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NOTE FOR THE ATTENTION OF THE ERASMUS+ AND EUROPEAN SOLIDARITY CORPS NA DIRECTORS

Subject: Coronavirus – specific guidance in cases of force majeure

Following the sending of notes 005 (31/01/2020) and 012 (25/02/2020) on the impact of the coronavirus COVID-19 on the implementation of the Erasmus+ and European Solidarity Corps programmes, we have been receiving a high number of questions from National Agencies on the practicalities regarding the application of the *force majeure* clause.

Most of the questions are on to the possibility of extending the duration of Grant Agreements with beneficiaries, the application of the definition of *force majeure* and the practicalities of covering additional costs, the reason why this note focuses on these aspects. Any questions not replied to by this note will be dealt with bilaterally, via e-mail or NACO, or additional notes, where needed.

As regards the application of *force majeure*

The template for Grant Agreements defines in Article II.1 (Definitions) a situation of *force majeure* as follows:

Force majeure: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Agreement, which is not attributable to error or negligence on their part or on the part of the subcontractors affiliated entities or third parties in receipt of financial support and which proves to be inevitable despite their exercising due diligence. The following cannot be invoked as *force majeure*: labour disputes, strikes, financial difficulties or any default of a service, defect in equipment or materials or delays in making them available, unless they stem directly from a relevant case of *force majeure*.

National Agencies are invited to use their judgement as to the situations in which the beneficiary is in the incapacity to fulfil its obligations under the grant agreement. The provision can thus be invoked beyond the applicable formal recommendations from the competent authorities¹, in situations in which obligatory parts to the agreement between the beneficiary and its partners/participants cannot be fulfilled.

¹ In the context of this note, “competent authorities” are defined as the authorities in charge at national, regional or local level of issuing health recommendations and/or travel restrictions for public interest.

As regards costs incurred, including possible additional costs:

In line with the Guide for National Agencies (article 3.16§2), there cannot be an increase of the total grant amount awarded.

Within this limit, National Agencies may accept additional costs of an extraordinary nature not foreseen in the initial budget, where duly justified (e.g. the cost could not be recovered under an insurance scheme, the generating event could not be rescheduled, etc.) on a real cost basis. Beneficiaries need to provide a signed declaration stating that the costs could not be recovered by other means. For reporting purposes, the beneficiaries should be advised to use the procedure for *force majeure* described in the IT documentation:

<https://webgate.ec.europa.eu/fpfis/wikis/pages/viewpage.action?pageId=194407954>.

Any additional costs above the maximum grant amount will have to be financed from other sources.

If the National Agency decides to cancel a planned activity following the application of *force majeure*, the costs incurred can be considered eligible within the project at final report stage.

As regards the project duration:

Where relevant, the National Agencies may decide to authorise beneficiaries to extend the duration of their projects to allow postponement of activities with up to 12 months per project. While taking this decision, the National Agencies should take into account i.a. the following elements:

- the maximum duration of the Delegation Agreements between the Commission and the National Agency for the implementation of the entrusted tasks is still respected
- the additional administrative workload for the National Agency
- the equal treatment of beneficiaries facing the same situations

The normal rules on amendments set out in Article II.13 of the Grant Agreement apply.

In cases where the National Agency decides to grant the prolongation of projects, the final project duration may not in any case exceed 36 months² in total, in any Key Action³. Whereby such prolongation cannot be granted on the basis of the existing rules of the action, as set out in the Programme Guides of the Erasmus+ and European Solidarity Corps programmes, National Agencies need to sign an exception report in line with article 2.5.4 of the Guide for National Agencies.

For further information or clarifications, please do not hesitate to contact the Commission via your desk officer or by sending an email to EAC-NA-COORDINATION@ec.europa.eu.

² This implies e.g. that projects of 12 months can be extended up to 24 months and 24 months projects may be extended up to 36 months. This also means that KA2 projects of already the maximum duration of 36 months cannot be extended.

³ In line with the e-mail of 26 February 2020 providing specific guidance for ICM projects, the new end date of the extended ICM 2018-projects will be 31/07/2021.

We would like to inform all National Agencies that notes from the Commission to National Agencies are not to be disseminated or published. The functional mailbox EAC-NA-COORDINATION@ec.europa.eu is only to be used by National Agencies, not by project beneficiaries.

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