

## ANNEX II - GENERAL CONDITIONS

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## **Part One: Provisions Applicable to Activities for which the IPA II beneficiary is the Contracting Authority**

### **Article 1 - General principles**

- (1) The purpose of Part One is to lay out the rules for implementing the entrusted budget-implementation tasks as described in Annex I and to define rights and obligations of the IPA II beneficiary and the Commission respectively in carrying out these tasks.

Part One shall apply to the budget-implementation tasks entrusted to the IPA II beneficiary related to the Union contribution alone, or combined with funds of the IPA II beneficiary or funds of a third party, in case such funds are implemented in joint co-financing, i.e. where they are pooled.

- (2) The IPA II beneficiary shall remain responsible for the fulfillment of the obligations stipulated in this Financing Agreement and in the Framework Agreement, even if it sub-delegates to other entities identified in Annex I to carry out certain entrusted budget implementation tasks. The Commission, in particular, reserves the right to suspend payments, and to suspend and/or terminate this Financing Agreement on the basis of the acts, omissions and/or situations of any designated entity.
- (3) The tasks referred to in paragraph 1 of this Article shall be carried out by the IPA II beneficiary in accordance with the procedures and standard documents laid down and published by the Commission for the award of procurement and grant contracts in external actions, in force at the time of the launch of the procedure in question (PRAG), as well as in accordance with the required visibility and communication standards referred to in Article 2(2).  
The IPA II beneficiary shall conduct the procurement and grant award procedures, conclude the resulting contracts, and ensure that all relevant documents for audit trail are in the language of this Financing Agreement.
- (4) The IPA II beneficiary shall respect the minimum rate of its contribution specified in Annex I. In case of contributions from both the IPA II beneficiary and the Union, the IPA II beneficiary contribution shall be made available at the same time as the corresponding contribution from the Union.
- (5) The IPA II beneficiary shall keep all relevant financial and contractual supporting documents from the date of the entry into force of this Financing Agreement or as from an earlier date in case if the procurement procedure, call for proposals or direct grant award procedure was launched prior to the entry into force of this Financing Agreement:

- (a) For procurement procedures in particular:

- a) Forecast notice with proof of publication of the procurement notice and any corrigenda;
- b) Appointment of shortlist panel;
- c) Shortlist report (incl. annexes) and applications;
- d) Proof of publication of the shortlist notice;
- e) Letters to non-shortlisted candidates;
- f) Invitation to tender or equivalent;
- g) Tender dossier including annexes, clarifications, minutes of the meetings, proof of publication;

- h) Appointment of the evaluation committee;
  - i) Tender opening report, including annexes;
  - j) Evaluation / negotiation report, including annexes and bids received;<sup>1</sup>
  - k) Notification letter;
  - l) Cover letter for submission of contract;
  - m) Letters to unsuccessful candidates;
  - n) Award / cancellation notice, including proof of publication;
  - o) Signed contracts, amendments, riders, implementation reports, and relevant correspondence.
- (b) For calls for proposals and direct award of grants in particular:
- a) Appointment of the evaluation committee;
  - b) Opening and administrative report including annexes and applications received;<sup>2</sup>
  - c) Letters to successful and unsuccessful applicants following concept note evaluation;
  - d) Concept note evaluation report;
  - e) Evaluation report of the full application or negotiation report with relevant annexes;
  - f) Eligibility check and supporting documents;
  - g) Letters to successful and unsuccessful applicants with approved reserve list following full application evaluation;
  - h) Cover letter for submission of grant contract;
  - i) Award/cancellation notice with proof of publication;
  - j) Signed contracts, amendments, riders and relevant correspondence.

In addition, financial and contractual documents referred to in paragraph 5(a) and (b) of this Article shall be complemented by all relevant supporting documents as required by the procedures referred to in section 3 of this Article, as well as all relevant documentation relating to payments, recoveries and operating costs, for example project and on the spots checks reports, acceptance of supplies and works, guarantees, warranties, reports of supervising engineers.

