cost to be used for cost recovery of services provided (1)**

Category of personnel	Charge-back internal		Charge-back external		TOTAL COSTS
	Personnel costs	"Habillage"			
		Building and other administrative costs	ICT costs		
Official or Temporary Agent (general average)	115.300	16.500	4.700	136.500	
<i>AD Official or Temporary Agent</i>	<i>137.500</i>	<i>16.500</i>	<i>4.700</i>	<i>158.700</i>	
<i>AST Official or Temporary Agent</i>	<i>80.500</i>	<i>16.500</i>	<i>4.700</i>	<i>101.700</i>	
Seconded National Expert	56.200	16.500	4.700	77.400	
Contractual Agent (general average)	46.800	16.500	4.700	68.000	
<i>Contractual Agent FG IV</i>	<i>70.400</i>	<i>16.500</i>	<i>4.700</i>	<i>91.600</i>	
<i>Contractual Agent FG I to III</i>	<i>41.500</i>	<i>16.500</i>	<i>4.700</i>	<i>62.700</i>	
Budget lines to assign revenues (2)	XX 01 01 01 01, for Officials or TAs XX 01 02 01 00 03, for SNEs xx 01 02 01 00 01 20, for CAs	26 01 22 02, for Brussels 26 01 23 02, for Luxembourg	XX 01 03 01 04		
(1) These figures will be updated yearly by Circular note of DG Budget to RUF and will be published in BudgWeb					
(2) The JRC, Offices and any other department with particular budget structures, will use the corresponding budget lines in their nomenclature.					

N.B.: In order to keep the mechanism as simple as possible, and as far as the recovery of FTE costs is concerned, the number of budget lines receiving the funds has been limited to a maximum of 3 as indicated in the above table.

*Externally contracted costs:*

The funds will be recovered on the same line that initially supports the costs of the external contractor (or the budget line expected to support the costs if the recovery precedes the expenditure). Following are some examples of such recoveries:

Free-lance interpreters	31 01 07 01
Free-lance translators	31 01 08 01
ICT services from DIGIT	Relevant sub-item within XX 01 03 01
Development of IT systems	xx 01 02 11 05 (Global envelope), if initially charged on this line
Renting of premises by OIB	26 01 22 02
Recovery of missions expenditure	xx 01 02 11 01
External advisors or consultants	The budget line supporting their contract

The average costs published by DG Budget in a given year will be used for estimating costs referred to the provision of services as from the 1<sup>st</sup> of January of the following year.

Where, owing to the limited amount involved, the authorising officer considers inefficient to assign it to a given budget line, that amount will be assigned to one or several of the other lines in the recovery order. For this purpose, without prejudice of other criteria exposed by the authorising officer, limited amounts will be those below EUR 1,000<sup>8</sup>.

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<sup>8</sup> The same threshold that Article 137(3) RAP considers for payments against invoices without prior acceptance of a tender.



### ANNEX III – REPORTING REQUIREMENTS

The reporting requirements are intended to allow the CMB to monitor the process, its impact on resource allocations within the Commission and the respect of the general principles defined in this Guidance.

The report to the CMB must include as a minimum the following elements per service provided and per client:

- the FTEs involved in service delivery, per category of staff<sup>9</sup>;
- the FTEs received from other institutions as cost recovery for the services provided;
- the estimate of the actual costs incurred for the provision of services, following the methodology applied in each case;
- the actual amounts recovered, and the balance to be settled per client;
- the exceptions of the applied cost methodology with regard to the methodology defined in Annex I;
- negligible not-recovered costs foreseen in point 4.4 (*de minimis* rule);
- negligible provision of services foreseen in Annex I to which no recovery model is applied.

The numbers of FTEs reported should be coherent with the information reported in the context of the annual Commission working document on Planning and Optimising Commission Human Resources to Serve EU Priorities (the "Screening Report"). Where there are discrepancies, the reason for this should be explained in the report.

