Ref. Ares(2023)2397649 - 03/04/2023
With qualified electronic signature(s)

TRANSFER AGREEMENT

AECID letter dated February 2023 - ECHO/PSE/BUD/2023/91000

The European Union, represented by the European Commission, itself represented for the purposes of this Agreement by its Directorate-General for European Civil Protection and Humanitarian Aid Operations (ECHO) (hereinafter referred to as the "Commission"),

of the one part,

and

the ***Spanish Agency for International Development Cooperation AECID*** with its Head office at Reyes Católicos 4 28040 Madrid (hereinafter referred to as the "Donor"), hereinafter referred to as the "Donor",

of the other part,

(Hereinafter referred to as, individually a "Party" and collectively the "Parties"),

have agreed as follows:

SPECIAL CONDITIONS

Article 1 - Purpose

1(1) The purpose of this transfer agreement (hereinafter referred to as the "Agreement") is a contribution (hereinafter referred to as the "Contribution") by the Donor to the Commission. The Commission shall manage the Contribution on behalf of the Donor with the purpose of co-financing the action named

"Prevention of the forcible transfer of Palestinians in the West Bank, including East Jerusalem, through humanitarian assistance and evidence-based advocacy"

hereinafter referred to as the "Action" as described in Annex 1.

1(2) The Donor – AECID Spanish Agency for International Development Cooperation, shall transfer the Contribution set out in Article 1(1) following the terms and conditions set out in this Agreement which consists of these special conditions (hereinafter referred to as the "Special Conditions") and Annexes 1 (Description of the Action) and 2 (General Conditions applicable to the transfer agreement).

1(3) The Commission shall be entrusted with the responsibility for managing the Contribution in the framework of the Action in accordance with the procedures applicable to General Budget of the European Union as set out in the Financial Regulation[1].

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013,

Article 2 – Entry into force

2(1) This Agreement shall enter into force on the date when the last of the two Parties signs the Agreement.

2(2) The implementation period of this Agreement is 30 months as of its entry into force.

2(3) The execution period of this Agreement shall end at the latest 18 months as from the end of the implementation period of the Action as stipulated in Article 2(2).

Article 3 – Financing the Action

3(1) The Contribution of the Donor is of EUR 1 000 000

3(2) Pursuant to Article 4 of Annex 2, 4% of the amount set out in Article 3(1) EUR is allocated to the Commission in order to cover indirect costs.

Article 4 – Transfer of the Contribution by the Donor

The Contribution set out in Article 3 is transferred to the Commission in one single instalment pursuant to Article 5 of Annex 2. The indicative timeframe of instalments is two months from the entry into force of this agreement.

Article 5 – Contact addresses

Any communication relating to this Agreement, and correspondence of any other nature, shall be in writing, and shall use the following addresses.

For the Commission

Directorate-General "European Civil Protection and Humanitarian Aid Operations" (ECHO)

[Action under Annex 1]

For the attention of Unit:

ECHO.DDG.C3 – Middle East

Giovanni.Di-Girolamo@ec.europa.eu

Thorsten.Muench@ec.europa.eu

Aldo.Biondi@ec.europa.eu

Copies of any documentation of financial nature shall also be sent to:

ECHO.E.3 – Contracts and Finance

Jan SEMPELS, Head of Unit

Jan.Sempels@ec.europa.eu

For the Donor: Humanitarian Action Office AECID Jefa.oah@aecid.es

(EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (J L 193, 30.7.2018, p. 1).

Article 6 – Annexes

6(1) The following documents are annexed to these Special Conditions and form an integral part of the Agreement:

Annex 1: Description of the Action

Annex 2: General Conditions applicable to the transfer agreement

6(2) In the event of a conflict between the provisions of the present Special Conditions and any Annex thereto, the provisions of the Special Conditions shall take precedence.

Article 7: Other specific conditions applying to the Action

7(1) The following shall supplement the General Conditions:

7(1)(1) The Commission shall submit to the Spanish Agency for International Development Cooperation, in electronic version only and at the latest one month after their submission to the Commission, copy of the interim and final reports submitted by the implementing partners funded under the Action, under the conditions that 1) the reports will not be made public and 2) the ECHO partners give a preliminary agreement on sharing their reports with the Donor. Should any of these conditions not be fulfilled, a summary/information factsheet will be submitted instead.

Done in Brussels in two originals in the English language, one for the Commission and one for the Donor.

