

**Agreement**  
**Between the Member and Partner States and**  
**the Grand-Duchy of Luxembourg**  
**in its role as the Managing and Certifying Authority**  
**on the implementation of the**  
**"ESPON 2013 Operational Programme"**

In accordance with the EU regulations laying down provisions on the Structural Funds, in particular Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (hereinafter referred as Regulation (EC) No 1080/2006), Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (hereinafter referred as Regulation (EC) No 1083/2006), Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (hereinafter referred as Regulation (EC) No 1828/2006,

The EU Member States

- the Federal Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the Republic of France, the Federal Republic of Germany, the Hellenic Republic of Greece, the Republic of Hungary, the Republic of Ireland, the Republic of Italy, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Poland, the Republic of Portugal, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland ;

[And the Partner States

- the Kingdom of Norway, the Swiss Confederation, the Republic of Iceland and the Principality of Liechtenstein]

Have agreed

- To implement together the " ESPON 2013 Operational Programme" (hereinafter referred to as "ESPON 2013 OP"), approved by the European Commission on 7 November 2007;
- To sign an agreement on the joint implementation of the ESPON 2013 OP in compliance with the Description of the management and control system according to Article 71 of Regulation (EC) No 1083/2006.

### **Preamble**

With reference to Article 59 of Regulation (EC) No 1083/2006 and in accordance with the ESPON 2013 OP, the Member States shall designate a Managing Authority and a Certifying Authority. They shall lay down rules and mutual relations between the authorities referred above, defining their tasks and responsibilities.

### **§ 1**

#### **Institutional Structure**

1. The Member States and the Partner States designate the „Ministry of the Interior and Spatial Planning of the Grand Duchy of Luxembourg, Directorate for Spatial Development “to act as Managing authority (hereinafter referred as MA) within the meaning of Articles 14 and 15 of Council Regulation (EC) No 1080/2006.
2. The EU Member States and Partner States designate the “Budgetary Unit in the Ministry of the Interior and Spatial Development ” to act as Certifying Authority (hereinafter referred as CA) within the meaning of Articles 14 of Council Regulation (EC) No 1080/2006 and Article 61 of Council Regulation (EC) No 1083/2006.
3. The General Inspection of Finances (“Inspection Générale des Finances”) is acting as Audit Authority (hereinafter referred as AA) according to the provisions included in Articles 62 of Regulation (EC) No 1083/2006 and Article 14 of Regulation (EC) No 1080/2006. The Audit Authority will be as well in charge of establishing the report according to Article 71(2) of Regulation (EC) No 1083/2006.
4. In compliance with article 14 of Council Regulation (EC) No 1080/2006, the MA,, as well as the Monitoring Committee (hereinafter referred as MC) and the AA shall be assisted by the Coordination Unit (hereinafter referred as CU) in its role of Joint Technical Secretariat. The CU could also assist the CA but only for the tasks and under the modalities indicated in the ESPON 2013 OP.
5. The MA will undertake the necessary steps to ensure the appropriate conditions for the hosting of the Coordination Unit, and this according to the provisions of the ESPON 2013 OP.

## §2

### **Duties of the Managing Authority, Certifying Authority, Audit Authority, Coordination Unit, Member States and Partner States**

1. The respective tasks and responsibilities of the MA, the CA, the AA and the CU, as well as the mechanisms relating to their co-operation, are laid down in the ESPON 2013 OP, the Description of the management and control system according to Article 71 of Regulation (EC) No 1083/2006, the Document describing the relations between the MA and the CA and the Programme Manual.
2. As set out in Article 15 (1) of Regulation (EC) No 1080/2006 the MA shall be responsible for managing and implementing the OP in accordance with the principle of sound financial management as set out in Article 60 of Regulation (EC) No 1083/2006.
3. Member States and Partner States shall appoint their representatives in the MC within one month after the approval of the ESPON 2013 OP by the European Commission. The representatives shall also be prepared to provide assistance to the MA in carrying out its duty in particular regarding matters which require follow up of on the spot checks in each country. Annex I provides a list of national authority and contact person responsible for representation in the MC. Member States and Partner States are obliged to inform the MA without delay if the responsibility for representation of the country is due to change.
4. According to Article 21 of Regulation 1828/2006 the MA shall provide a Description of the management and control system according to Article 71 of Regulation (EC) No 1083/2006 and in accordance with the model set out in Annex XII of Regulation (EC) No 1828/2006. The Description of the management and control system shall be completed with the description of the control system (and their relevant annexes) set up by the Member States and the Partner States according to Article 16 of Regulation (EC) No 1080/2006.
5. Each Member State and Partner State shall submit to the MA, prior to the opening of the first call for proposal, a description of the control system set up (see in detail § 8 of this Agreement) and the name of the body responsible for the implementation of the control system in their respective countries according to the form provided by the MA. The list of the bodies responsible for the control system set up by each Member State and Partner State is included in this Agreement in Annex II. The full description of the national control system and the list of the bodies in Annex II will be included in the Description of the management and control system in accordance with Regulation (EC) No 1828/2006

