



## **Eurostars-2 Bilateral Agreement**

between

Ministry of Education, Science, Research  
and Sport  
of the Slovak Republic  
("MERDS")

and

the EUREKA Secretariat

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## Terms and Conditions

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**This Bilateral Agreement ('the Agreement') is between the following Parties:**

**on the one part,**

Ministry of Education, Research, Development and Sport of the Slovak republic ("MERDS")  
Official registration number: 00 164 381, Stromová 1, 813 30 Bratislava, Slovak republic  
represented for the purposes of signing this Agreement by Peter Plavcan, Minister.

**and**

**on the other part,**

the EUREKA Secretariat A.I.S.B.L. ("the ESE"), Official registration: 0429.585.680, Rue  
Neerveld/Neerveldstraat 107, B-1200 Brussels, (VAT number: BE 0429.585.680 ), represented  
by Mr Pedro de SAMPAIO NUNES, Head of ESE,

By signing this Agreement, the Parties accept to enter into the Agreement under the terms and conditions below

The Agreement is composed of:

**Terms and Conditions**

- |         |  |
|---------|--|
| Annex 1 | Commitment Letter of <i>Slovak Republic</i> to the Director General of DG Research and Innovation of the European Commission |
| Annex 2 | Template for Declaration of Commitments  |
| Annex 3 | Template for Declaration of Expenditures   |
| Annex 4 | Change of legal representative or operational contact  |
| Annex 5 | Illustrative Template for Annual certification   |
| Annex 6 | Illustrative template for self-assessment of internal control arrangements   |
| Annex 7 | Template for nomination of NFB representative to the National Implementation Group   |
| Annex 8 | Delegation Agreement for Eurostars-2   |
| Annex 9 | Certification from the statutory auditor on the ESE process control for the Eurostars 2 contribution.                        |

**PREAMBLE**

- The Commission has decided to entrust implementation tasks ('the entrusted tasks') to the ESE by a Delegation Agreement (H2020 – Eurostars-2 - Joint Programme) under the Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States ("the Participating States") aimed at supporting research and development performing small and medium-sized enterprises ("Eurostars-2 Joint Programme").

The Bilateral Agreements obligations derive from the Delegation Agreement signed on 18 December 2014 between the ESE and the Commission. According to the Delegation



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Agreement, the ESE shall sign bilateral agreements with the National Funding Bodies designated by the Participating States, before any transfer of the EU contribution to them. The Bilateral Agreement shall set out:

- (i) the responsibilities of the ESE and the National Funding Bodies, in accordance with the rules of the Eurostars-2 programme, objectives and implementation modalities.
- (ii) the rules governing the transfer of the EU contribution.
- (iii) the minimum operational targets and national progressive milestones for further integration and synchronisation of national programmes agreed by the Eurostars-2 High Level group in consultation with the Commission, including a shorter time-to-grant in accordance with the Financial Regulation No 966/2012 and the Rules for Participation.

The Bilateral Agreement is compliant with the provisions of the Decision No 553/2014/EU, the Eurostars-2 Delegation Agreement and Transfer of Fund Agreement;

- Regulation (EU) No 1291/2013 of the European Parliament and of the Council established Horizon 2020 – The Framework Programme for Research and Innovation (2014-2020) ('Horizon 2020'). Horizon 2020 aims at achieving a greater impact with respect to research and innovation by contributing to the strengthening of public-public partnerships, including through Union participation in programmes undertaken by several Member States in accordance with Article 185 of the Treaty on the Functioning of the European Union.
- The EUREKA Ministerial Conference on 22 June 2012 in Budapest endorsed a strategic vision for Eurostars-2 ('Budapest Document'). The ministers committed to support the continuation of Eurostars-2 after its termination in 2013 for the period covered by Horizon 2020. This will consist of a reinforced partnership addressing the recommendations of the interim evaluation of Eurostars-. The Budapest Document sets out two main objectives for Eurostars-2. Firstly, a structural-oriented objective to deepen the synchronisation and alignment of the national research programmes in the field of funding, which is a central element towards the realisation of the European Research Area by the member countries. Secondly a content-related objective to support research and development performing SMEs engaging in transnational research and innovation projects. The Budapest Document invites the Union to participate in Eurostars-2.
- In its Decision No 553/2014/EU of 15 May 2014, the European Parliament and the Council provides for the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research and development performing small and medium-sized enterprises ("Eurostars-2 Joint Programme"), within the meaning of Article 185 of the Treaty on the Functioning of the European Union. A ceiling of 287 Million euro is established for the Union's financial contribution to Eurostars-2 for the duration of the Horizon 2020. Within the limits of that ceiling, there should be flexibility regarding the Union's contribution, which should be at least one third but no more than half of the contribution of the Participating States in order to ensure a critical mass necessary to satisfy the demand from projects eligible for financial support, to achieve a high leverage effect and ensure stronger integration of national research programmes of the Participating States.
- The Participating States have agreed on designating the ESE ('ESE') as the implementation structure for Eurostars-2. The ESE is responsible for the implementation of Eurostars-2. In order to achieve the objectives of Eurostars-2, ESE should be in charge of the organisation of the calls for proposals, the verification of the eligibility criteria, the peer-review evaluation







and the selection and the monitoring of projects, as well as the allocation of the Union's contribution.

- The evaluation of proposals should be performed centrally by independent external experts under the responsibility of ESE following calls for proposals. The projects' ranking list should be binding for the Participating States as regards the allocation of funding from the Union's financial contribution and from contribution from Participating States. The award decision for the allocation of the Union's financial contribution – taken by the HLG and implemented by ESE – is based on formal confirmation from the NFBs to the ESE of the conclusion of the funding agreements with the project participants.
- Overall, Eurostars-2 should support transnational research activities performed by research-intensive SMEs and contribute to the integration, alignment and synchronisation of national research funding programmes. As part of the improvements from the previous Eurostars programme (2008-2013), Eurostars-2 should head towards shorter time-to-grant, stronger integration and lean, transparent and more efficient administration to the ultimate benefit of research and development performing SMEs.
- Participation to Eurostars-2 is subject to Regulation (EU) No 1290/2013 of the European Parliament and of the Council. However, due to the specific operating needs of Eurostars-2, it is necessary to provide for derogations from that Regulation in accordance with Article 1(3) of that Regulation. In order to facilitate the participation of SMEs which are more used to national channels and which would otherwise carry out research activities only within their national boundaries, the Eurostars-2 financial contribution should be provided in accordance with the well-known rules of their national programmes and implemented through a funding agreement directly administered by the national authorities, combining Union funding with the corresponding national funding. A derogation should therefore be made from Article 15(9), Articles 18(1), 23(1), (5) to (7), 28 to 34 of Regulation (EU) No 1290/2013.
- MERDS has been formally designated by Slovak Republic ("Participating State") to financially support legal entities participating in selected Eurostars-2 projects from its national earmarked Eurostars-2 budget.
- The Eurostars-2 Joint Programme shall be implemented:
  - in accordance with the Decision 553/2014/EU and the Delegation agreement concluded between the Commission, on behalf of the European Union, and the ESE defining the implementation tasks that are entrusted to the ESE in the context of the Eurostars-2 Joint Programme and sets out the rights and obligations and terms and conditions for their implementation.
  - on the basis of annual work plans.

It is therefore hereby agreed as follows:

#### ARTICLE 1- SCOPE

In the context of the Eurostars-2 joint Programme, the purpose of this Agreement is to define terms and conditions for:



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- The implementation of the Eurostars-2 Joint Programme on the basis of the annual work plans and in accordance with the Decision 553/2014/EU and the Delegation Agreement signed between the Commission, on behalf of the European Union, and the ESE, where the implementation tasks that are entrusted to the ESE are defined, and the rights and obligations and terms and conditions are set out.
- The responsibilities of the ESE and the National Funding Bodies, in accordance with the Eurostars-2 rules, objectives and implementation modalities, including the IPR policy for the Eurostars-2 Programme.
- The rules governing the transfer of the EU contribution, including the allocation and the use of the EU contribution to MERDS following the actual payments of its financial support to Eurostars-2 participants, the controls of funds, the recovery of any unduly payment made, and the adequate protection of the financial interests of the European Union.
- The milestones for further integration and synchronisation of national programmes agreed by the Eurostars-2 high-level group in consultation with the Commission, including a shorter time-to-contract in accordance with the Financial Regulation No 966/2012 and the Rules for Participation.