All relevant financial and contractual documents shall be kept for the same duration in accordance with Article 49 of the Framework Agreement.

#### **Article 1a - Duty to inform, administrative sanctions, and failure to act**

- (1) The IPA II beneficiary shall inform the Commission immediately when a candidate, tenderer or applicant is in a situation of exclusion from participating in procurement and grant award procedures, has committed irregularities and fraud, or has been found in serious breach of its contractual obligations.

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<sup>1</sup> Elimination of unsuccessful bids five years after the closure of the procurement procedure.

<sup>2</sup> Elimination of unsuccessful applications three years after the closure of the grant procedure.

- (2) The IPA II beneficiary shall take into account the information contained in the Commission's 'Early Detection and Exclusion System' (EDES) when awarding procurement and grant contracts. Access to the information can be provided through the liaison point(s) or via consultation using the following means: (European Commission, Directorate-General for Budget, Accounting Officer of the Commission, BRE2-13/505, B-1049 Brussels, Belgium and by email to BUDG-C01-EXCL-DB@ec.europa.eu in copy to the Commission address identified in Article 3 of the Special Conditions).
- (3) Where the IPA II beneficiary becomes aware of an exclusion situation in the implementation of the tasks described in Annex I, the IPA II beneficiary shall impose upon an economic operator or a grant applicant an exclusion from its future procurement or grant award procedures. The IPA II beneficiary may also impose a financial penalty proportional to the value of the contract concerned. Exclusions and/or financial penalties shall be imposed following an adversarial procedure ensuring the right of defence of the person concerned. The IPA II beneficiary shall notify the Commission in accordance with paragraph 1 of this Article.
- (4) In respect of paragraph 3 of this Article, the IPA II beneficiary is considered in failure to act, if it does not impose exclusion and/or a financial penalty upon the economic operator or grant applicant.
- (5) In the case of a failure to act, the IPA II beneficiary shall notify the Commission explaining the reasons for its failure to act. The Commission reserves the right to exclude an economic operator or a grant applicant from future EU financed award procedures, and/or impose a financial penalty on an economic operator or a grant applicant between 2 % and 10 % of the total value of the contract concerned.

#### **Article 2 - Visibility and communication**

- (1) In accordance with Article 24(3) of the Framework Agreement, the IPA II beneficiary shall take the necessary measures to ensure the visibility of EU funding for the activities entrusted to it, and prepare a coherent plan of visibility and communication activities which should be submitted to the Commission for an agreement within 2 months after the entry into force of this Financing Agreement.
- (2) These communication and visibility activities shall comply with the Communications and Visibility Manual for EU External Actions laid down and published by the Commission in force at the time of the activities.

#### **Article 3 - *Ex-ante* controls on grant and procurement procedures and on *ex post* controls on contracts and grants to be performed by the Commission**

- (1) The Commission may exercise *ex ante* controls on the tendering of contracts, launch of calls for proposals and the award of contracts and grants for the following stages of procurement or grant award:
  - (a) approval of contract notices for procurement, work programmes for calls for proposals, and any corrigenda thereof;
  - (b) approval of tender dossiers and guidelines for applicants on grants;
  - (c) approval of the composition of Evaluation Committees;
  - (d) approval of evaluation reports and award decisions<sup>3</sup>;
  - (e) approval of contract dossiers and contract addenda.
- (2) With regard to *ex ante* controls the Commission shall decide:
  - (a) to perform *ex ante* controls on all files, or

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<sup>3</sup> For service contracts this steps includes *ex ante* controls concerning approval of the shortlist.



- (b) to perform *ex ante* controls on a selection of such files, or
  - (c) to completely dispense with *ex ante* controls.
- (3) If the Commission decides to perform *ex ante* controls in accordance with paragraph 2(a) or (b) of this Article, it shall inform the IPA II beneficiary of the files selected for *ex ante* controls. The IPA II beneficiary shall provide all the documentation and information necessary to the Commission upon being informed that a file has been selected for *ex ante* control, at the latest at the time of submission of the contract notice or the work programme for publication.
- (4) The Commission may decide to perform *ex post* controls, including audits and on-the-spot controls, at any time on any contracts or grants awarded by the IPA II beneficiary arising out this Financing Agreement. The IPA II beneficiary shall make available all the documentation and information necessary to the Commission upon being informed that a file has been selected for *ex post* control. The Commission may authorize a person or an entity to perform *ex post* controls on its behalf.