Annex XII. The Member States and the Partner States shall without delay inform the MA of any changes related to the provided description of the control systems set-up and of the responsible body. The Description of the management and control system will be assessed by the AA as required by Article 71(2 and 3) of Regulation (EC) No 1083/2006. Member States and Partner States engage themselves to provide to the MA and AA with all the information and supporting documents needed to ensure an unqualified opinion by the AA on the Description of the management and control system, allowing the MA to receive payments from the European Commission. The AA reserve the right to qualify its opinion on the description of the control system set up by individual Member State and/or Partner States should the system and/or the supporting documents and annexes provided be considered insufficient.

6. In case a Member State or the Partner State is opting for a decentralised control system, its Central Approbation Body (see Annex II) shall undertake quality checks of the functioning of the system set up at national level. The MA (through the CU) shall reserve the right to participate to the quality checks. In case a Member State or Partner State is opting for a centralised control system, the MA (through the CU) shall undertake the quality checks together with the national representative in the MC, notwithstanding that the final responsibility of the soundness of the control system shall remain with the Member States in question. In the case of the country of the MA, the quality check shall be undertaken by the CA with the support of the CU. All Member States and Partner States shall ensure that the recommendations resulting from the quality checks will be followed and implemented. The MA shall reserve the right to withhold temporarily payments to those beneficiaries located in the Member States and Partner States where quality checks have shown serious system deficiencies.
7. The MA designates a contact person to be responsible for information and publicity and informs the European Commission on the designated person. This person shall actively participate in Community network which might be set up according to Article 10 of Regulation (EC) No 1828/2006. The Member State shall take all the appropriate administrative steps to ensure effective application of all arrangements lined out in Regulation (EC) No 1828/2006, Section 1 in order to support the MA. Member States shall also collaborate directly with the European Commission.
8. In order to fulfil its function, as specified in Article 60 (b) of Council Regulation (EC) No 1083/2006, the MA shall rely on the control systems according to Article 16 of Regulation (EC) No 1080/2006 set up in those Member States and Partner States hosting a

beneficiary unless a system audit indicates insufficiencies. The Member State and Partner State shall ensure that all supporting documents required for a sufficient audit trail regarding incurred expenditure and payments are recorded, stored in computerised form and made available. Member States and Partner States shall as well ensure that control systems are set up according to the provisions of § 8 – Financial Control and § 9 – Auditing of this Agreement. The MA shall ensure that the Lead and Project Partners are aware of these requirements.

9. The function of the CA shall be carried out in compliance with Article 61 of Regulation (EC) No 1083/2006.
10. According to Article 60 (g) of Regulation (EC) No 1083/2006, the MA shall ensure that the CA receives all the necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification so that the sufficiency of the control system and audit trail can always be taken into account before a statement of expenditure is presented to the European Commission.
11. For the purpose of certification, the CA shall ensure that it has received adequate information from the MA on the procedures and verifications carried out in relation to expenditure, that it takes into account the result of all the audits carried out in relation to expenditure and the results of all the audits carried out by or under the responsibility of the AA. The CA (with the support of the CU) reserves the right to request, at any time, additional information and supporting documents to final beneficiaries in order to perform its certifying tasks.
12. The functions of the AA shall be carried out in compliance with Article 62 of Regulation (EC) No 1083/2006 and Article 16 to 18 of Regulation (EC) No 1828/2006.
13. The Monitoring Committee (hereinafter referred as MC) is responsible for supervising and monitoring the implementation of the Programme, as described in Articles 63, 64 and 65 of Council Regulation (EC) No 1083/2006 and in the ESPON 2013 OP and for selecting the operations, as described in Article 19 (3) of Regulation (EC) No 1080/2006.
14. Every Member of the MC informs and advises the CU and the control authorities in order to enable them to support the MA in fulfilling its management and control system functions, as described in the provisions of Chapter 2, Section 3 of Regulation (EC) No 1828/2006.