The actual amounts recovered will be taken from the reports made available by DG BUDG through the ABAC-DWH facility. If the service provider considers that this does not properly reflect the financial amounts resulting from the implementation of this Guidance, it will note the differences in the report.

Whenever service providers take measures aimed to enhance the accuracy of the cost calculation and the respect of the non-profit and administrative cost efficiency rules, these should also be reported.

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<sup>9</sup> Departments are responsible for ensuring that the information is coherent with data provided in the screening exercise.

A template for reporting to the CMB by DG XXX in year N is presented below:

<b>DG XXX</b>		estimated actual FTEs (other units)	cost recovered	estimated actual cost	Comments
Client 1	Service 1	130	220.000	228.000	
	Service 2	64	34.000	35.000	
	Service 3	35	120.000	128.000	
Client 2	...				
	Service 3	55	15.880	15.000	
	Service 4	95	188.000	198.000	
Client 3	...				
	Service 5	85	235.000	252.000	
	...				
<b>TOTAL</b>		<b>464</b>	<b>812.880</b>	<b>856.000</b>	

The information to be delivered to the client by DG XXX:

<b>Client 1</b>		estimated actual FTEs (other units)	cost recovered	estimated actual cost	Comments
Service 1	130	220.000	228.000		
Service 2	64	34.000	35.000		
Service 3	35	120.000	128.000		
...					
<b>Total</b>	<b>229</b>	<b>374.000</b>	<b>391.000</b>		

## **ANNEX IV – MODEL OF A SERVICE LEVEL AGREEMENT**

### **SERVICE LEVEL AGREEMENT**

Between

The services of the European Commission

and

XYZ

The Services and offices of the European Commission, hereinafter called "Commission departments", represented by the Directorate General XYZ of the European Commission hereinafter called "DG XYZ", which is represented for the conclusion of the present agreement by Mr/Ms xx in his/her competence as Director General

AND

XYZ, "XYZ", represented by XXX, and for the conclusion of this agreement, represented by XXX,

(hereinafter jointly referred to as "the parties")

Having regard to the Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (hereinafter "Financial Regulation"), and in particular its Article 21(3)(e),

Have agreed the following:

### **PART I GENERAL CONDITIONS**

#### **SECTION I.1 GENERAL PROVISIONS**

##### **Article 1 – Object of the Service Level Agreement**

1. This Service Level Agreement ("the agreement") defines the conditions under which DG XYZ ("service provider") provides services, goods or works ("services") to XYZ ("client") against an agreed compensation in form of human or financial resources from the client.
2. The general conditions of this agreement are further detailed and completed by the special conditions laid down in Part II.
3. Agreements and decisions adopted in the framework of bodies, groups or gatherings formally established by EU institutions, agencies and bodies where their representatives collectively decide on certain activities to be performed by one or more EU institutions, agencies or bodies and their financing modalities ("organised interinstitutional cooperation") are excluded from the scope of the present agreement.

4. In the event of a conflict the different sets of provisions are applicable in the following hierarchical order: a) the Financial Regulation with its Rules of Application b) the general conditions of the present agreement, c) the special conditions of the present agreement.

## **Article 2 - Duties of the parties**

1. Both parties commit to implement the present agreement in a spirit of cooperation, transparency and efficiency.
2. The service provider commits to offer the services at the standard level similar to the services provided internally within the Commission, with the same level of quality, timing and deliverables.
3. The client has a duty to ensure timely and full payment of incurred costs in accordance with the financial provisions in section I.3 of this agreement.
4. The two parties adopt measures to continue operations in order to facilitate the continuity of the provision of services. If the client wishes to put an end or otherwise modify the terms of the service, he should inform the service provider reasonably in advance, to allow the latter to adjust the use of the resources made available. If such arrangement cannot be respected, the client may be requested to refund the costs already incurred by the service provider. The applicable termination modalities are detailed in Article 15.
5. The parties convene that their representatives meet at the request of one of the parties in order to examine the functioning and the modalities of the implementation of the present agreement. No less than six months should elapse between meetings.