For the Donor

Antón LEIS GARCÍA

Director

AGENCIA ESPAÑOLA DE COOPERACIÓN INTERNACIONAL PARA EL DESARROLLO - DIRECTOR

Signature

Date 13-04-2023

For The Commission

Maciej POPOWSKI

Director General

Qualified electronic signature by:
MACIEJ POPOWSKI
Date: 2023-04-03 11:57:40 +02:00

Signature

Date

ANNEX 1: Description of the Action

Humanitarian support to Palestinians at risk of forcible transfer in the West Bank

In the context of the occupied Palestinian territories' protracted protection crisis, the Action supports a partnership between the European Commission (represented by DG ECHO), EU Member States and five INGOs – the West Bank Protection Consortium – aimed at providing protection and assistance to Palestinians at risk of forcible transfer in the West Bank due to recurrent violations of international law.

Building on risks and vulnerability analyses, the Action addresses the protection of needs of persons and communities of concern through a multi-sectoral approach that reduces vulnerabilities, builds capacities and responds to threats.

Specifically, the Action seeks to provide assistance to 20 000 unique beneficiaries at least, by means of three strands of work:

1. Emergency preparedness and response

Vulnerability-based emergency support, in the form of cash and in-kind assistance coupled with protection measures and service referrals, will be provided to 6 000 persons at least, who would be affected by protection incidents such as demolitions or settler violence and with a view to supporting their recovery and reduce their insecurity.

2. Resilience-building

A community protection approach will be enacted in at least 100 high risk communities to strengthen local capacities; material assistance will be provided to at least 6 000 to improve their living conditions and access to basic services; legal aid will be provided to 8 000 persons at least, and those actors who assist them, to ensure protection from rights violations.

3. Advocacy

Duty-bearers, third states and international organisations will receive humanitarian analyses, policy and legal advice to promote increased respect for international law and accountability.

The Action reflects the principles of Accountability to Affected People, Age-Gender-Diversity and do no harm. It supports humanitarian coordination through the Cluster System and Association of INGOs in the occupied Palestinian territories and seeks linkages with the Palestinian Authority and development actors to reduce structural vulnerabilities, enacting nexus/exit strategies wherever possible.

ANNEX 2

GENERAL CONDITIONS APPLICABLE TO TRANSFER AGREEMENTS

Article 1 - General obligations

1.1 The Commission shall use the Donor's Contribution (hereinafter 'the Contribution') with a view to financing, fully or in part, the humanitarian action referred to in Article 1 of the Special Conditions (hereinafter 'the Action').

1.2 The Commission shall manage the Contribution with the requisite degree of care, efficiency, transparency and diligence, making every effort to further the implementation of the Action, using to that effect all relevant means and procedures available to it under the financial rules applicable to the Agreement as specified in Article 1(3) of the Special Conditions. Such means and procedures include notably the award of grants and public contracts as well as entrusting budget implementation tasks with pillar-assessed entities. In so doing, the Commission shall abide by the same standard of care, efficiency, transparency in diligence that it exerts itself as donor towards the organisation that it supports financially to implement humanitarian aid actions.

1.3 The Commission shall make every effort to mobilise all the financial, human and material resources required for full implementation of the Action, as specified in Annex I (Description of the Action).

1.4 The Commission shall take appropriate measures to prevent irregularities or fraud, as referred to in Article 3(2) of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29), as well as corruption, as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union of 26 May 1997 (JO C 195, 25.6.1997, p. 1).

1.5 The Commission shall take appropriate measures against any person entrusted with the implementation of the Action who is suspected of misuse of funds or corruption.

1.6 The Commission shall forward to the European Anti-Fraud Office (OLAF) without delay any information relating to possible cases of fraud or corruption or any other illegal activity linked to this Agreement and shall inform the Donor about this transmission.

Article 2 - Obligations regarding information

2.1 The Commission shall provide the Donor with full information on the implementation of the Action. The type and frequency of the reports shall be set out in the Special Conditions.

2.2 In addition to the above-mentioned reports, the Commission shall endeavour to inform the Donor of any relevant external reports, publications, and press releases relating to the Action.

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2.3 In any event, the Commission shall inform the Donor without delay of any circumstances likely to hamper or delay the implementation of the Action.

Article 3 - Liability

3.1 The Commission shall have sole responsibility for complying with any legal obligation incumbent on it.

3.2 The Donor may not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Commission while the Action is being carried out or as a consequence of the Action. Therefore, the Donor may not accept any claim for compensation or increases in payment in connection with such damage or injury, except for noncompliance with the contractual obligations by the Donor.

3.3 Subject to the rules governing the Commission's privileges and immunities, the Commission shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Action. The Commission shall discharge the Donor of all liability associated with any claim or action brought as a result of an infringement by the Commission or the Commission's staff or individuals for whom these are responsible of rules or regulations, or as a result of violation of a third party's rights.