15. The ESPON 2013 OP is foreseeing a Concertation Committee (hereinafter referred as CC) in order to prepare and facilitate the work of the Monitoring Committee. Tasks and mode of operation of the CC are detailed in ESPON 2013 OP.
16. Each Member and Partner State shall nominate an ESPON Contact Point (ECP) as described in the ESPON 2013 OP in order to ensure the relation of the Programme to the national and regional level and to be able to participate in the transnational activities of the Programme. Tasks and mode of operation of the ECP are detailed in ESPON 2013 OP.
17. In accordance with Article 24 of Commission Regulation (EC) No 1828/2006, the Member States and Partner States shall provide to the MA, CA and AA all information that they require to discharge their responsibilities under Article 60 and 61 of Regulation (EC) No 1083/2006 and Article 14 and 15 of Regulation (EC) No 1080/2006.
18. Without prejudice to these provisions, the MA shall act in full compliance with the institutional, legal and financial system of the Grand Duchy of Luxembourg.

### **§ 3**

#### **National and European Regional Development Fund**

1. The CA administers the European Regional Development Fund (hereinafter referred to as ERDF), the national co-financing of the Member States and the contributions of the Partner States. One single bank account will be used by the CA. A separate document describing the relations between the MA and the CA will detail the modalities for the management and recording of Technical Assistance and the other expenditures incurred directly by the MA for the implementation of specific actions approved by the MC.
2. At the beginning of every year the MA shall send a request for the national contribution to the ESPON 2013 OP. Until the end of February, or, in exceptional cases when this is not possible, at the latest within one month after the approval of their national budgets, the Member States and Partner States shall transfer their national contributions to the Programme for the coming year on the base of the financial plan agreed. Payments will be credited to the separate Euro-currency (€) account (Trust Account) managed separately as trust funds by the CA.
3. A report on the payment situation shall be regularly given to the Monitoring Committee.

4. If at the end of the Programme implementation period the Member States have transferred more funds than have actually been needed to co-finance the ESPON 2013 OP, the CA will reimburse these funds, unless the MC decides differently.

#### **§ 4**

##### **Exchange of information**

##### **between the European Commission, the Managing Authority and the Certifying Authority on expenditure at Programme level**

1. The CU elaborates the updated forecast of applications for payment for the current year and the forecast for the following year. These forecasts are forwarded by the MA to the European Commission no later than the end of April of each year, in compliance with Article 76 (3) of Regulation (EC) No 1083/2006.
2. Pursuant to Title VII – Sections 2 and 4 of Regulation (EC) No 1083/2006, the CA issues the certificates and statements. The certificate of statements of interim and final expenditure referred in these Articles shall be drawn up in the form prescribed in Annex X of Regulation (EC) No 1828/2006.
3. According to Article 20 of Regulation (EC) No 1828/2006, the CA shall send a statement to the European Commission identifying the amounts withdrawn and/or recovered for each priority axes in the format described in Annex XI of Regulation (EC) No 1828/2006.

#### **§ 5**

##### **Reporting duties: Respective roles of Member States, Partner States, Managing Authority, Certifying Authority, Audit Authority and Coordination Unit**

1. The MA (through the CU) shall provide Member States and Partner States with information on Programme implementation at least once a year with the annual implementation report in accordance with Article 67 of Regulation (EC) No 1083/2006. The annual implementation report shall be approved by the MC before it is submitted to the European Commission.
2. The MA (through the CU) shall monitor the progress of operations based on regular reports on project activity and finance from the Lead beneficiary as defined in Article 20 of Regulation (EC) No 1080/2006. The regular reports shall be accompanied by the certification of expenditure signed respectively by the designated Lead Partners and Project Partners certifying bodies designated according to the national control system according to Article 16 of Regulation (EC) No 1080/2006. Should there be any suspicion

of irregularities, the MA (through the CU) or the CA shall inform the competent administration listed in section §9 below, in compliance with the Description of the management and control system.

3. Every year when the annual report on implementation is submitted, the European Commission and the MA shall examine the progress made in implementing the Operational Programme. After this examination, the European Commission may make comments to the MA which shall inform the MC. The MA after the agreement of the MC shall inform the European Commission of the action taken in response to the comments.
4. The Member States and Partner States, the MA, the CU, the CA and the AA shall provide mutual assistance and inform each other to comply with their respective reporting duties.