#### ARTICLE 2 DEFINITIONS

- "Award decision" refers to the decision made by the HLG and implemented by the ESE to approve the final list of Eurostars-2 projects and award Union's financial contribution for the co-funding of projects eligible for receiving the Union's financial contribution.
- 'Annual work plan' refers to an obligation described in the decision 553/2014/EU, Article 9, stating that "Eurostars-2 shall be implemented on the basis of annual work plans." The annual work plan shall be adopted by the Head of the ESE following the prior agreement of the Eurostars-2 high-level group and of the Commission. As such, it is also part of the Transfer of Funds Agreement signed on an annual basis between the ESE and the Commission.
- "Commission" means the European Commission;
- "EUREKA National Project Coordinator (NPC)" means the national contact point;
- "Eurostars-2 High Level Group (HLG)" means the body in charge of supervising the implementation of the Eurostars-2 Joint Programme, and in particular for the appointment of the members of the Eurostars-2 Advisory Group, the approval of the operational procedures for running the Eurostars-2 Joint Programme, the approval of the call planning and call budget, and the approval of the ranking list of Eurostars-2 projects to be funded;
- "Eurostars-2 participant" means a legal entity participating in a Eurostars-2 project;
- "Eurostars-2 project" means a project selected following the call for applications and the centralised evaluation issued by the ESE under the Eurostars-2 Joint Programme and included in the final list of Eurostars-2 projects approved by the Award Decision.
- "Financial regulation" means Regulation (EU, Euratom) No 966/2012 of the European



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Parliament and of 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 and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, as amended since and as they will be amended in the future;

- "Independent Evaluation Panel (IEP)" means the panel responsible for reviewing and ranking applications received following the call for applications issued by the ESE, on the basis of predefined criteria;

- "IPRs" means Intellectual Property Rights;

- "Main participant" means the R&D performing SME **leading** a Eurostars-2 project;

- "Milestones": The 'milestones' refer to:

- the "minimum operational targets and national progressive milestones" mentioned in the Decision N°553/2014/EU from the European Parliament and the Council,
- the "target for funding" and "national progressive milestones" defined in the 'Eurostars 2: 2014-2020 Budapest document' endorsed during the EUREKA Ministerial conference on 22 June 2012 in Budapest,
- the 'progressive milestones' further established in the 'Eurostars (2014-2020) General Implementing Guidelines' endorsed by the High Level Group in Ankara in June 2013.

As such, the milestones for the NFBs are:

- (a) Time-to-contract of 7 months or shorter on average by Cut Off.
- (b) A balanced budget from the NFB and the European Commission to secure funding for the top-50 projects of the projects above the threshold.
- (c) A balanced budget from the NFB and the European Commission to secure funding for 50-75% of the projects above the threshold.
- (d) A common financial viability methodology defined, based on a proposal accepted by the National Implementation Group.
- (e) A common reporting system accepted, based on a proposal accepted by the National Implementation Group and taking into account national requirements.

- "National Implementation Group" is one of the body of the Eurostars-2 governance, composed of representatives from the NFBs, in charge of implementing the programme at national level. Its aim is to:

- Further define and implement the "milestones";
- Monitor the implementation of the "milestones" by the NFBs.

- "National Roadmap" refers to a roadmap to be established by each NFB for achieving the national milestones.

- "Small and medium-size enterprises (SME)" means micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC of 6 May 2003.

- "R&D performing SME" means a SME which meets at least one of the following conditions:  
(a) reinvests at least 10 % of its turnover to research and development activities;







- (b) dedicates at least 10 % of its full-time equivalents to research and development activities;
- (c) has at least five full-time equivalents (for SME with no more than 100 full-time equivalents) for research and development activities;
- (d) or has at least 10 full-time equivalents (for SME with over 100 full-time equivalents) for research and development activities.

- "Rules for Participation" means Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006

- 'Time-to-contract' is the time elapsed between the cut-off date and the date of notification of the grant decision from the NFB to the participant. It is also referred as 'Time-to-grant' in the Decision N°553/2014/EU and EU regulations.

### ARTICLE 3- ENTRY INTO FORCE AND DURATION

This Agreement should enter into force on the date of the last signature of this Agreement. Task entrusted to the ESE and MERDS should take place before 31/12/2025.

This Agreement shall continue in full force and effect until the earlier of:

- (a) its termination in accordance with Article 21- Suspension and Termination, or
- (b) the complete discharge of all obligations undertaken by the Parties under this Agreement.

The provisions relating to Audits and checks, Confidentiality, Publications and Intellectual Property shall survive the expiration or termination of this Agreement to the extent needed to enable the Parties to pursue the remedies and benefits provided for in those provisions.

The period of this Agreement can be extended by written approval of both Parties.

The expenditures related to the grants provided to Eurostars-2 projects selected following the first, second, third and fourth calls for proposals, which closed on 13 March 2014, 11 September 2014, 5 March 2015 and 17 September 2015 respectively, are eligible. The Terms and conditions of the present bilateral agreement are fully applied for expenditures related to grants for Cut-off 1 (deadline date: 13 March 2014), Cut-off 2 (deadline date: 11 September 2014), Cut-off 3 (deadline date: 5 March 2015), Cut-off 4 (17 September 2015) and the following calls organised under Eurostars-2 until 2020."





## SECTION I - THE RESPONSIBILITIES OF THE ESE AND THE NATIONAL FUNDING BODIES

### ARTICLE 4 - OBLIGATIONS OF MERDS AND THE ESE

#### 4.1 General obligations of MERDS

MERDS shall:

- 4.1.1 Act in compliance with all legal obligations under applicable EU, international and national law (in particular, including the principles of sound financial management, transparency and non-discrimination and the Decision No 553/2014/EU).
- 4.1.2 Ensure that Grants are awarded in compliance with the Rules for Participation and the Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research and development performing small and medium-sized enterprises ("Eurostars-2 Joint Programme"). Grant agreements must be signed by the National Funding Body before 31 August 2021 or beyond that date in exceptional and duly justified cases under Article 20(3) of the Rules for Participation.
- 4.1.3 MERDS may use its own model grant agreements, but the provisions of the model grant agreements must comply with the Rules for Participation or the national funding rules applicable under Article 8 of Decision No 553/2014/EU and allow the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors to exercise their rights under Article 18 – checks, audits and investigation.