3.4 Where the situation so requires, the Commission shall take all appropriate measures to recover funds unduly paid or incorrectly used, including by bringing legal proceedings. The Donor shall be entitled to recover funds, on a pro rata basis of its Contribution to the financing of the Action, only to the extent that the Commission could itself recover them, save where it can be shown that the Commission has not exercised the proper degree of care and diligence in taking appropriate measures to recover funds unduly paid or incorrectly used.

Article 4 –Administrative costs

A lump sum shall be allocated to the Commission out of the Contribution in order to cover its administrative costs. This lump sum shall be established according to the type of action and amount of the contribution and stipulated in Article 3(2) of the Special Conditions and shall not be reduced in case of reduction of the Donor's Contribution or reimbursed pursuant to Article 14.

Article 5 - Transfer of the Contribution

5.1 Article 4 of the Special Conditions shall set out the modalities for transfer of the funds. The Donor shall disburse its Contribution in one single instalment or in several annual instalments. In case of several annual instalments, the Commission shall call for a yearly payment, on the basis of the forecast cash-flow needs of the Action and the indicative timeframe set out in Article 4 of the Special Conditions.

5.2 The Contribution, or each of the instalments, shall be transferred within the period

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specified in the debit note issued by the Commission, into the bank account indicated in that note, with a communication specifying the name of the Action as well as any other budgetary references required by the Commission in the debit note.

5.3 On expiry of the time limit for payment specified in paragraph 2, the Commission shall receive interest on the late payment, at the rate applied by the European Central Bank to its principal refinancing operations in euros. The reference rate shall be the rate in force, on the first day of the month in which the time limit for payments expires, as published in the C series of the Official Journal of the European Union, increased by three and a half percentage points. Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date when Commission actually receives payment. Any partial payment shall first cover the interest.

Article 6 - Accounting and auditing

6.1 The Commission shall keep accurate and regular records and accounts of the implementation of the Action co-financed by the Contribution, in accordance with the rules and procedures governing its accounts under the financial rules referred to in Article 1(3) of the Special Conditions.

6.2 The Contribution shall be subject to the internal and external auditing procedures laid down in the financial rules referred to in Article 1(3) of the Special Conditions.

Article 7 - Conflict of interests

The Parties undertake to take all necessary precautions to avoid conflicts of interests. There is a conflict of interests where the impartial and objective exercise of the functions of any person under this Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party.

Article 8 - Confidentiality

8.1 The Donor and the Commission shall preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is duly identified as confidential. The Donor may have access upon request, on a confidential basis, to such documents, information or other material. The confidential nature of a document shall not prevent from it being communicated on a confidential basis when the rules binding upon the Parties so require.

8.2 The Parties shall obtain each other's prior written consent before publicly disclosing such information unless:

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

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

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c) the disclosure of confidential information is required by law. In no case can disclosure put into jeopardy the Commission's privileges and immunities or the safety and security of the Commission's staff.

8.3 The Parties shall remain bound by confidentiality for at least five years after the end of the execution period.

Article 9 - Visibility

8.1 Unless the Donor requests or agrees otherwise, the Commission shall ensure the visibility of the Donor's Contribution.

8.2 The Donor accepts that the Commission publishes in any form and medium, including on its website the name and address of the Donor, the purpose of the contribution as well as the amount contributed and, if relevant, the percentage of co-financing.

Article 10 - Ownership and use of results

10.1 To the extent legally possible, ownership, title and industrial and intellectual property rights in the results of the Action and the reports and other documents relating to it shall vest in the Commission, as the case may be together with third parties or as may otherwise be agreed by the Commission.

10.2 Notwithstanding the provisions of Article 10.1 and subject to Article 8, the Commission shall grant the Donor the right to use free of charge and as it sees fit all documents deriving from the Action, whatever their form, provided it does not thereby breach pre-existing industrial and intellectual property rights.

Article 11 - Evaluation of the Action

11.1 Representatives of the Donor may be invited to participate in the monitoring and in the evaluation missions relating to the performance of the Action. The results of such missions shall be reported to the Donors.

11.2 Article 11.1 is without prejudice to any evaluation mission which the Donor as a donor may wish to perform. Evaluation missions by representatives of the Donor shall be planned and completed in a collaborative manner with Commission's staff, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement. The Commission and the Donor shall agree on procedural matters in advance. The Donor shall make the draft report of the evaluation or monitoring mission available to the Commission for comments prior to final issuance. The Donor shall send the final report to the Commission once issued.