## **Article 3 – Reporting**

1. Each service provider shall report to the clients once per year. The reporting covering the Year N shall be provided at the latest by the end of the first quarter of Year N+1.
2. The reporting shall cover, as a minimum:
  - a. the quantity aspects of the services provided (actual costs of the services, amounts recovered during the year, balance to be settled);
  - b. the financial and human resources deployed, with particular mention of human resources received as compensation for the services provided;
  - c. the modifications and evolutions foreseen in the services provided for the coming year(s).
3. Other reporting requirements may be agreed in the special conditions of the present agreement, but the reporting period in no case will be less than one year or more than three years. Under no circumstances shall these specific requirements constitute an excessive burden on the service provider or be disproportionate to the value of the services and the amounts recovered.

#### **Article 4 – Delegation of AIPN powers**

1. In cases where the client has delegated its competence as appointing authority, it shall comply with the decisions taken by the Commission on requests or complaints pursuant to Article 90c of the Staff Regulations, where appropriate in conjunction with Article 117 of the Conditions of Employment of Other Servants.
2. The provisions of the preceding paragraph shall apply by analogy to judgments handed down in appeal procedures pursuant to Article 91a of the Staff Regulations, where appropriate in conjunction with Article 117 of the Conditions of Employment of Other Servants.
3. In exceptional circumstances,
  - a. where the unfavourable outcome of an appeal procedure referred to in paragraph 2 of this Article is due to a lack of diligence on the part of the client, including notably transmission of erroneous or incomplete information or erroneous implementation of a formal advice or service provided by the Commission, the client shall reimburse the Commission for costs incurred in such procedures;
  - b. where additional costs incurred by the client under paragraph 1 or 2 of this Article is due to a lack of diligence on the part of the service provider in the execution of services to be provided under this agreement, the service provider shall reimburse the costs incurred.

#### **Article 5 – Harmful events**

1. Any question related to the consequences of harmful events occurring in connection with the implementation of this agreement shall be resolved in a spirit of cooperation, transparency and efficiency.
2. If the implementation of this agreement causes, or threatens to cause, damage to assets held by the Commission or by the client or to the interests of a third party, both parties shall keep each other informed and take any necessary measures to limit the damage.
3. If a third party invokes the Commission's liability or that of the client, both parties shall consult each other on the line to be taken.

### **SECTION I.2 DEROGATIONS AND SPECIFIC PROVISIONS**

#### **Article 6 – Derogations**

In order to take into account the specificities of the services and conditional on the integration of an explicit mentioning to this effect, the special conditions of this agreement may derogate from the provisions under its Section I.4 regarding:

- a. Modalities of dispute settlement linked to the interpretation or implementation;

- b. Duration of validity and conditions of renewal, without prejudice however to Article 15(2) of this agreement; and
- c. Conditions for amendment and termination.

### **Article 7 – Specific provisions**

Without prejudice to Article 6, the special conditions of the present agreement shall notably specify the following elements:

1. The particular subject of the service to be provided, and notably its nature, dimension and technical characteristics. It will include as appropriate any information, products, means and equipment to be made available to the service provider, as well as a list of particular applicable documents or references;
2. The modalities defining compensation in terms of financial or human resources, and especially the information regarding the application of the costing model, and indexation or revision modalities;
3. The specific payment conditions, and especially the payment modalities, the due dates and pre-financing payments if applicable;
4. Further characteristics of the service: criteria for measuring and monitoring quality of the service, timeline of the service delivery, treatment conditions and service follow-up modalities;
5. The measures concerning security and data protection applicable during the implementation of the service;
6. As appropriate, other reporting conditions than those foreseen in Article 3 above;
7. Contact points for the present agreement and for each service provided.