## **§ 6**

### **ERDF Subsidy Contract and Payment to Lead Partner**

1. MC members will be informed in brief on the results of the checks undertaken by the MA (through the CU) in relation to the administrative, financial and technical capabilities of Lead Partners and Project Partners. The information will be provided to the MC Members together with the documents preparing for the project approval by the MC. The MC members shall confirm or object on the conclusions of the checks undertaken by the MA during MC meetings prior the approval of projects by the MC. Should there be no objections, the Member and Partner States shall not question the checks undertaken by the MA and shall accept to bear the financial responsibility for beneficiaries located in their territories which have proven not being capable of managing ERDF funds.
2. The MA has the right to refuse Lead Partner and Project Partner from those countries for which the AA has issued a qualified opinion on their description of the national control system set up according to Article 16 of Regulation (EC) No 1080/2006 and this until the reservation expressed by the AA have been lifted.
3. Following the decision of the MC, the MA (through the CU) shall draft a Subsidy Contract. The MA shall use the standard form for the Subsidy Contract which has been approved by the MC and lays down further details concerning the responsibilities and liabilities of the Lead Partner. The Subsidy Contract shall be signed by the MA and the Lead Partner. The Subsidy Contract shall include the full list of Project Partners and their respective financial allocations as well as an indication on the financial control body for each Lead and Project Partner.



4. Shall the call for proposal be opened to partners under private law, the CU, when assessing the eligibility of the application, will ask Member States and Partner States to verify that any Project Partner under private law meets all the established legal conditions. In addition, Member States and Partner States shall verify that the solvency conditions to carry out the project properly are respected. The MA reserves the right to ask any Project Partner under private law to provide a bank guarantee equivalent to the amount of the subsidy granted.
5. The MA shall ensure that the Subsidy Contracts make Lead Partner aware of their obligation to:
  - a. Accept controls by the relevant authorities (CU, MA, National Authorities, CA, AA, Member States and Partner States national authorities, Commission services and European Court of Auditors), to give access to their business premises, to provide and give access to all the information and documents supporting the audit trail in compliance with Article 90 of Regulation (EC) No 1083/2006 and Article 15 of Regulation (EC) No 1828/2006;
  - b. Respect of public procurement, information and publicity, environmental protection and equal opportunities rules;
  - c. Keep all information and supporting documents related to the operation at least until 2020 (i.e. a period of three years following the closure of the Programme). Notwithstanding national rules may require even a longer archiving period.
6. The MA shall make sure that Lead Partners are aware that these obligations will have to be fulfilled by all Project Partners and that the necessary provisions are included in their Partnership Agreements.
7. The MC may ask the MA to exercise its right to terminate the Subsidy Contract should the project not comply with the expected deliveries and timing. The MA reserves the right to terminate the Subsidy Contract without the approval of the MC should the Lead Partner violate the Subsidy Contract provisions. In this case, the Member States and Partner States will be informed without delay.
8. Payment claims submitted by the final beneficiaries must be supported by relevant Progress and Financial Reports. As soon as the Lead Partner of a project has countersigned the Subsidy Contract, such a payment claim can be submitted for the reimbursement of the proposal preparation costs, within the limits defined in the Programme Manual.

9. The reimbursement of the preparation costs shall be accepted up to 5% of the total project cost as stated in the Subsidy Contract. Only preparation costs incurred after the pre-announcement of the call and directly link to the preparation of the approved proposal will be accepted. Subsequent payment claim shall be submitted to the CU every six months according to the approved timetable detailed in the Subsidy Contract. The regular reports shall be accompanied by the certification of expenditure signed by the designated first level controllers of the Lead Partner and the Project Partners.
10. The MA (through the CU) shall assess the progress reports and monitor the proper implementation of the approved operations according to the procedure laid down in the Description of the management and control system. Payment to project Lead Partner shall be made by the CA after approval of the report by the MA (through the CU).
11. The MA (through the CU) shall decide on changes as long as the purpose and the other basic features of the project are not altered. It shall also decide on changes which do not have consequences on the eligibility or the results of the project. In particular the MA (through the CU) shall decide on:
- Additional minor conditions to approved operations in case additional mistakes, errors or clarification requests are found during the negotiations with the Lead Partner;
  - Reallocation of the budget by up to 20% of total costs as stated in the Subsidy Contract;
  - Changes in activities which do not change the aim of the operation;
  - Extension of the duration of the project not extending the Programme deadline;
  - Extension of the date by which Progress Reports have to be presented by the Lead Partner.
- The MC shall decide in all other cases and shall be informed on decisions taken by the MA.
12. Without prejudice to the list of ineligible expenditure in Article 7 of Regulation (EC) No 1080/2006, the rules of Article 49 to 53 of Regulation (EC) No 1828/2006 shall apply in accordance with Article 13 of Regulation (EC) No 1080/2006 to the determination of the eligibility of expenditure under operation selected as part of the ESPON 2013 OP.
13. Should there be any suspicion of irregularities, either the MA or the CU or the CA shall inform the competent administration listed in Annex III in compliance with the Description of the management and control system.

