



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNATIONAL COOPERATION AND DEVELOPMENT

The Director-General

Brussels, 01/04/2020
devco.r.3(2020)2040002

Subject: Reply to your letter dated 18 March 2020 (Call for actions to respond to COVID-19 impact on DEVCO/NEAR projects)

Dear Ms. Cox,

We thank you for addressing your concerns on the possible implications that the world-wide COVID-19 outbreak might have on the implementation of DEVCO/NEAR projects.

With regard to the issues you raised in your letter, please find hereafter DG DEVCO and DG NEAR comments:

1. Application of “force majeure” as an overriding principle in the context of the COVID-19 pandemic

We confirm that the COVID-19 pandemic may be regarded as a force majeure event according to the definition laid down in the general conditions of the PRAG grant contract. Indeed, the current world-wide COVID-19 outbreak might be classified as an ‘abnormal and unforeseeable circumstance’ beyond the control of the party whose consequences could not have been avoided in spite of the exercise of all due care. In this respect, we acknowledge that such exceptional and unforeseeable circumstances might prevent the parties – for a given period of time – from fulfilling their obligations without being considered in breach of contract.

However, although the notion of “force majeure” can be regarded as an overriding principle in the context of the COVID-19 pandemic, authorising officers should always exercise their discretion in authorising an extension of the action’s implementation period and/or the suspension of the action.

Therefore, an extension of the action’s implementation period and the acknowledgment of a situation of force majeure can be granted by the contracting authorities following a case-by-case basis analysis depending on the state of the implementation of the contracts concerned.

2. Projects in their final stages of implementation

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A no-cost extension will be granted following a case-by-case assessment carried out by the authorising officers for each concerned contract.

In this respect, we would like to inform you that a temporary measure for the signature of legal commitments and riders has been put in place: exchanges of signed and scanned copies in pdf format by email will be accepted and once the situation has returned to normal, the services will undertake to proceed to the blue ink signature of the legal commitment by the two parties.

Furthermore, where the execution of contracts is impeded because of COVID-19 (due to unavailability of key staff or the impossibility of carrying on work in a zone affected by the virus, which can be regarded as force majeure), authorising officers should exercise their discretion in permitting substitute performance or delayed performance. This could be done following a justified request by the beneficiary/contractor/expert to amend the contract including by extending the period of its implementation/ performance.

3. Eligibility of costs and contingency reserves

We cannot ensure that costs, considered reasonable in the beneficiaries' views, will be qualified as eligible. Nevertheless, we might envisage that relocation and travel costs will be considered eligible when due to sanitary emergency provided that relevant evidence is provided.

The authorising officer may authorise the use of the contingency reserve on a case-by-case basis.

4. Redirecting activities of ongoing projects to respond to COVID-19

Any changes in the planned activities should follow the amendment procedure set out in Article 9 of the general conditions. The request for amendment can be done via email according to the temporary measure procedure for document exchanges explained above.

Nevertheless, although this procedure is conceived to be applied in such exceptional circumstances by ensuring in particular the social distancing precautionary measures, the general principles governing the amendment of the contract should be respected, namely the condition according to which an amendment may occur only before the end of the execution period as well as the principles outlined in Article 9.4 related to the unilateral amendment to the Budget allocations and the Description of the Action.

5. Ongoing calls for proposals

With regard to the possibility to request an extension of the deadline for recently launched calls, please note that the responsible authorising officers may consider an extension of the deadlines for submission of proposals by publishing a corrigendum on the Europa website for grant procedures (normally through PROSPECT). Please also note that the responsible authorising officer will exercise his/her discretion in granting such a deadline extension and will base his/her decision on a substantiated factual assessment. Such assessment will take into account several conditions, such as the remaining period for submission, the potential impact on the deadlines for committing appropriations as well as any other elements of relevance deemed necessary by the authorising officer.

We can reassure you that DG DEVCO and DG NEAR are committed to applying a consistent approach on all the issues outlined in your letter. Our services are providing common guidance to Headquarters and EU Delegations with a view to applying coordinated solutions. A dedicated section on Frequently Asked Questions for external users will be available soon.

I thank you for your letter and hope that DG DEVCO and DG NEAR can continue to count on your support on these important issues.

Yours sincerely,

[e-signed]
Koen DOENS