#### 4.2 Financial obligations of MERDS

MERDS undertakes to:

- 4.2.1 annually contribute to the financing of the Eurostars-2 Programme in accordance with the Commitment Letter of Slovak Republic to the Director General of DG Research and Innovation of the Commission (Annex 1);
- 4.2.2 financially support the eligible Eurostars-2 participants, excluded natural persons, from its national earmarked Eurostars-2 budget in compliance with the award decision approved by the Eurostars-2 HLG, and in accordance with its pre-established applicable national funding rules;
- 4.2.3 Refrain from financially supporting Eurostars-2 participants before the signature of a consortium agreement by all participants in the project is validated by the ESE;
- 4.2.4 make all possible efforts to find additional funding for its Eurostars-2 participants in case its national earmarked Eurostars-2 budget is exhausted, in line with the national milestones;
- 4.2.5 provide information to the ESE on the funding availability for projects ranked above the quality threshold within maximum five weeks of the publication of the ranking list:
  - Within two weeks, confirm the allocation of the earmarked budget to fund project participants, in the order of the ranking list







- Within the three following weeks, if the earmarked budget is exhausted, confirm availability of additional funding or alternative funding, including self-financing, for project participants.
- 4.2.6 carry out **controls** on the recipients in accordance with Article 29 of the Horizon 2020 Framework Programme Regulation No 1291/2013, including, where appropriate, on-the-spot checks on representative and risk-based samples of transactions to ensure that underlying transactions are legal and regular and that actions financed from the EU budget are effectively carried out and implemented correctly. MERDS will report on them to the ESE.
- 4.2.7 avoid any double funding from other direct or indirect European Union funding sources (such as European Structural and Investments funds), and in particular from the Horizon 2020 Programme, for the same activity. Therefore a specific provision shall be included in the agreements between MERDS and the Eurostars-2 participants;
- 4.2.8 ensure that its national financial support to Eurostars-2 participants - eligible for EU contribution co-financing under Horizon 2020- does not contain EU funding from other direct or indirect sources (such as European Structural and Investments funds), and respects the principles laid down in Article 109 of the Financial regulation (transparency, equal treatment, non-retroactivity, non-cumulative co-financing and non-profit);
- 4.2.9 ensure that the rules for State aids are applied<sup>1</sup>.
- 4.2.10 perform a Financial viability check of applicants under the coordination of the ESE to ensure that the Eurostars-2 participants have the necessary resources to carry out their involvement in the Eurostars-2 project.
- 4.2.11 ensure that the national funding schemes participating in Eurostars-2 Programme comply with the common eligibility criteria for Eurostars-2. These schemes shall not be in contradiction with the Decision and its Annex I in particular, or with any EU rule, or of such a nature to put the reputation of the European Commission at risk.
- 4.2.12 provide the ESE with, and ensure the respect of, the funding rules of the underlying national programme of MERDS as well as the eligibility criteria for costs;
- 4.3 Obligations of MERDS in relation to Eurostars-2 participants**
- MERDS undertakes to make the necessary arrangements to ensure that:
- 4.3.1 Participants eligibility - The Eurostars-2 participants are entities eligible for the Eurostars-2 Joint Programme under the Decision and have stable and sufficient funding to maintain their activity throughout their participation to the Eurostars-2 project;

<sup>1</sup> OJ C 198, 27.6.2014, Communication from the Commission — Framework for State aid for research and development and innovation.







- 4.3.2 IPR - Selected Eurostars-2 Joint Programme projects are implemented in compliance with Articles 41 to 49 of the Rules for Participation<sup>2</sup> in addition to national requirements. Specific provisions on those IPR rules should be included in the grant agreement between MERDS and the participants.
- 4.3.3 Project changes - The main participant has to inform immediately MERDS, the EUREKA NPC and the ESE of any significant changes occurred during the execution of the Eurostars-2 project with regard to the objectives, duration, budget and composition of the consortium, and asks for prior approval by the ESE of these modifications;
- 4.3.4 Consortium agreement – all participants in a Eurostars-2 project sign a consortium agreement.  
The consortium agreement signed by all should address IPR in detail, in particular regarding identification of project background, the ownership of results, the exploitation, dissemination and the access rights, both for the execution of the projects and for the exploitation phase on the basis of the approach taken under the Rules for Participation<sup>3</sup> of Horizon 2020 Programme in addition to national requirements.
- 4.3.5 Project and Participants reporting -  
The Eurostars-2 participants are required to provide the ESE with accurate information (i) upon request of the ESE during the performance of the Eurostars-2 project as regards to the progress of the Eurostars-2 project, and (ii) upon request of the ESE during 3 years after the end of the Eurostars-2 project, as regards the exploitation of the project results.
- 4.3.6 Success story – participants are informed that the ESE, with the consent of the participants, has the right to use any Eurostars-2 project as a case study or success story to promote the Eurostars-2 Joint Programme;
- 4.3.7 Right to carry out Ex-post Audits and investigations on participants - The ESE, Commission, OLAF and the Court of Auditors may carry out ex post audits and investigations on participants, in accordance with their respective competences, for a period up to two years after the payment of the balance.
- 4.3.8 Ethics appraisal – Participants shall implement the specific requirements set out within the central ethics appraisal. The ESE or the Commission are authorized at any point to carry out checks and audits with regards to the follow-up of those requirements.

#### 4.4 Information and reporting obligations of MERDS

- 4.4.1 MERDS shall annually provide the ESE with the information of its earmarked budget

<sup>2</sup> OJ L 347, 20.12.2013 - Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006

<sup>3</sup> OJ L 347, 20.12.2013 - Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006



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for each cut-off, in the frame of the preparation of the Eurostars-2 Annual Work Plans.

- 4.4.2 Declaration of Commitment – MERDS shall communicate a "Declaration of Commitments" signed by the legal representative of the MERDS (see Template in Annex 2 entitled "Declaration of Commitments") to the ESE within a maximum delay of 12 months following the relevant Cut-off date, including the list of Eurostars-2 projects participants to which a financial support is planned, the total maximum amount of the planned financial support, the date of notification of the grant decision. Amounts shall be declared in national currency. The conversion rate defined in article 15.2 – conversion rate will be applied. The "Declaration of Commitments" shall also include a statement of assurance as part of the Declaration of Commitments (see Template in Annex 2 entitled "Declaration of Commitments"), signed by the legal representative of MERDS.

If the ESE does not receive the "Declaration of Commitments" of MERDS by the set deadline, the ESE will not allocate any EU contribution for the projects participants, unless the delay is duly justified by MERDS and agreed by the ESE

- 4.4.3 Declaration of expenditures – MERDS shall submit to the ESE a request for the payment of the EU contribution through a "Declaration of Expenditures", on an annual or bi-annual basis. The "Declaration of Expenditures" shall include the amount and date of each financial transaction carried out to Eurostars-2 projects participants. Amounts shall be declared in national currency. The conversion rate defined in article 15.2 – conversion rate will be applied. It shall also contain a statement signed by the legal representative of MERDS that MERDS obtained reasonable assurance that the costs claimed by the recipients are correct and represent eligible costs and that for each element of information concerning financial transactions carried out, MERDS makes available to the ESE, on request, adequate evidence of the payments actually carried out, including bank statements and accounting recordings ( see Template in Annex 3 entitled "Declaration of Expenditures").

MERDS shall provide the ESE with information on the last financial transactions made to Eurostars-2 projects participants within 12 months of the ESE's request for Final reports to participants further to completion of the Eurostars-2 project.

If not received by the set deadline, the ESE will not release any further EU contribution for the project participants involved, unless the delay is duly justified by MERDS and agreed by the ESE.

- 4.4.4 Reporting on the progress towards national milestones – MERDS shall provide any information necessary for the annual and midterm evaluation of the national milestones as defined in article 2 – definitions, it shall include in particular :
- Explanation when the time-to-contract exceeds 7 months on average by cut-off in order to allow proper reporting of the ESE towards the National Implementation Group, High level Group and European Commission;
  - Any amendment to the national roadmap when required including updated description of national process for finalising the grant decision;
  - A mitigation plan where requested by the ESE.

- 4.4.5 Additional reporting – MERDS is required to provide the ESE with information







necessary for the continuous and systematic review by the Commission of the specific programme and the Horizon 2020 programme, and the evaluation and impact assessment of European Union activities. Such data may be requested throughout the duration of the Eurostars-2 Joint Programme and up to five years after its end.

MERDS shall also provide the ESE with a copy of the evaluation report when carrying out or having carried out an evaluation of the implementation impact of Eurostars-2 at national level.

4.4.6 Revised documents - After receiving the documents referred to in Article 4.4 – Information and Reporting obligations, the ESE may:

- (a) request additional information related to the content of the documents. MERDS shall supply the requested information within 15 calendar days of the request or upon a specific deadline agreed with the ESE.
- (b) request submission of revised documents. MERDS shall supply the revised documents by the deadline set by the ESE in the request or upon a specific deadline agreed with the ESE.