#### **Article 4 - Bank accounts, accounting systems, and cost recognised**

- (1) After the entry into force of this Financing Agreement, the National Fund and the operating structure of the IPA II beneficiary that is the Contracting Authority for the Programme shall open at least one bank account denominated in euro. The total bank balance for the Programme shall be the sum of the balances on all the Programme bank accounts held by the National Fund and all participating operating structures in the IPA II beneficiary.
- (2) The IPA II beneficiary shall prepare and submit to the Commission disbursement forecast plans for the duration of the implementation period of the Programme. These forecasts shall be updated for the annual financial report referred to in Article 14(2) and for each request for funds. The forecasts shall be based on a documented detailed analysis (including the planned contracting and payment schedule per contract for the following fourteen months) which shall be available to the Commission on request.
- (3) The initial disbursement forecast plan shall contain summary annual disbursement forecasts for the whole implementation period and monthly disbursement forecasts for the first fourteen months of the Programme. Subsequent plans shall contain summary annual disbursement forecasts for the balance of the implementation period of the Programme and monthly disbursement forecasts for the following fourteen months.
- (4) The IPA II beneficiary is required to establish and maintain an accounting system in accordance with Clause 2(3)(b) of Annex A to the Framework Agreement which will hold at least the information for the contracts managed under the Programme indicated in Annex V.
- (5) Cost recognised in the accounting system maintained under the section 4 of this Article must have been incurred, paid and accepted and correspond to actual costs proven by supporting documents and shall be used when appropriate to clear pre-financing paid by the IPA II beneficiary under local contracts.
- (6) The IPA II beneficiary shall provide to the Commission reports as follows:
- (a) Cut-off report - as set out in Article 14(4);
  - (b) Annual reports as set out in paragraphs (2) to (4) of Article 14;
  - (c) Request for funds reports as referred to in Article 5.

**Article 5 - Provisions on payments made by the Commission to the IPA II beneficiary**

- (1) The IPA II beneficiary shall submit its initial disbursement forecast for the Programme, prepared pursuant to Article 4(2), with the first pre-financing payment request. The first pre-financing payment shall be for 100 % of the forecast disbursements for the first year of the disbursement forecast plan.
- (2) The IPA II beneficiary shall submit subsequent pre-financing payment requests when the total bank balance for the Programme falls below the disbursements forecast for the following five months of the Programme.
- (3) Each request for additional pre-financing shall be supported by following documents:
  - a) A summary of all disbursements made for the Programme;
  - b) The bank balances for the Programme at the cut-off date of the request;
  - c) A forecast of disbursement for the Programme for the following fourteen months at the cut-off date of the request in accordance with Annex IV point (d).
- (4) The IPA II beneficiary may request for each subsequent pre-financing the amount of total disbursements forecast for the fourteen months following the cut-off date of the request, less the balances referred to in section 3(b) of this Article at the cut-off date of the request for funds increased by any amount funded by the IPA II beneficiary under paragraph 5 of this Article and not yet reimbursed.

The Commission reserves the right to reduce each subsequent pre-financing payment if the total bank balances held by the IPA II beneficiary under this Programme and on all other IPA I or IPA II programmes managed by the IPA II beneficiary exceeds the disbursement forecast for the next fourteen months.