14. Technical Assistance included in Priority 5 and other expenditure incurred by the MA for the implementation of actions under Priorities 1-4 under service contract provisions shall be reimbursed by the CA under the submission of certified requests, according to the Description of the management and control system.
15. Pursuant to Article 80 of Regulation (EC) No 1083/2006, the CA ensures that Lead Partner receive payments of the approved contribution from the ERDF and national co-financing in time and in full. No deduction, with the exception of irregularities and/or suspicion of irregularities detected by the MA (through the CU) and/or the CA, retention or further specific charges which would reduce the amount of the payment shall be made. In case of systemic error detected, the MA and CA have the right to withhold temporarily the payments to a particular beneficiary or to all beneficiaries of one particular Member State and/or Partner State should the system error be the consequence of a failure of the Member State and/or Partner State control system. Payment suspension(s) shall be lifted as soon as the MA and CA receive sufficient evidence on the solution of the systemic error(s) detected.
16. Pursuant to Article 79 or Regulation (EC) No 1083/2006 the cumulative total pre-financing and interim payments made to the Programme will not exceed 95% of the contribution from the ERDF to the ESPON 2013 OP. The Member States agree with the MA and the CA on the following procedure. Provided that the expenditure is certified, payments to Lead Partners will be guaranteed up to the amount equalling 95% of the approved project's ERDF funds and 100% of the national co-financing. The payment of any remaining ERDF funds to the Lead Partner will depend on the availability of funds (see next section 17). Should there be insufficient funds to pay 100% of the amount to the Lead Partner, the final balance of the funding shall only be paid when the Programme has reached its actual finalisation as described in Article 89 of Regulation (EC) No 1083/2006 and the final payment is transferred by the European Commission to the CA.
17. Taking into account that co-financing rates of the ESPON 2013 Programme's priorities for projects are not the same rate as the average co-financing of the Programme as whole, and taking into account that the European Commission always reimburses to the MA only the average co-financing rate of the Operational Programme, the budgetary situation in terms of liquidity of the ESPON budget may vary according to the amounts claimed by the CA from the European Commission under the different priorities. Therefore, the MA guarantees payments only as long as the budgetary situation is allowing for. In case any

problem arises, the MA shall promptly inform Member States and Partner States to find a joint solution.

18. All amounts referred to in the Subsidy Contract are expressed in EURO (EUR). Funds shall be disbursed in EUR to the bank account of the Lead Partner as specified in the project application. The exchange rate risk shall be borne by the Lead Partner.

## **§ 7**

### **Securities and guaranties, irregularities and liabilities**

1. In compliance with Article 17 of Regulation (EC) No 1080/2006, the Member/Partner States shall bear liability in connection with the use of the ERDF funding of the Programme as follows:
  - a. Each Member/Partner State bears the possible financial consequences of irregularities committed by the partners located (and registered, in case of Project Partner under private law) on its national territory in compliance with Article 17 of Regulation (EC) No 1080/2006;
  - b. In case of a systemic irregularity leading to flat rate corrections at Programme level, the Member/Partner States shall jointly bear the financial consequences, whereby each Member/Partner State shall be responsible in proportion to the ERDF contribution of the respective national Project Partners involved;
  - c. In case of systemic irregularities leading to flat rate corrections at national level, the concerned Member/ Partner State shall solely bear the financial consequences;
  - d. For Technical Assistance and expenditure incurred by the MA for the implementation of actions under Priorities 1-4 under service contract provisions, the liability shall be borne by the MA for administrative related irregularities and shall be borne jointly by the Member States and Partner States proportionally to their financial contributions to the ESPON 2013 OP in any other case.
2. As Member States have the overall liability for the ERDF support granted to Partners located on their territory, they shall seek to recover any amounts lost as a result of an irregularity or negligence committed by a beneficiary located in their territory. Where appropriate Member States may also charge interest on late payments.
3. According to Article 28 of Regulation (EC) No 1828/2006 each Member State and Partner State hosting a beneficiary shall be responsible for reporting irregularities detected in