#### 4.5 Controls and audits

4.5.1 Internal control framework – MERDS shall ensure proper management and control mechanism, and in particular:

- (a) use an accounting system that provides accurate, complete and reliable information in a timely manner;
- (b) take appropriate measures to prevent, detect and correct irregularities and fraud;
- (c) set up and ensure the functioning of an internal control system that is effective and efficient;
- (d) agrees to be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of it;

4.5.2 Self-assessment of MERDS assurance/internal control arrangements – MERDS shall provide the ESE with a self-assessment of its own assurance/internal control arrangements, based on guidelines to be provided by the ESE. The self-assessments will be required on a cyclical basis of between two and four years. The exact timing will be determined for each NFB by the ESE Secretariat based on the latter's assessment of the robustness of the NFB's arrangements.

- (a) The self-assessment will cover a range of areas such as:
  - Internal control arrangements
  - Validation of participant claims
  - Payment arrangements
  - Counter fraud arrangements
  - Audit arrangements







- (b) The self-assessment shall include a formal review by an independent auditor and an audit report. This review will be undertaken in accordance with:
- Formal terms of engagement determined by ESE
  - ISRS 4400 "Agreed Upon Procedures"
  - Code of Ethics for Professional Accountants

The first self-assessment should be provided to the ESE no later than six months after signing the Bilateral Agreement.

- (c) The ESE will perform a review of the self-assessment and audit report and has the right to request further documentary evidence from MERDS for desk check review.
- (d) In the intervening years between formal self-assessments MERDS shall confirm to the ESE whether or not there have been any significant changes to its assurance arrangements. MERDS shall also report annually to the ESE on any frauds or irregularities that have occurred.

- 4.5.3 Annual Certification of Expenditure – MERDS shall report annually to the ESE on its grant expenditure to participants. MERDS shall obtain an independent auditors report on the certification of expenditure. The audit will focus principally on:
- The reconciliation of the main accounting system and evidencing the total sum spent on Eurostars grants;
  - Whether grants to Eurostars-2 beneficiaries are compliant with national funding rules.

This certification audit will be undertaken in accordance with:

- Formal terms of engagement determined by the ESE;
- ISRS 4400 "Agreed Upon Procedures";
- Code of Ethics for Professional Accountants.

- 4.5.4 ESE Spot checks – The ESE will consider the results of :
- The self-assessments;
  - The certification audits;
  - Any other evidence.

The ESE will then determine the need for further detailed spot checks at NFB level. Spot checks will be risk based and will focus primarily on NFBs with weaker control arrangements. The ESE reserves the right to carry out detailed spot checks on any NFB.

- 4.5.5 The ESE will provide further detailed guidance on the nature of the self-assessments and audits as well as illustrative audit reports.
- 4.5.6 Record-keeping – MERDS shall keep all original documents, especially accounting and tax records stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a





period of five years after the payment of the balance. If there are on-going audits, appeals, litigation or pursuit of claims concerning the Agreement, MERDS shall keep the documents until the end of these procedures.

4.5.7 Information – MERDS shall also inform the ESE without delay of:

- (a) any substantial changes to its systems, rules or procedures that relate to the management of the EU 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 EU's financial interests;
- (e) any event which may delay or jeopardize performance of MERDS under this Agreement.

4.5.8 Revised documents - After receiving the documents referred to in Article 4.5 – Controls and Audits, the ESE may:

- (a) request additional information related to the content of the documents. MERDS shall supply the requested information within 15 calendar days of the request or upon a specific deadline agreed with the ESE;
- (b) request submission of revised documents. MERDS shall supply the revised documents by the deadline set by the ESE in the request or upon a specific deadline agreed with the ESE.

#### 4.6 Performance obligation of the ESE

**Implementation tasks** - In the 'Eurostars-2 Decision', the Participating States have agreed on designating the Eureka Secretariat ('ESE') as the implementation structure for Eurostars-2. In line with the Delegation Agreement signed between the European Commission and the ESE, the ESE is entrusted with the management of the EU contribution and the following implementation tasks:

- 4.6.1 Managing the following phases of the lifecycle of Eurostars-2 Joint Programme projects: call publication on dedicated websites, providing information to applicants, receiving proposals, central verification of the eligibility criteria, central verification of the operational capacity, central evaluation and ranking against the award criteria, ethics review, checks and audits in accordance with Articles 13 and 14 of the Rules for Participation Regulation (EU) No 1290/2013, evaluation review, information of NFBs of the outcome of the evaluation, monitoring execution of grant agreement through project reporting and audits by the NFBs.
- 4.6.2 Ensuring the receipt, allocation and monitoring of the Union contribution;
- 4.6.3 Collecting the necessary information from the NFBs for the transfer of the EU contribution;



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- 4.6.4 Promoting Eurostars-2 and ensuring that sufficient guidance and information is available to all potential participants;
- 4.6.5 Reporting to the Eurostars-2 High Level Group and the Commission on the Eurostars-2 programme; and informing the EUREKA network about the activities of Eurostars-2.
- 4.6.6 Establishing and maintaining the bilateral agreements with the NFBs and the contracts with the experts assessing Eurostars-2 applications;
- 4.6.7 Preparing the Eurostars-2 annual work plan and adopting it following the prior agreement of the Eurostars-2 High Level Group and of the Commission.

**Obligation towards MERDS-** The ESE shall:

- 4.6.8 Make the necessary arrangements to communicate to MERDS the Award Decision taken by the Eurostars-2 HLG within 4 months following the relevant cut-off date.
- 4.6.9 Implement the Award Decision made by the Eurostars-2 HLG upon receipt of the 'Declaration of Commitments' from NFB as stated in Article 12 – Conditions for the allocation of the EU contribution.
- 4.6.10 Pay EU contribution payments to MERDS not later than 30 days after receipt of the request of MERDS as stated in Article 15 - financial provisions
- 4.6.11 Inform MERDS on any changes to a project and requesting advice of MERDS on any request of substantial changes in a project.
- 4.6.12 Maintain the Eurostars Project Database, update it and provide an access to it for MERDS;
- 4.6.13 Support MERDS with data and statistics requests;
- 4.6.14 Communicate to MERDS a copy of the evaluation report when carrying out or having carried out an evaluation of the implementation impact of Eurostars-2;
- 4.6.15 Take effective measures to avoid any double funding from other European Union funding sources, and in particular from the Horizon 2020 Programme, for the same activities.
- 4.6.16 Liaise with the European Commission to identify through access to the central exclusion database if applicants (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 EU's financial interests, and communicate this information to MERDS.

**ARTICLE 5 – CONFLICT OF INTEREST**





MERDS shall take all the necessary measures to prevent any risk conflict of interest and inform the ESE without delay of any situation constituting or likely to lead to a conflict of interest. Such conflicts of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or emotional reasons, or any other common interests liable to affect the impartial and objective performance of the obligations of this Agreement;

The ESE may verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

#### ARTICLE 6 – VISIBILITY OF EU FUNDING

MERDS shall include in any communication or publication related to the Eurostars-2 Joint Programme (including in electronic form, via social media etc) :

- An indication of EU support,
- Display of the EU emblem and
- the following text:

*"This project has received funding from the Eurostars-2 Joint Programme with co-funding from the European Union's Horizon 2020 research and innovation programme".*

When displayed together with another logo, the EU emblem must have appropriate prominence.

For the purposes of its obligations under this Article, MERDS is authorised to use the EU emblem, without first obtaining permission from the Commission. This does not however give it the right of exclusive use.

Moreover, MERDS shall not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

Any communication or publication related to the implementation of the Eurostars-2 Programme, made by MERDS 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.

MERDS shall ensure that above provisions are also implemented by Eurostars-2 participants.

#### ARTICLE 7 – PUBLICATION OF INFORMATION AND PROCESSING OF PERSONAL DATA

##### 7.1 Publication of information

MERDS shall make the necessary arrangements to allow the ESE to publish on its website information on the recipients of EU funds, with due regard to confidentiality requirements and protection of personal data: the name and locality of the recipient, the amount awarded, the nature and purpose of the measure.