- (5) Where the payment is reduced under paragraph 4 of this Article, the IPA II beneficiary must fund the Programme from its own resources up to the amount of the reduction. The IPA II beneficiary may then request the reimbursement of that funding as part of the next request for funds as specified in paragraph 4 of this Article.
- (6) The Commission shall have the right to recover excessive bank balances which have remained unused for more than twelve months. Before exercising this right, the Commission shall invite the IPAII beneficiary to give reasons for the delay in disbursing the funds and demonstrate a continuing need for them within the next following two months.
- (7) Interest generated by pre-financing of the Programme bank balances shall not be due.
- (8) Following Article 33(4) of the Framework Agreement, if interruption of time limit for payment request exceeds two months, the IPA II beneficiary may request a decision by the Commission on whether the interruption of time limit is to be continued.
- (9) The final financial declaration referred to in Article 37(2) of the Framework Agreement shall be submitted by the NAO no later than 16 months after the end of operational implementation period.

**Article 6 - Interruption of payments**

- (1) Without prejudice to the suspension or termination of this Financing Agreement according to Articles 18 and 19 respectively, as well as without prejudice to Article 39 of the Framework Agreement, the Commission may interrupt payments partially or fully, if:
  - (a) the Commission has established, or has serious concerns that the IPA II beneficiary has committed substantial errors, irregularities or fraud questioning the legality or regularity of the underlying particular transactions in the implementation of the Programme, or has failed to comply with its obligations under this Financing Agreement, including obligations regarding the implementation of the Visibility and Communication plan;

- (b) the Commission has established that or has serious concerns, whether the IPA II beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under this or other Financing Agreements, provided that those errors, irregularities, fraud or breach of obligations have a material impact on the implementation on this Financing Agreement or call into question the reliability of the IPA II beneficiary's internal control system or the legality and regularity of the underlying expenditure.

#### **Article 7 - Recovery of funds**

- (1) In addition to cases referred to in Article 41 of the Framework Agreement, the Commission may recover the funds from the IPA II beneficiary as provided in the Financial Regulation, in particular in case of:
  - (a) the Commission established that objectives of the Programme set out in Annex I are not achieved;
  - (b) non eligible expenditure;
  - (c) non respect of the contribution rate, as provided in Annex I;
  - (d) expenditure incurred as a result of errors, irregularities, fraud or breach of obligations in the implementation of the Programme, in particular in the procurement and grant award procedure.
- (2) In accordance with national law, the IPA II beneficiary shall recover the Union contribution paid to the IPA II beneficiary from recipients who were in any situation defined in paragraph 1 points b) or d) of this Article or referred to in Article 41 of the Framework Agreement. The fact that the IPA II beneficiary does not succeed in recovering all or part of the funds shall not prevent the Commission from recovering the funds from the IPA II beneficiary.
- (3) Amounts unduly paid or recovered by the IPA II beneficiary, amounts from financial, performance and pre-financing guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed by the IPA II beneficiary on candidates, tenderers, applicants, contractors or grant beneficiaries, to the IPA II beneficiary shall be either re-used for the Programme or returned to the Commission.

### **Part Two: Provisions Applicable to Budget Support**

#### **Article 8 - Policy dialogue**

The IPA II beneficiary and the Commission commit to engage in a regular constructive dialogue at the appropriate level on the implementation of this Financing Agreement.

#### **Article 9 - Verification of conditions and disbursement**

- (1) The Commission shall verify the conditions for the payment of the tranches of the budget support component, as identified in Annex I and Annex IA.
- (2) Where the Commission concludes that the conditions for payment are not fulfilled, it shall inform the IPA II beneficiary thereof without undue delay.
- (3) Disbursement requests submitted by the IPA II beneficiary shall be eligible for EU financing provided that they are in accordance with the provisions set out in Annex I and Annex IA and that they are submitted during the operational implementation phase.

- (4) The IPA II beneficiary shall apply its national foreign exchange regulations in a nondiscriminatory manner to all disbursements of the budget support component.

#### **Article 10 - Transparency of budget support**

The IPA II beneficiary hereby agrees to the publication by the Commission, of this Financing Agreement and any amendment thereof, including by electronic means, and of such basic information on the budget support which the Commission deems appropriate. The content of such publication shall be in accordance with the EU laws applicable to the protection of personal data.

