



ERSTE Stiftung

FUNDING GUIDELINES

1. FUNDING

- 1.1. ERSTE Foundation is working in three programmes, namely Social Development, Culture, and Europe, respectively. These programmes deal with issues around social interrelation, cultural development and the challenges to be met in the course of the European unification process. They are interconnected and form a common platform to promote dialogue and the transfer of knowledge in central and south-eastern Europe. Within its continuously developing work programme, ERSTE Foundation supports legal entities defined under Austrian tax law as non-profit, charitable or church organisations and selected in accordance with ERSTE Foundation's principles (hereafter also called "*beneficiaries*" or "*Project Partners*") with funding. This funding is hereafter also called "*grant(s)*".
- 1.2. Funding is not subject to a counter-performance, but to the implementation of the funded projects in the public interest. These Funding Guidelines therefore set out the relationship between ERSTE Foundation and the Project Partners to ensure a specific outcome of the projects and the appropriate use of the grants.
- 1.3. Legal entities suitable for funding may neither derive from these Funding Guidelines nor from any other documentation, any claim to become a beneficiary of ERSTE Foundation or otherwise receive funding from it.
- 1.4. Grants shall be subject to compliance by the Project Partner with these Funding Guidelines, the funding agreements and other documents as agreed with ERSTE Foundation.



2. PRINCIPLES OF ELIGIBILITY FOR GRANTS AND COMPLETION OF THE PROJECT

- 2.1. The Project Partner guarantees that it is in possession of all necessary rights required to carry out the project until the end of the term of its contractual relationship with ERSTE Foundation.
- 2.2. All rights shall in particular mean the licences, permits and concessions, etc., required for the activities of the Project Partner in general and for the completion of the project in particular. All rights shall further refer to intellectual property rights required for the implementation of the project.
- 2.3. The Project Partner shall - according to its legal basis (statute law, articles of association, deed of foundation, etc.) and to its actual conduct of business - directly and exclusively serve non-profit, charitable or church purposes (except for completely subordinate, ancillary purposes), at least for the entire duration of its contractual relationship with ERSTE Foundation, and will use the grants solely for such purposes. The Project Partner shall not aim to generate profits. Associates of a Project Partner shall neither receive any profit shares nor any other benefit from the Project Partner. In the event an associate leaves the Project Partner, not more than those assets, which have been made available by the specific associate to the Project Partner may be returned to him. The Project Partner shall not favour anybody with administrative expenses not in line with Project Partner's non-profit purpose nor with inappropriately high remuneration. In the event the Project Partner is dissolved, any liquidation assets shall be used for non-profit, charitable or church purposes.
- 2.4. The Project Partner - regardless of any possible joint implementation of the project together with cooperation partners - shall use the grants directly to carry out the funded project. In particular it shall not use grants in order merely to finance implementation of the project by a third party.
- 2.5. The project shall be carried out by the Project Partner on its own responsibility. The Project Partner shall ensure compliance with any applicable legal provisions, such as tax law, labour law or social law.
- 2.6. The Project Partner shall ensure that the project results do not violate any third party rights.



3. FINANCING AND USE OF FUNDS

- 3.1.** The funded project shall be financed according to the project financing plan on which ERSTE Foundation bases its funding. The Project Partner shall inform ERSTE Foundation without delay and in writing of any necessary changes to the financing (e.g. through agreements with third parties regarding funding or by generating revenues). Such changes shall not be effective without the prior written consent of ERSTE Foundation, whereas such consent shall not be withheld without reason.
- 3.2.** The Project Partner shall use grants in an economical, prudent, appropriate and correct way and only to cover costs incurred in the implementation of the project in accordance with the project cost calculation on which the funding agreement is based. Any changes to this also require the written consent of ERSTE Foundation according to the principles laid down in paragraph 3.1 above.
- 3.3.** The Project Partner shall neither transfer (e.g. assign) nor encumber its grant entitlements arising from a funding agreement, except for a collateral assignment or encumbrance in favour of the Project Partner's financing banks by way of security for interim financing of a project funded by ERSTE Foundation. The Project Partner shall inform ERSTE Foundation in writing before any such collateral assignment or encumbrance.
- 3.4.** In the event the Project Partner uses less than the budgeted amount, ERSTE Foundation will not transfer to the Project Partner any outstanding amounts exceeding the adapted budget. In the event the Project Partner uses less than the whole amount made available by ERSTE Foundation, the Project Partner shall return within 14 days after such fact became known any excess amount to ERSTE Foundation, unless the parties agree in writing within this 14 day period to use the excess amount differently.
- 3.5.** In the event, Austrian capital gains tax accrues for any funding, ERSTE Foundation will deduct such capital gains tax at source. The Project Partner shall pay all other due taxes as well as all other duties required by law in relation with the funding received from ERSTE Foundation. The Project Partner



shall be exclusively liable for the filing of all tax returns and other required notices to tax and other authorities with respect to these taxes, duties, etc. The Project Partner shall indemnify and hold harmless ERSTE Foundation from and against any claims in this respect.