Locality means for legal persons, its address.

The information may not be published, if disclosure risks threatening the rights and freedoms under the Charter of Fundamental Rights of the European Union or would be likely to harm the commercial interests of the recipients.



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This arrangement should also be made for any other information to be published by the ESE upon the request of the Commission aimed at ensuring the visibility of the European Union action.

The Commission is authorised to publish directly the relevant information on its website.

## **7.2 Processing of personal data by the ESE and MERDS**

Where the implementation of the entrusted tasks requires the processing of personal data by the ESE, it shall be processed by the ESE pursuant to Regulation No 45/2001.

The persons whose personal data are processed shall have the right of access to their personal data and the right to rectify any such data.

They shall also have the right of recourse at any time to the European Data Protection Supervisor (EDPS).

MERDS ensures to process personal data under their grant agreements in accordance with the applicable national law on the protection of personal data.

## **7.3 Processing of personal data by the recipients**

MERDS should ensure that recipients will:

- process personal data under their grant agreement or contract in compliance with applicable EU and national law on data protection (including authorisations or notification requirements);
- grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring their grant agreement or contract ;
- inform the personnel whose personal data are collected and processed by the ESE or MERDS.





## SECTION II - NATIONAL MILESTONES

### ARTICLE 8 – GENERAL PROVISION

MERDS agrees with the national milestones, as defined in article 2 - Definitions.

MERDS will strive to achieve the national milestones by the mid-term of the Eurostars-2 Programme in 2017.

MERDS should provide the ESE with a roadmap for achieving the national milestones, based on a template to be provided by the ESE. The roadmap should include a description of national process for finalising the grant decision.

### ARTICLE 9 – TIME-TO-CONTRACT

Time-to-contract will be monitored by the ESE based on the 'Declaration of Commitments' provided by MERDS for each Cut-off date following the requirements set out in article 4.4 - Information and reporting obligations of MERDS.

Shorter time-to-contract shall be reached in accordance with the 'Eurostars 2: 2014-2020 Budapest document' endorsed during the EUREKA Ministerial conference on 22 June 2012 in Budapest, the 'Eurostars (2014-2020) General Implementing Guidelines' endorsed by the High Level Group in Ankara in June 2013, the Financial Regulation No 966/2012 and the Rules for Participation.

The ESE and MERDS will undertake joint efforts to ensure the time-to-contract is 7 months on average or less:

- the ESE will make all necessary efforts to ensure that the funding results are communicated to the participants of selected Eurostars-2 projects and to MERDS within 4 months of the Cut-off deadline.
- MERDS will make all necessary efforts to ensure the grant decisions with project participants are finalised within 3 months of the communication of the funding results by the ESE.

### ARTICLE 10 – PARTICIPATION TO NATIONAL IMPLEMENTATION GROUP MEETINGS

The aim of the National Implementation Group is to:

- Further define and implement the national milestones;
- Monitor the implementation of the national milestones by the NFBs.

MERDS will designate its representative(s) to the National Implementation Group that will meet at least once a year and will provide a mandate for its/their participation.

### ARTICLE 11 – REPORTING AND EVALUATION OF THE NATIONAL MILESTONES

Reporting of the national milestones will be provided to the Eurostars-2 High Level Group by the ESE at least once a year, based on the monitoring of the NFBs roadmaps within the







National Implementation Group and status of national milestones including time-to-contract.

An evaluation of the implementation of the national milestones will take place in 2017.

When necessary the ESE will visit MERDS to propose improvements based on best practices.



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### SECTION III - RULES GOVERNING THE TRANSFER OF THE EU CONTRIBUTION

#### ARTICLE 12 – CONDITIONS FOR THE ALLOCATION OF THE EU CONTRIBUTION

The ESE undertakes to allocate the EU contribution to the Eurostars-2 projects to MERDS further to the award decision made by the Eurostars-2 HLG, in accordance with the Decision and the Financial Regulation as well as on the basis of the following cumulative principles without prejudice of the specific rules agreed upon hereinafter:

- (a) The EU contribution shall be:
  - calculated at the rate defined in the Annual Work Plans;
  - calculated by reference to the eligible costs of each Eurostars-2 project as a whole;
  - limited to the maximum EU contribution amount in euro confirmed by the ESE further to receipt of the "Declaration of Commitments".
- (b) The EU contribution shall be allocated upon:
  - the award decision made by the Eurostars-2 HLG and implemented by the ESE;
  - the actual payments made to the Eurostars-2 participants by MERDS;
  - submission of appropriate financial statements by MERDS;
  - submission of progress and Final reports by the Eurostars-2 participants;
  - approval by the ESE and the NFBs of any request for minor and major changes of the projects;
  - approval by the ESE of the said statements and progress reports.
- (c) The EU contribution cannot give rise to any profit for MERDS or for the Eurostars-2 participants.

#### ARTICLE 13 - CONDITIONS FOR EU CONTRIBUTION ELIGIBILITY OF EXPENDITURE COSTS

The ESE shall **accept** EU contribution for expenditure related to grants which meet the following criteria:

- (a) they are actually incurred by MERDS. Amounts that are to be recovered by the ESE under with Article 16 - Recovery - shall not be considered as actually incurred;
- (b) they are incurred in the following periods : expenditure related to grants is acceptable if the grant is awarded after the starting date set out in Article 3- Entry into force and duration - and the action supported by the grant is completed before the end date set out in Article 3 – Entry into force and duration;
- (c) they are directly linked to the implementation of the projects
  - Where the financial contributions of MERDS take the form of grants, the financial contributions due to participants shall be the amounts due under the grant agreements signed by MERDS.
  - Where the financial contributions take forms other than grants, they shall be valued by the ESE according to grant equivalence rules established by the Commission;
- (d) They are identifiable and verifiable, in particular recorded in the accounts of MERDS in accordance with the usual cost accounting practices of MERDS;



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- (e) They comply with the applicable national law on taxes, labour and social security;
- (f) They are reasonable, justified and comply with the principles of sound financial management.

#### ARTICLE 14 - INACCEPTABLE EXPENDITURE

The ESE shall not accept the following as eligible expenditure:

- (a) costs not compliant with Article 13, in particular:
  - (i) debt and debt service charges (interest);
  - (ii) provisions for future losses and debts;
  - (iii) exchange losses;
  - (iv) bank costs
  - (v) expenditure resulting from commitments made during suspension of the implementation of the Bilateral and Delegation Agreement;
  - (vi) deductible VAT;
  - (vii) contributions in kind provided free of charge by third parties to the participants
- (b) expenditure declared under another EU funding instrument
- (c) expenditure related to the national implementation of the programme.

#### ARTICLE 15 – FINANCIAL PROVISIONS

##### 15.1 Payment modalities to MERDS

The requests for payments are made through the "Declaration of Expenditures".

"Declaration of Expenditures" shall be submitted in National Currency. The rules on conversion set out in Article 15.2 – Conversion rate apply.

Payments by the ESE shall be made in Euro.

Requests for the allocation of the EU contribution shall be addressed to the Eurostars/Programme Implementation Department of the ESE.

The EU contribution will be allocated by the ESE not later than 30 days after receipt of the request of the MERDS with the following details:

Name of the bank: Štátna pokladnica  
Address of the bank: Radlinskeho 32, 810 05, Bratislava  
Name of the account holder: MERDS  
IBAN code: SK70 8180 0000 0070 0013 3219  
BIC code: SPSRSKBA

provided all requirements under this Agreement are met.

The ESE reserves the right to communicate specific arrangements for payments during holiday periods to MERDS.

Incomplete bank details will lead to non-payment.





The ESE shall formally notify MERDS of the expenditure/payment request accepted with explanatory documentation.

Payments by the ESE shall be considered to have been carried out on the date when they are credited to the MERDS's account.

Bank Charges for payments to SEPA Countries will be shared between the ESE and MERDS.

### 15.2 Conversion rate

Costs shall be reported by MERDS to the ESE in National Currency.