#### **Article 11 - Recovery of budget support**

All or part of the budget support disbursements may be recovered by the Commission, with due respect to the principle of proportionality, if the Commission establishes that payment has been vitiated by a serious irregularity attributable to the IPA II beneficiary, in particular if the IPA II beneficiary provided unreliable or incorrect information, or if corruption or fraud was involved.

### **Part Three: Provisions Applicable to this Financing Agreement Irrespective of the Management Mode**

#### **Article 12 - Execution period, operational implementation period and contracting deadline**

- (1) The execution period is the period during which the Financing Agreement is implemented and includes the operational implementation period as well as a closure phase. The duration of the execution period is stipulated in Article 2(2) of the Special Conditions, and it shall start on the entry into force of this Financing Agreement.
- (2) The operational implementation period is the period in which all operational activities covered by procurement, grant contracts and delegation agreements are completed. The duration of this period is stipulated in Article 2(2) of the Special Conditions, and it shall start on the entry into force of this Financing Agreement.
- (3) The execution and operational implementation periods shall be respected by the Contracting Authority when concluding and implementing procurement, grant contracts and delegation agreements within this Financing Agreement.
- (4) Costs related to the activities shall be eligible for EU financing only if they have been incurred during the operational implementation period; the costs incurred by the IPA II beneficiary before the entry into force of the Financing Agreement shall not be eligible for EU financing.
- (5) The procurement and grant contracts shall be concluded at the latest within three years of the entry into force of the Financing Agreement, except:
  - (a) amendments to contracts already concluded;
  - (b) individual procurement contracts to be concluded after early termination of an existing procurement contract;
  - (c) contracts relating to audit and evaluation, which can be signed after operational implementation;
  - (d) change of the entity charged with entrusted tasks.

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- (6) A procurement or grant contract which has not given rise to any payment within two years of its signature shall be automatically terminated and its funding shall be de-committed.

#### **Article 13 - Permits and authorisation**

Any type of permit and/or authorisation required for the implementation of the Programme shall be provided in due time by the competent authorities of the IPA II beneficiary, in accordance with national law.

#### **Article 14 - Reporting requirements**

- (1) For the purpose of the general reporting requirements to the Commission set out in Article 58 of the Framework Agreement and the specific reporting requirements under indirect management set out in Articles 59(1) of the Framework Agreement on the annual report on the implementation of IPA II assistance, the NIPACs shall use the template provided for in Annex III to this Financing Agreement.
- (2) For the purpose of the specific reporting requirements under indirect management set out in point (a) of Article 59(2) of the Framework Agreement on the annual financial report or statements, the NAO in the IPA II beneficiary shall use the templates provided for in points (a) and (b) of Annex IV to this Financing Agreement.
- (3) For the purpose of Article 59(4) of the Framework Agreement, the NIPAC shall submit a final report on the implementation of IPA II assistance of this Programme to the Commission no later than four months after the last disbursement to its contractors or grant beneficiaries.
- (4) For the purpose of Article 59(6) of the Framework Agreement the NAO shall provide by 15 January of the following financial year in electronic format a copy of the data held in the accounting system established under Article 4(4). This should be supported by a signed un-audited summary financial report in accordance with point (c) of Annex IV.

#### **Article 15 - Intellectual property rights**

- (1) Contracts financed under this Financing Agreement shall ensure that the IPA II beneficiary acquire all necessary intellectual property rights with regard to information technology, studies, drawings, plans, publicity and any other material made for planning, implementation, monitoring and evaluation purposes.
- (2) The IPA II beneficiary shall guarantee that the Commission, or anybody or person authorised by the Commission, shall have access and the right to use such a material. The Commission will only use such material for its own purposes.

#### **Article 16 - Consultation between the IPA II beneficiary and the Commission**

- (1) The IPA II beneficiary and the Commission shall consult each other before taking any dispute relating to the implementation or interpretation of this Financing Agreement further pursuant to Article 20.