## **SECTION I.3 FINANCIAL PROVISIONS**

### **Article 8 – Costing model**

1. Annual costs incurred for the provision of a service by the service provider will be compensated by the client through the provision of necessary budgetary and/or other resources, including posts.
2. The estimation of the annual costs incurred to deliver a service, will include direct and indirect costs, as well as overheads allocated to the service provided:
  - a. Direct costs include staff cost of the personnel and externally contracted costs directly linked with the delivery of the service;
  - b. Indirect costs are costs that can be attributed to the service but, for organisational reasons, they are associated with entities which support a variety of programmes or processes;

- c. Overheads are costs that cannot be attributed to a specific service and are allocated in accordance with a reasonable key, namely proportional to the relative number of FTE staff involved in the delivery of the service. The percentage of overhead costs reflecting the administrative support to deliver the services is calculated by the Commission annually.
3. The calculation of human resources costs shall be done on the basis of average costs (standard costs), as defined, and adjusted when appropriate, by the Commission's Directorate General for the Budget.
4. Alternative and more adequate methodologies can be used, provided that they are duly justified and that the general principles set out in section 2 of the "Guidance on the provision of services to other EU Institutions, Agencies and Bodies" are respected. These could refer to unit prices, average costs, budgeted costs or accrued costs; or to the use of differentiated staff costing rates.
5. The prices will be adjusted according to the rules set out in the special conditions of this agreement. Any price revision shall be communicated to the clients sufficiently in advance to allow the inclusion of a corresponding change in their annual draft budget during Year N-1. Otherwise, the increase will only be effective in the Year N+1.
6. The provision of services compulsory under EU legal provisions will not be subject to any compensation; it is understood that the corresponding budget is available to the Commission<sup>10</sup>.
7. Services provided by Commission departments to other EU institutions, agencies and bodies within Heading 5 of the Multiannual Financial Framework, which are recurrent and stable in terms of volume and for which the corresponding budget is made available to the Commission will not be subject to any compensation.

### **Article 9 – Payments**

1. As a general rule an advance prefinancing payment corresponding up to 100 % of the estimated costs due for Year N shall be executed by the end of the first quarter of Year N, unless specified otherwise in the special conditions of this agreement.
2. No later than 1 October each year, the service provider will inform the client of the final estimated costs for the year, and will regularise the advance payment by issuing a recovery order or a payment order with the difference.
3. In case the final costs for Year N as reported per Article 3 above deviate from the amounts recovered, the balance shall be settled with the subsequent payments in Year N+1.

### **Article 10 – Declaration of assurance**

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<sup>10</sup> In the SLAs to be concluded with the EEAS the following clause will be added: 'Services provided following the Administrative Agreement between both institutions of 13 December 2010, in particular Article 3, 2<sup>nd</sup> paragraph, will not be subject to any compensation; it is understood that the corresponding budget is available to the Commission.'

1. The amount paid for services provided is considered to constitute assigned revenue, in application of Article 21(3)(e) of the Financial Regulation.
2. As a consequence, the Annual Declaration of Assurance of the responsible Authorising Officer in the service provider also covers the funds recovered for the provision of services. If requested, the Authorising Officer in the service provider will provide the client with a copy of the Declaration of Assurance and Annual Activity Report covering the use of funds received for the provision of services.