The ESE will convert into Euro using the following rules:

- (a) "Declaration of Commitments" - The exchange rate used to declare grant commitments in the "Declaration of Commitment" (Annex 2 "Declaration of Commitments" template) shall refer to the date of the first day of the month following the award decision by the Eurostars-2 High Level Group.
- (b) "Declaration of Expenditures" - The exchange rate used to declare expenditures in the "Declaration of expenditures" (Annex 3 "Declaration of Expenditures" template) shall be the average of daily exchange rate covering this financial period
- (c) Recoveries - The exchange rate used to declare recoveries shall be the date on which the recovery order is drawn up by the ESE.

The exchange rate used is the average of the daily exchange rates published in the C series of the Official Journal of the European Union (<https://www.ecb.int/stats/exchange/eurofxref/html/index.en.html>), 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 website ([http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)), determined over the corresponding reporting period.

### 15.3 Suspension of the payment deadline by the ESE

The ESE may — at any time — suspend the payment deadline, if a request for payment cannot be met because:

- (a) the Commission decides to suspend the payments
- (b) the payment request does not comply with the provisions of this Agreement;
- (c) the accompanying documents set out in article 4.4 –Information and reporting obligation and article 4.5-Controls and audits have not been submitted or are not complete;
- (d) there is doubt about the acceptability of the underlying expenditure, or
- (e) there are indications of a significant deficiency in the functioning of the internal control



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system or that the expenditure certified by MERDS is linked to a serious irregularity and has not been corrected and suspension of the payment deadline is necessary to prevent significant damage to the EU's financial interests.

The ESE shall formally notify MERDS of the suspension to and the reasons for such suspension.

Suspension shall take effect the day the notification is sent by the ESE.

If the conditions for suspending the payment deadline are no longer met, the suspension will be lifted — and the remaining period for payment will resume.

If the suspension period exceeds two months, MERDS may request the ESE if the suspension will continue.

#### 15.4 Suspension of payments by the ESE

The ESE may — at any time — suspend payment, if:

- (a) if the Commission decides to suspend the payment
- (b) if it has evidence that MERDS has committed substantial errors, irregularities or fraud, or if MERDS fails to comply with its obligations under this Agreement;
- (c) if it has evidence that MERDS has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under the present or other agreements funded by EU funds, which call into question the reliability of its internal control system or the legality and regularity of the underlying expenditure;
- (d) if it suspects substantial errors, irregularities, fraud or breach of obligations committed by MERDS in the implementation of the entrusted tasks and needs to check whether they have occurred;
- (e) if the Participating State does not contribute to the financing of Eurostars-2 Joint Programme in accordance with Article 7 of Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research and development performing small and medium-sized enterprises ("Eurostars-2 Joint Programme"), or contributes partially or late.

Before suspending payment, the ESE shall formally notify MERDS of its intention to suspend payment:

- specifying the reasons for the decision to suspend payment and
- inviting MERDS to submit observations within 30 days from receiving the notification.

If the ESE does not receive observations or decides to pursue the procedure despite the observations it has received, it shall formally notify the NFB of the suspension. Otherwise, it shall formally notify MERDS that the suspension is not continued.

The suspension shall take effect the day the confirmation notification is sent by the ESE.

If the conditions for resuming payments are met, the suspension will be lifted. The ESE shall formally notify MERDS of the lifting of the suspension.

During the suspension, MERDS may not submit any requests for payments. Requests for payments may be submitted after resumption of payments or may be included in the first request for payment due following resumption of payments.



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## ARTICLE 16 – RECOVERY

The ESE shall take any necessary legal actions to assure effective recovery of any amount unduly paid.

If any amount is unduly paid by the ESE to the MERDS or if recovery is justified under the terms of this Agreement (as for instance any amount that was paid to it but which exceeds the rate of the EU contribution mentioned in the annual work plan applicable to the financial contributions of the NFBs due to Eurostars-2 participants), the MERDS undertakes to repay to the ESE the amounts in question on reasonable terms and by a reasonable date specified by the ESE.

Before recovery, the ESE shall formally notify MERDS of its intention to recover an amount by:

- specifying the amount due and the reasons why it is claimed it is due and
- inviting it to submit observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by MERDS, the ESE decides to pursue the recovery procedure, the ESE may formally confirm the recovery by notification specifying the terms and the date for payment.

The ESE shall recover the amount:

- (a) by offsetting it — if directly declared by the NFB or with its consent — against any amounts owed to MERDS;
- (b) by requesting MERDS the direct reimbursement to the ESE bank account :

Name of the bank: Belfius Banque Belgique  
Address of the bank: Boulevard Pacheco 44, B-1000 Brussels, Belgium  
Name of the account holder: Secrétariat d'EUREKA  
IBAN code: BE23 0689 0175 7291  
SWIFT code: GKCCBEBB

- (c) by taking legal action including the application of late interest payments due in accordance with Belgian legislation.

The ESE may waive recovery if the conditions set out in Article 80 of the Financial Regulation No 966/2012 are met.

Bank charges incurred in the recovery process shall be borne by MERDS.

## ARTICLE 17 — FINANCIAL CORRECTIONS BY THE ESE

The ESE may apply financial corrections by:

- excluding grant expenditure costs from EU financing, if the grant expenditure costs do not comply with the conditions set out in Article 13 – Conditions for eligibility of expenditures.
- reducing the EU contribution in proportion to the seriousness of the breach, if MERDS has breached any of its other obligations under the Agreement ; or



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- reducing the EU contribution in proportion to the seriousness of the breach, if the Participating State does not contribute to the financing of Eurostars-2 Joint Programme in accordance with Article 7 of Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research and development performing small and medium-sized enterprises ("Eurostars-2 Joint Programme"), or contributes partially or late.

Before applying financial corrections, the ESE shall formally notify its intention to MERDS:

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

If the ESE does not receive any observations or decides to apply the financial corrections despite the observations it has received, it shall formally notify MERDS of its intention to proceed with the corrections.

## **ARTICLE 18 – CHECKS, AUDITS AND INVESTIGATION**

### **18.1 General principles**

Checks, audits and investigations shall follow general principles as laid down in the Decision N° 553/2014/EU of the European Parliament and of the Council of 15 May 2014.

In particular, for the purpose of simplification, administrative burdens should be reduced for all parties. Double audits and disproportionate documentation and reporting should be avoided. When audits are conducted, the specificities of the national programmes should be taken into account, as appropriate.

### **18.2. Checks, audits and investigation of MERDS by the ESE, Commission, OLAF and the Court of Auditors**

The ESE, the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors may carry out checks and audits on the implementation of the Eurostars-2 Programme at any time during the implementation of MERDS obligations under this agreement and up to five years after the payment of the balance of the agreed payment.

MERDS shall ensure that the ESE, the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors can exercise their rights under this Article.

MERDS shall provide any information, including information in electronic format, requested by the ESE or the Commission, or by any other qualified body chosen by the ESE or the Commission in the context of checks and audit, to check that the provisions of this agreement are being properly implemented.

During an on-the-spot visit, MERDS shall grant the ESE, the Commission staff and duly authorised persons the appropriate right of access to its premises and to all the necessary information (including information in electronic format) needed in order to conduct the audit. 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.

On the basis of the audit findings, the ESE or Commission may take the measures which it



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considers necessary, including financial corrections and recovery of all or part of the payments made.

Under Regulations No 883/2013 and No 2185/96 (and in accordance with their provisions and procedures), OLAF may — at any time during implementation of the entrusted tasks or afterwards — carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the EU's financial interests. OLAF findings may lead to financial corrections and recovery.

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

Any such check, audit or investigation shall be carried out on a confidential basis.

### 18.3. Checks, audits and investigations of the Eurostars-2 participants

MERDS shall ensure that the rights of the ESE, the Commission, OLAF and the Court of Auditors to carry out ex-post audits and investigations in accordance with their respective competences are extended to the right to carry out any such ex-post audits and investigations on any Eurostars-2 participant whose costs are reimbursed in full or in part by the EU contribution, on the same terms and conditions as set out above.