- (2) Where the Commission becomes aware of problems in carrying out procedures relating to the implementation of this Financing Agreement, it shall establish all necessary contacts with the IPA II beneficiary to remedy the situation and take any steps that are necessary.
- (3) The consultation may lead to an amendment, suspension or termination of this Financing Agreement.
- (4) The Commission shall regularly inform the IPA II beneficiary of the implementation of activities described in Annex I which do not fall under Part One of these General Conditions.

#### **Article 17 - Amendment of this Financing Agreement**

- (1) Any amendment of this Financing Agreement shall be made in writing.
- (2) If the IPA II beneficiary requests an amendment, the request shall be submitted to the Commission at least six months before the amendment is intended to enter into force.
- (3) The Commission can amend the Model Documents in Annex III, IV and V without this necessitating an amendment to this Financing Agreement. The IPA II beneficiaries shall be informed in writing about any such amendment and its entry into force.

#### **Article 18 - Suspension of this Financing Agreement**

- (1) The Financing Agreement may be suspended in the following cases:
  - (a) The Commission may suspend the implementation of this Financing Agreement if the IPA II beneficiary breaches an obligation under this Financing Agreement;
  - (b) The Commission may suspend the implementation of this Financing Agreement if the IPA II beneficiary breaches any obligation set under the procedures and standard documents referred to in Article 18(2) of the Framework Agreement;
  - (c) The Commission may suspend the implementation of this Financing Agreement if the IPA II beneficiary does not meet requirements for entrusting budget implementation tasks;
  - (d) The Commission may suspend the implementation of this Financing Agreement if the IPA II beneficiary decides to suspend or cease the EU Membership accession process;
  - (e) The Commission may suspend this Financing Agreement if the IPA II beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption;
  - (f) This Financing Agreement may be suspended in cases of force majeure, as defined below. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by a case of force majeure of which the other party is duly informed. A party faced with force majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage. If force majeure impacts only part of the Programme, the suspension of the Financing Agreement can be partial;

- (g) Neither of the Parties shall be held liable for breach of its obligations under this Financing Agreement if it is prevented from fulfilling them by force majeure, provided it takes measures to minimise any possible damage.
- (2) The Commission may suspend this Financing Agreement without prior notice.
- (3) The Commission may take any appropriate precautionary measure before suspension takes place.
- (4) When the suspension is notified, the consequences for the on-going or to be signed procurement and grant contracts, and delegation agreements shall be indicated.
- (5) A suspension of this Financing Agreement is without prejudice to the interruption of payments and termination of this Financing Agreement by the Commission in accordance with Article 6 and Article 19.
- (6) The parties shall resume the implementation of the Financing Agreement once the conditions allow with the prior written approval of the Commission. This is without prejudice to any amendments of this Financing Agreement which may be necessary to adapt the Programme to the new implementing conditions, including, if possible, the extension of the operational implementation and execution periods, or the termination of this Financing Agreement in accordance with Article 19.

**Article 19 - Termination of this Financing Agreement**

- (1) If the issues which led to the suspension of this Financing Agreement have not been resolved within a maximum period of 180 days, either party may terminate the Financing Agreement at 30 days' notice.
- (2) This Financing Agreement shall be automatically terminated, if within the period of two years of its signature:
  - (a) it has not given rise to any payment;
  - (b) no implementing contract or delegation agreement has been signed.
- (3) When the termination is notified, the consequences for the on-going procurement and grant contracts, delegation agreements and such contracts or grants, and delegation agreements to be signed shall be indicated.
- (4) The termination of this Financing Agreement shall not preclude the possibility of the Commission to make financial corrections in accordance with Articles 36 to 44 of the Framework Agreement.

**Article 20 - Dispute settlement arrangements**

- (1) Any dispute concerning the Financing Agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 16 may be settled by arbitration at one of the parties' request.
- (2) Each party shall designate an arbitrator within 30 days of the request for arbitration. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration (The Hague) to designate a second arbitrator. The two arbitrators shall in their turn designate a third arbitrator within 30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.

- (3) Unless the arbitrators decide otherwise, the procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.
- (4) Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.

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