compliance with Article 28,29,31 and 36 of Regulation (EC) No 1828/2006 to the European Commission and at the same time to the MA, CA and AA as well as reporting on procedures instituted with respect to all irregularities previously notified and of important changes resulting from them in compliance with Article 30 and 31 of Regulation (EC) No 1828/2006. Member States and Partner States engage anyhow themselves also to communicate promptly to the MA, CA and AA any information of detected irregularities relating to amounts of less than EUR 10.000 of Community funding as stipulated in Article 10 of Regulation (EC) No 2035/2005.

4. Should the CA, the MA or the CU become aware of irregularities they shall without any delay inform the liable Member State and/or Partner State.

## **§ 8**

### **Financial control of beneficiaries according to**

#### **Article 13 of Regulation (EC) No 1828/2006 (“first level control”)**

1. According to Article 16 of Regulation (EC) No 1080/2006, each Member State and Partner State designates the controllers responsible for verifying the legality and regularity of the expenditure declared by each beneficiary participating in the operation. Each Member State and Partner State ensures that expenditures can be validated by the controllers within a period of two months so the Lead Partner is in the position to submit the progress report to the CU within 4 months after the end of each reporting period and the MA (through the CU) can regularly declare expenditure to the European Commission.
2. As stipulated in § 2 sec 5 of this Agreement each Member State and Partner State shall submit to the MA, prior the opening of the first call for proposal and in any case within nine months from the approval of the ESPON 2013 OP by the European Commission, a description of the control system set up and the list of national responsible bodies and, if relevant, the list of nationally appointed controllers according to the form provided by the MA. The Member States and Partner States shall without delay inform the MA of any changes of responsible body and of the national control system set up.
3. The MA (through the CU) shall monitor the activities and financial progress of operations. For this purpose, three main types of information shall be considered:
  - a. The use of the ERDF and national co-financing for the purpose mentioned in the Subsidy Contract, the Project Specification as approved by the MC, and the approved application;

- b. The progress made by the project in the implementation of the operation in compliance with the Subsidy Contract, the Project Specifications as approved by the MC, and the approved application;
  - c. The certification of expenditure of Lead and Project Partners in compliance with the system set up in each Member State and Partner State according to Article 16 of Regulation (EC) No 1080/2006.
4. The MA (through the CU) may implement additional on-the-spot checks of operations (“quality checks”) which results shall be taken into account for the monitoring of operations. These controls can be undertaken in cooperation with the national body responsible for the control system set up according to Article 16 of Regulation (EC) No 1080/2006. Member States and Partner States agree to accept the recommendations made to projects as results of the on-the-spot-checks and shall support the MA for ensuring their implementation by the partners located in their territory.
5. With regard to Technical Assistance and MA expenditure, the MA ensures that expenditure is certified in line with the control system set up by Luxembourg according to Article 16 of Regulation (EC) No 1080/2006.
6. The annual examination of the Programme according Article 68 of Regulation (EC) No 1083/2006 with the European Commission shall be attended by the MA and the CU. Should the European Commission make comments or recommendations for adjustments in the monitoring and management arrangements in compliance with Title VI and Article 60 of Regulation (EC) No 1083/2006, these shall have to be first agreed by the MC before being implemented by the MA (through the CU).

## § 9

### **Auditing of beneficiaries (“second level control”)**

1. In compliance with Article 14 of Regulation (EC) No 1080/2006, a Group of Auditors (hereinafter referred as GoA), shall be set up at the start of the Programme to assist the AA in carrying out the duties provided for in Article 62 of Regulation (EC) No 1083/2006. The GoA shall be chaired by the AA and shall comprise of a maximum of two representatives (in exceptional cases up to three) of each Member State and Partner State participating in the ESPON 2013 OP. At its first meeting the GoA shall independently approve its Rules of Procedure.