Any such ex-post audits and investigations shall be carried out on a confidential basis, for a period of up to two years after the payment of the balance.

## ARTICLE 19— FINANCIAL LIABILITY

1. In compliance with article 13 of the Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 relating to the Eurostars-2 Joint Programme, the Participating States, in implementing Eurostars-2, shall take the legislative, regulatory, administrative or other measures necessary to protect the Union's financial interests, in particular to ensure full recovery of any amounts due to the Union in accordance with the Financial Regulation<sup>4</sup> and its Rules of Application<sup>5</sup>.

In compliance with Article 58.1 of the Financial Regulation, the financial contribution of the Union can be implemented indirectly by other bodies ("indirect management") providing adequate financial guarantees are provided.

Therefore, in addition to the Participating States, ESE and each NFB should provide adequate financial guarantees to protect the Union's financial interest.

Financial obligations of the ESE relating to the Eurostars-2 Joint Programme, as stated in the Delegation Agreement and Transfer of Fund Agreements (including Annual Work Plans) concluded between the European Commission and the ESE will be covered by the financial liability measures described under Articles 19.2 to 19.7.

2. The total financial liability for the financial obligations of the ESE regarding the EU contribution relating to the Eurostars-2 Joint Programme activities covers:
  - a. EU contribution for Administrative costs;

<sup>4</sup> Regulation (EU, Euratom) No 966/2012

<sup>5</sup> Delegated Regulation (EU) No 1268/2012







- b. EU contribution for Operational costs relating to evaluation activities;
    - c. EU contribution for other Operational costs than those referred to in article 19.2b. (i.e. support to Eurostars-2 selected projects).
  3. The individual liability of MERDS for the financial obligations of the ESE regarding the EU contribution relating to the Eurostars-2 Joint Programme activities is capped at a percentage of that total financial liability as defined in Article 19.2, where:
    - a. This percentage is calculated as the proportion that the commitment of that NFB bears in relation to the total of commitments of all NFBs as referred to in subsequent paragraph c.
    - b. MERDS shall not be liable for the EU contribution for the Administrative costs referred to in Article 19.2.a. and to the Operational costs relating to evaluation activities referred to in Article 19.2b., carried out by the ESE relating to a specific Transfer of Fund Agreement and its related Annual Work Plan, provided the ESE obtains a bank guarantee or any other guarantee deemed as being acceptable by the European Commission in respect of those liabilities.
    - c. The maximum total financial liability of MERDS is calculated as the result of the percentage referred to in paragraph a), in relation to on the EU financial contribution transferred by the Commission to the ESE. Consequently, it takes into account the aggregated Eurostars-2 Programme EU financial contribution MERDS is entitled to receive and has effectively received according to its Declarations of Commitment and its Declaration of Expenditures in order to support the selected Eurostars-2 projects.
  4. The calculation of the percentage of each NFB individual liability shall be proposed by the ESE once all Declarations of Commitments linked to a specific Cut-off date have been received and agreed by the ESE. This calculation of individual liabilities shall be validated and formally endorsed by the High Level Group within a maximum period of 60 calendar days from the initiation of the endorsement procedure by the ESE. All Declarations of Commitments linked to a specific Cut-off date must be received by the ESE within the period referred to in article 4.4.2.
  5. Any amount unduly paid by the ESE to MERDS shall be recovered by the ESE in accordance with Article 16. In case of fraud, error, corruption or any other illegal activity carried out by a specific NFB, the ESE will not be entitled to recover this amount from NFBs other than the NFB responsible for such amount.
  6. Each debt related to the EU contribution of MERDS under this Agreement and for which MERDS becomes liable shall also be regarded as a debt directly owed by it to the European Union. The European Commission shall be entitled to directly claim for such debt, including before the Court of First Instance of the European Union or a State Court, as it considers appropriate.
  7. The ESE will take all necessary measures to limit the risk on the management of the EU financial contribution on its bank accounts and related internal procedures/processes, as certified in annex 9 - Certification from the statutory auditor



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on the ESE process control for the Eurostars 2 contribution. This process will be part of the yearly statutory audit on the ESE, specifically requiring a certification accompanying the opinion, as a deliverable.



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## SECTION IV – FINAL PROVISIONS

### ARTICLE 20– CONFIDENTIALITY

During the implementation of the Agreement and for a period of five years after the end date set out in Article 3 – Entry into force and duration, the Parties must keep confidential any data, documents or other material (in any form) that is identified as confidential (in writing) at the time it is disclosed ('confidential information').

Unless otherwise agreed with the ESE, MERDS may use confidential information only for fulfilling its obligations under the Agreement.

The Parties may disclose confidential information only if:

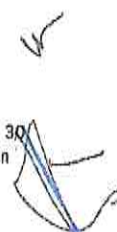
- the concerned party agrees to release the other party from the confidentiality obligations earlier;
- the confidential information becomes public through means other than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- the disclosure of the confidential information is required by law.

### ARTICLE 21– SUSPENSION AND TERMINATION OF THE AGREEMENT

#### 21.1 Suspension of the Agreement

21.1.1 Suspension of the Agreement by the ESE - This Agreement may be suspended by the ESE in cases where:

- (a) the Delegation Agreement signed between the ESE and the Commission is suspended including where the annual transfer of funds agreement is not renewed;
- (b) MERDS is not fulfilling its obligations according to this Agreement when the ESE may suspend the agreement in full or in part, if:
  - it has evidence that MERDS has committed substantial errors, irregularities or fraud or if MERDS fails to comply with its obligations under the Agreement;
  - it has evidence that MERDS has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under the present or other agreements funded by EU funds which call into question the reliability of its internal control system or the legality and regularity of the underlying expenditure;
  - it suspects substantial errors, irregularities, fraud or breach of obligations committed by MERDS in the implementation of its obligations under this agreement and needs to check whether they have occurred;
- (c) the Participating State does not contribute to the financing of Eurostars-2 Joint Programme in accordance with Article 7 of Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research and development performing small and medium-sized enterprises ("Eurostars-2 Joint Programme"), or contributes partially or late..





Before suspending the Agreement, the ESE shall formally notify MERDS of its intention to suspend:

- specifying the reasons for the suspension and
- Inviting MERDS to submit observations within 30 calendar days from receiving notification of the intention to suspend the Agreement.

If the ESE does not receive observations or decides to pursue the suspension despite the observations it has received, it shall formally notify the suspension. Otherwise, it shall formally notify MERDS that the suspension is not proceeding.

The suspension shall take effect on the day the notification is received by MERDS (or on a later date specified in the notification).

The suspension will be lifted if the conditions for resuming implementation of the Agreement are met.

MERDS will be formally notified of the lifting of the suspension — unless the Agreement has already been terminated.

During the suspension, MERDS may not submit any requests for payments. Requests for payments may again be submitted after resumption, or may be included in the first request for payment due following resumption.

21.1.2 Suspension of the Agreement by MERDS- MERDS may suspend all or part of its obligations under this Agreement, if exceptional circumstances — in particular force majeure — make fulfilment of the obligations impossible or excessively difficult.

MERDS shall immediately inform the ESE, stating:

- the reasons why it is suspending the Agreement and
- the expected date of resumption of its obligations under the Agreement.

Once circumstances allow for the implementation to resume, MERDS shall immediately formally notify the ESE, unless the Agreement is terminated in accordance with Article 21.1.1- Suspension of the Agreement by the ESE.

During the suspension, MERDS may not submit any requests for payments. Requests for payments may again be submitted after resumption or may be included in the first request for payment due following resumption.

## 21.2 Termination of the Agreement

This Agreement may be terminated by the ESE in the following circumstances:

- The Delegation Agreement signed between the ESE and the Commission is terminated. The termination of the Agreement will take effect on the date indicated in the notification to MERDS;
- the Participating State does not contribute to the financing of Eurostars-2 Joint Programme in accordance with Article 7 of Decision No 553/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research and development performing small and medium-sized



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enterprises ("Eurostars-2 Joint Programme"), or contributes partially or late. The termination will take effect on the date indicated in the notification to MERDS.