## **SECTION I.4 FINAL PROVISIONS**

### **Article 11 – Settlement of disputes**

1. Subject to special provisions that could be provided for in the special conditions of this agreement, in the event of disputes between the parties resulting from interpretation or application of the present agreement, the parties shall aim at reaching an amicable agreement in a spirit of good cooperation, first at the level of the operational services, then at the level of the DG concerned (Director General or equivalent) and finally at the level of the Secretary-General of the Commission and of the Secretary-General or equivalent officer of the client.
2. The client shall notify errors and/or anomalies concerning the service provided under this agreement to the central contact person (as defined in the special conditions of the present agreement) as well as to the sectorial contact person designated for the service concerned.
3. In reply to this notification the central contact person or, in agreement with the latter, the sectorial contact person shall indicate the reason for the error or anomaly as well as the proposed solution and the date by which this solution will be implemented. If this information cannot be provided promptly, the client will be kept informed about measures taken.
4. Each party shall respond to a request for amicable settlement within 15 working days of such request. The period to reach an amicable settlement shall be 30 days from the date of the request.
5. If the dispute cannot be resolved in an amicable way, the parties may agree to designate jointly a mediator, accepted by both sides, who will try to facilitate the resolution of the dispute as soon as possible.

In the absence of any resolution by means of mediation within a reasonable time, the parties may submit the dispute to arbitration by the Court of Justice of the European Union under Article 272 TFEU.

### **Article 12 – Force majeure**

1. If one of the parties is confronted with a case of ‘force majeure’, the party shall inform the other side in writing without delay, clarifying the exact nature, the probable duration and the expected impact on the execution of the present agreement.
2. If the other party cannot agree on the qualification of ‘force majeure’, the issue will be settled in accordance with Article 11.
3. None of the parties shall be considered to have failed in, or infringed, his obligations if they were not executed due to a case of ‘force majeure’. The parties take all necessary measures to reduce maximally any possible damages linked to the non-execution of the present agreement.

### **Article 13 – Data protection**

1. Personal data mentioned or covered by the present agreement, including those related to the provision of the services, are treated in conformity with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
2. These data shall only be treated for the purpose of the execution, management, and follow-up by authorized units to this end, without prejudice to any possible transmission to bodies charged with a control or inspection mission in applying EU law.

### **Article 14 –Amendment of the present agreement**

Any amendment of the present agreement shall require mutual agreement and take the form of a written amendment.

### **Article 15 – Termination**

1. Each party may terminate the present agreement with a prior written notice asking for a date of termination of all services provided as per its special conditions. The prior notice shall be of a sufficient duration to allow for the integration of any management or budgetary consequences caused by the termination into the management and budget plan of the two parties.
2. The parties will agree on the modalities for winding-up of services and settlement of final compensation due.

### **Article 16 - Confidentiality**

1. The service provider and the client shall treat with confidentiality any information, documents and data used or produced as part of the provided services and identified as confidential. Both parties undertake not to disclose any information to third parties without the prior consent of the other party and to use the information solely for fulfilling the obligations covered by the present agreement.
2. The client shall ensure the protection of such data with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care.
3. The confidentiality obligations set out in this article are binding on the service provider and the client during the implementation of the present agreement and for as long as the information or documents keep a confidential character unless:
  - a. the disclosing party agrees to release the other party from the confidentiality obligation earlier;
  - b. the confidential information or documents become public through other means than in breach of the confidentiality obligation;
  - c. the applicable law requires the disclosure of the confidential information or documents.

### **Article 17- Checks and audits**

1. The Internal Auditors of the EU institutions, agencies and bodies, the Court of Auditors and European Anti-Fraud Office have the right to perform any check or audit in accordance with relevant legislation and by taking due account of any bilateral agreements between the European Anti-Fraud Office and the EU institutions, agencies and bodies concerned.
2. In a spirit of good cooperation, the parties endeavour to facilitate any such checks or audits making mutually available, if needed, the results of the controls performed.

### **Article 18 – Entry into force and duration of validity**

1. The present agreement shall enter into force on the date of the signature by the last party.
2. It will be valid for a period of 1 year that will be automatically renewed unless specified otherwise in the special conditions of the present agreement or unless either party requests its termination in accordance with Article 15.

## **PART II SPECIAL CONDITIONS**

### **[SECTION II.1 ...]**

#### **Article 19 – ...**

[For the minimum content of the special conditions – see point 4.3 of the Guidance and Article 7 of this model service level agreement]

Done at Brussels, on

[Signatures]