2. The GoA representative(s) shall be entitled to participate in decision-making within the GoA on behalf of their MS/PS and shall be independent from the Monitoring Committee members, from the controllers designated according to Article 16 of Regulation (EC) No 1080/2006 and from any ESPON 2013 project activity and finance. Each Member State and Partner State shall inform the MA about their GoA representative within three months of the decision approving the ESPON 2013 OP with the help of a form developed by the MA. The contact details of the respective GoA representative are be listed in Annex III (National authority and contact person responsible for second level control). The information on the GoA representation shall also be included in the Description of the management and control system according to Regulation (EC) No 1828/2006 Annex XII.
3. The GoA shall support the AA in implementing its tasks as detailed in Article 62 of Regulation (EC) No 1083/2006 and according to the provisions of Articles 16, 17 and 18 of Regulation (EC) No 1828/2006.
4. For the implementation of the audit strategy an external auditor can be contracted and its serviced paid under the Technical Assistance budget. However, the Technical Assistance budget will not cover the costs of additional audits:
  - a. Resulting from an increased size of the sample, compared to the situation in the first year of audit, due to non satisfactory audit results;
  - b. Requested, in addition, by a Member State and/or a Partner State.

The additional audit costs under point a) shall be shared among the Member States where the irregularities have been found and this proportionally to the importance of the financial corrections finally decided. The higher the quality of the control system set up according to Article 16 of Regulation (EC) No 1083/2006 the lower the risk of additional audit costs as defined under point a).

Additional audit costs under point b) shall be covered by the requesting Member State(s) and/or Partner State(s).

5. The AA shall report on results of checks and controls (and follow-up actions if necessary) to the MA, the MC and the CA. For coordination purposes, the MC will be informed by the MA.

## **§ 10**

### **Reduction and recovery of payments to beneficiaries**

1. For the application of Articles 98 to 102 of Regulation (EC) No 1083/2006 on financial corrections, any exchange of correspondence between the European Commission and the Member State will be copied to the MA, the CU and the CA.
2. In the case of irregularities discovered, for example, by the Court of Auditors or by the Commission, which results in expenditure being considered ineligible and in a net correction being the subject of a Commission decision on the basis of Articles 98 to 102 of Regulation (EC) No 1083/2006, the financial consequences for the Member States are laid down in § 7 of this Agreement.

## **§ 11**

### **Concluding Provisions**

1. All communication between Member States, Partner States, MA, CA, AA and CU and all bodies mentioned in the ESPON 2013 OP and in this Agreement, and all communication necessary to manage and implement the Programme, shall be in English language.
2. This Agreement shall be governed in accordance with the laws of the Grand-Duchy of Luxembourg.
3. If any provision of this Agreement should be, or become, wholly or partly ineffective, all other provisions shall remain valid. The parties to this Agreement shall undertake all the necessary steps and actions to replace the ineffective provisions by an effective provision which come as close as possible to the purpose of the ineffective provision.
4. The cooperation between the members of the MC, the MA, the CA, the AA and the national bodies in each Member State, identified in the Annexes I, II and III of this Agreement represents a condition sine qua non in order to secure a complete management, financial control and audit of all parts co-financed by ERDF and national funds. Changes of the names of the responsible person appointed in the Annex I, II and III shall be subject of a notification to the MA only. Changes of the institution appointed in the Annex I, II and III shall be matter of a bilateral exchange of letter between the MA and the country in question.
5. Where disputes arise out or in connection with this Agreement, the concerned parties shall seek first an amicable solution.



6. Should parties fail to reach an amicable solution, all disputes arising out or in connection with this Agreement shall be settled by the competent jurisdiction of the Grand-Duchy of Luxembourg.
7. This Agreement shall be signed by representatives of the Governments of all Member States and Partner States participating in the ESPON 2013 OP. It shall apply for the duration of the implementation of the OP until its formal closure by the European Commission, starting with the eligibility of ERDF expenditure according to Art 56(1) of Regulation (EC) No 1083/2006.
8. This Agreement shall be amended only in writing and in agreement between the Member States and Partner States.

**The Government of the Grand Duchy of Luxembourg**

represented by

Place and date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_

**The Government of**

Represented by

Place and date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_

## **Annexes**

Annex I National authority and contact person responsible for representation in the MC

Annex II Bodies responsible for the control system set up by each Member State and Partner State

Annex III National authority and contact person responsible for second level control