This Agreement may in addition be terminated by the ESE or MERDS if:

- (a) A change to the legal, financial, technical, organisational or ownership situation or systems, rules or procedures of MERDS is likely to substantially affect its obligations under the agreement.
- (b) One of the Parties has failed to comply with its obligations under the Agreement.
- (c) The implementation of the obligations under the agreement is prevented by force majeure (see Article 22 –Force majeure) or suspension of the obligations by one of the parties and resumption is impossible.
- (d) One of the Parties is declared bankrupt, being wound up, having its affairs administered by the courts, has entered in to an arrangements with creditors, has suspended business activities, or is in an comparable situation arising from a similar procedure provided for in national legislation or regulation.
- (e) One of the Parties (or a natural person that has the power to represent or to take decisions on its behalf) has been found guilty of professional misconduct, proven by any means.
- (f) One of the Parties has evidence that the other party (or a natural person that has the power to represent or to take decisions on its behalf) has committed fraud, corruption or is involved in a criminal organisation, money laundering or any other illegal activity affecting the EU's financial interests.
- (g) One of the Parties has evidence that the other party (or a natural person that has the power to represent or to take decisions on its behalf) has committed substantial errors, irregularities or fraud in the implementation of its obligations under the Agreement.
- (h) One of the Parties has evidence that the other party has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other agreements funded by EU funds, which call into question the reliability of its internal control system or the legality and regularity of the underlying expenditure.

Before terminating the Agreement, the Party shall notify the other Party of its intention to terminate:

- specifying the reasons why it is terminating the Agreement and
- inviting the other Party to submit observations within 45 calendar days from receiving notification.
- In the circumstances set out in point (b) above the Party shall to inform the other Party of the measures necessary to ensure compliance with the obligations under the Agreement concerned in order to avoid termination of the Agreement.

If the Party notifying its intention to terminate the Agreement does not receive observations from the other Party or decides to pursue the procedure despite the observations it has received, it will formally notify to the other Party of the termination and the date it will take



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effect. Otherwise, it will formally notify the other Party that the termination is not proceeding.

The termination will take effect:

- For terminations under Points (a), (b) and (d) above: on the day specified in the formal notification of the termination (see above);
- For terminations under Points (c), (e), (f), (g) and (h) above: on the day after the formal notification of the termination is received by the Party.

MERDS shall submit a request for payment of the balance of the EU contribution.

The ESE will calculate the final amount of the EU contribution on the basis of the request submitted.

The ESE shall not accept expenditure relating to contracts and grant agreements which are not completed at the date of termination, unless MERDS cannot reasonably terminate them on legal grounds.

Neither party may claim damages due to termination of the Agreement.

Suspension or termination shall not affect the obligation to provide all input, deliverables and documents for the duration of its participation.

#### ARTICLE 22– FORCE MAJEURE

'Force majeure' shall mean any situation or event that:

- prevents either party from fulfilling their obligations under the Agreement;
- was unforeseeable, an exceptional situation and beyond the Parties' control;
- was not due to error or negligence on their part (or on the part of third parties involved) and
- proves to be inevitable in spite of exercising all due diligence.

The following cannot be invoked as force majeure:

- 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,
- labour disputes or strikes, or
- financial difficulties.

Any situation constituting force majeure shall be formally notified to the other Party without delay, stating the nature, likely duration and foreseeable effects.

The Parties shall immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation as soon as possible.

The Party prevented by force majeure from fulfilling its obligations under the Agreement shall not be considered in breach of them.

#### ARTICLE 23– LIABILITY FOR DAMAGES

Each Party is solely responsible for performing its obligations according to this Agreement.

Each Party shall bear sole responsibility for ensuring that their acts within this Agreement do not infringe the rights of third parties.

#### ARTICLE 24– NOTICES AND COMMUNICATION







Any notice and communication shall be made in writing to the following addresses:

- For the ESE

Head of the ESE  
Rue Neerveld 107  
B-1200 Brussels  
Belgium  
Tel: +32 2 777 09 50  
nfb@eurostars-eureka.eu

- For MERDS

Minister  
Stromova 1  
813 30 Bratislava  
Slovak republic  
Tel.: 00 421 2 59 374 711  
Juraj.draxler@minedu.sk

or to such other address and recipient as a Party may designate in respect of itself by written notice to the other Party.

Electronic communications shall be confirmed by an original signed paper version of that communication, if requested by the other Party with reasonable delay.

Each Party to this Agreement shall inform the other Party without delay and in writing of any changes in the names and addresses identified above.

A dedicated form (Annex 4 "change of Legal Representative or Operational Contact") is put at the disposal of MERDS for a change in its Operational Contact or Legal Representative.

Any communication is considered 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 communications are considered to have been received on the same day the communication was sent to the addressees listed above, unless the sending party receives a message of non-delivery. In this case, the communication must be resent to the paper address listed above. If the communication was subject to a deadline, the sending party shall not be considered in breach of this deadline.

Formal notifications by registered post with proof of delivery shall be considered to have been received on:

- the delivery date registered by the postal service or
- the deadline for collection at the post office.

#### ARTICLE 25 – AMENDMENTS

Amendments or changes to the Agreement shall be valid only if made in writing and signed by an authorised signatory and by both Parties.



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This Agreement shall be subject to amendments or changes in case where one or more of the provisions in this Agreement or any documents executed in connection herewith are not in compliance with the Delegation Agreement.

Requests for amendment shall be duly justified and sent to the other Party in advance of the amendment taking effect, unless duly substantiated by the Party requesting the amendment and accepted by the other Party.

Amendments shall enter into force on the day on which the last party signs or on the date of approval of the request for amendment.

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

#### ARTICLE 26– LANGUAGE

This Agreement is concluded in English.

English shall be used in all documents and notices prepared, including reports and deliverables, and meetings conducted, pursuant to this Agreement or otherwise in connection herewith.

Any translation shall be for convenience only and of no legal effect.

#### ARTICLE 27– APPLICABLE LAW

This Agreement and all matters arising out this Agreement shall in respect be governed by Belgian law.

#### ARTICLE 28 – SETTLEMENT OF DISPUTES

Any dispute between the Parties concerning the interpretation, application or validity of this Agreement, which cannot be solved amicably, shall be finally settled under the Rules of the Arbitration of the International Chamber of Commerce by the one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels if not otherwise agreed by the Parties. Nothing in this Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in ant applicable competent court of law. MERDS hereby explicitly waives any privilege of jurisdiction and execution.

#### ARTICLE 29 – SEVERABILITY

If one or more of the provisions contained in this Agreement or any documents executed in connection herewith are found by a competent court or authority to be invalid, illegal, or unenforceable in any respect under any applicable law, including competition law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided that in such case the Parties oblige themselves to use all commercially reasonable efforts to achieve the purpose of the invalid provision by a new legally valid stipulation that causes the same (or substantially similar) economic benefit or burden.

#### ARTICLE 30 – ASSIGNMENT



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MERDS shall not assign any of its rights and obligations arising from this Agreement without the prior and written authorisation of the ESE.

The ESE shall not assign any of its rights and obligations without prior and written authorisation of the Commission and the Eurostars-2 HLG.

#### ARTICLE 31 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES

Claims for payments of MERDS against the ESE 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 ESE, if it has accepted the assignment on the basis of a written and reasoned request to that effect made by MERDS. 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 ESE.

In no circumstances shall such an assignment release MERDS from its obligations towards the ESE.

#### ARTICLE 32 – INTERPRETATION OF THE AGREEMENT

The provisions in the Terms and Conditions of the Bilateral Agreement shall take precedence over its Annexes.

Done in two originals in English, in Brussels, on \_\_\_\_\_

The ESE

The MERDS

19.05.2016

\_\_\_\_\_