Article 12 - Amendment of the Agreement

Any substantial modification to the Agreement, including the annexes thereto, shall be set out in writing in an amendment signed by the Commission and the Donor, without prejudice to non-substantial modifications of the Action introduced by the Commission, which would affect

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Annex I to the Agreement to a limited extent without changing the nature and objectives of the Action.

Article 13 - Implementation period of the Agreement, suspension, *force majeure*, other particular circumstances

13.1 Irrespective of the starting date and implementation period of the projects awarded by the Commission to further the implementation of the Action, the implementation period of the Agreement shall be as set out in Article 2 of the Special Conditions.

13.2 The Commission may suspend implementation of all or part of the Action, upon the Donor's request or on its own motion, if circumstances so require, in particular in case of *force majeure*. The Commission shall inform the Donor without delay and provide all the necessary details. The Agreement may be terminated in accordance with Article 14. If the Agreement is not terminated, the Commission shall endeavour to minimise the duration of the suspension and may resume implementation of the Action once the conditions so allow and shall inform the Donor accordingly.

13.3 The implementation period of the Agreement shall be deemed to be automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions.

13.4 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by *force majeure*.

13.5 The Donor acknowledges that the Action may be adversely affected in case of *force majeure* invoked by the organisations implementing the Action without this constituting a breach of the Agreement even though the Action may not be implemented in full compliance with Annex I to the Agreement. In such a situation, the Commission shall inform the Donor in accordance with Article 2.3 to the extent the relevant information has been shared by the organisations implementing the Action. The Commission shall endeavour in such circumstances to provide a level of information similar to that which is referred to in Article 13.7.

13.6 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under the Agreement, was not attributable to error or negligence on their part (or of their partners, contractors, agents or employees), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* by the defaulting party.

13.7 Without prejudice to Article 13.2, the Party invoking *force majeure* shall notify the other Party thereof without delay, stating the nature, likely duration and foreseeable effect, as well as any measure envisaged to minimise possible damage.

13.8 The Donor acknowledges that expenditures incurred by the organisations implementing the Action may be deemed eligible to the extent justified by *force majeure* and shall therefore be definitively due to those organisations even though the Action may not have

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been implemented in full compliance with Annex I to the Agreement.

Article 14 - Termination of the Agreement

14.1 The Parties shall consult each other in the event of exceptional circumstances, such as:

- non-starting of the implementation or definitive blockade of the Action due to *force majeure*, or in the event of suspension pursuant to Article 13.2, or if, at any time, either Party believes that the purposes of the Agreement can no longer be effectively or appropriately carried out;
- in the event of fraud, corruption or any other illegal activity to the detriment of the financial interests of the European Union;
- non-execution, intentionally or by negligence, of an agreement or regulation, resulting from an act or an omission, which causes or might cause a partial or total loss of the Contribution in the execution of the Agreement.

14.2 Failing agreement on a solution, either Party may terminate the Agreement by serving two months' written notice, unless a shorter period is agreed by the Parties.

14.3 In that event, the balance of the Contribution not committed during the implementation of the Action shall be reimbursed by the Commission to the Donor pro rata to the Donor's share in co-financing the Action. A lump sum may be deducted from the balance to cover the costs of an audit and an evaluation, if applicable. The lump sum for administrative costs is always due in full.

Article 15 - Reimbursement of unused funds

Where the Action was completely implemented but not all the funds were used, the balance shall be reimbursed by the Commission to the Donor pro rata to the Donor's share in co-financing the Action.

Article 16 - Applicable law and jurisdiction

16.1 The Agreement is governed by EU law, and on a subsidiary basis by Belgian law.

16.2 The Parties shall enter into consultations at the request of either of them should any dispute arise concerning the interpretation, application or fulfilment of the Agreement, including its existence, validity or termination.

16.3 If these consultations fail to amicably resolve such a dispute to the satisfaction of both Parties, any of them may refer the matter to the General Court of the European Union and, in the event of appeal, the Court of Justice of the European Union.

16.4 Nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.

Article 17 – Data protection

17.1 Any personal data under the Agreement shall be processed by the Commission in accordance with Regulation 2018/1725 of the European Parliament and of the Council of

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23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). Processing shall be done under the responsibility of the data controller of the Commission (DG ECHO) in accordance with and for the purposes set out in the Privacy Statement applying to the management of agreements in the area of humanitarian aid.

17.2 The Donor shall process personal data under the Agreement in compliance with the applicable EU and national law on data protection (in particular, the General Data Protection Regulation[1]).

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ('GDPR') (OJ L 119, 4.5.2016, p. 1).

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