4. REPORTS AND FINAL ACCOUNTS

- 4.1. After completion of the project, the Project Partner shall within a period of three months transmit to ERSTE Foundation a final activity report on the project and render final accounts documenting the use of all funds provided by ERSTE Foundation. The final accounts shall document the total financing and total costs of the project including cost-reducing income and shall be broken down according to the project financing plan and the project cost calculation.
- 4.2. During the term of a funding agreement and before the completion of the project, the Project Partner shall submit to ERSTE Foundation a written interim report, in accordance with the respective funding agreement or funding letter, describing the activities performed thus far in connection with the project and including updated cost calculations.
- 4.3. If agreed in the funding agreement, the Project Partner shall set up at its own costs separate project accounts for the funded project conforming with proper accounting principles (e.g. according to the Austrian Companies Act "*Unternehmensgesetzbuch*").
- 4.4. If the Project Partner's accounts are audited by an independent certified public accountant or auditor, the Project Partner shall arrange for the auditor or accountant to verify the financial management of the projects funded by ERSTE Foundation within such an audit.
- 4.5. The Project Partner shall keep the originals of all relevant supporting documents (e.g. invoices, agreements, etc.) and other material for seven years after the expiry of the funding agreement. The Project Partner grants employees and third parties (e.g. auditors, etc.) authorised by ERSTE Foundation access to its premises to review all books, accounts and other documents in connection with the project in order to review correct use of ERSTE Foundation's funds. ERSTE Foundation may make copies of such books,



accounts and other documents. Further, upon request of ERSTE Foundation, the Project Partner shall make available the required documentation to ERSTE Foundation within 14 days. In the event, the Project Partner does not submit all requested documentation within the above mentioned 14 days, the Project Partner shall immediately repay all grants received from ERSTE Foundation.

- 4.6. The Project Partner may not request to inspect ERSTE Foundation's year-end financial statements, directors' reports, auditor's reports and books.

5. PROMOTION AND PUBLIC RELATIONS ACTIVITIES

- 5.1. At its sole discretion, ERSTE Foundation may promote current projects and their results among its existing and potential Project Partners and vis-à-vis the general public. ERSTE Foundation may further present the projects funded by it and their results through the Internet and all other media, and make these results available to the public inter alia via (digital) libraries, media collections, publications, etc. For promotion and public relation purposes, ERSTE Foundation may produce in particular catalogues raisonnés, catalogues, trailers, reports, exhibition invitations, posters as well as other advertisement and PR material.

- 5.2. For these promotion and public relations activities, the Project Partner shall make available to ERSTE Foundation media files meeting the following technical requirements on current projects and their results free of charge:

- Pictures:
resolution 300 dpi, formats: JPG, TIFF
- Movie:
formats: mp4, 3g2, 3gp, 3gp2, 3gpp, asf, asx, avi, divx, mts, m2t, m2ts, m2v, m4v, mkv, mov, mp4, mpe, mpeg, mpg, ogg, wmv
- TV and Audio files, press clippings:
to be sent via www.sendspace.com to press@erstestiftung.org

- 5.3. The Project Partner shall give ERSTE Foundation an opportunity to present itself and its supporting activities in a reasonable and appropriate manner. To this end the Project Partner shall offer ERSTE Foundation in any case at least



one page in any medium (e.g. catalogue, brochure, etc.) in connection with the project.

- 5.4. The Project Partner shall submit to ERSTE Foundation for its prior written approval any medium (such as catalogues, brochures, publications, etc.) presenting the project to the public before placing any print order. ERSTE Foundation shall use best efforts to answer a request for approval submitted by the Project Partner within two weeks from the date of proven receipt of the printer's copy. Approval is considered to have been granted, if no response is given within two weeks.
- 5.5. The Project Partner shall put the logotype of ERSTE Foundation preceded by the note "*Supported by*" on all printed material related to the project, especially invitations, press information, folders and posters. In case an attachment of the logotype is technically not feasible, the name of ERSTE Foundation without a graphic representation shall be used instead. ERSTE Foundation's logotypes are to be used as outlined in: www.erstestiftung.org/cj/.
- 5.6. In case Project Partner presents the project on its website, the Project Partner shall provide a suitable link to ERSTE Foundation's website at: <http://www.erstestiftung.org>. In the event ERSTE Foundation requests a specific graphic design of this link (for which it will provide suitable media files), the Project Partner shall comply with such request.
- 5.7. The Project Partner shall inform ERSTE Foundation in advance and in writing about all press releases, press conferences, conferences and all other events connected with the project and give ERSTE Foundation the possibility to participate in a suitable manner.
- 5.8. The Project Partner shall make available to ERSTE Foundation free of charge an agreed number of voucher copies of all publications connected with the project and shall inform ERSTE Foundation in advance of the publishing company and the planned number of copies of publications.
- 5.9. The Project Partner shall include ERSTE Foundation in its press mailing list and shall send to ERSTE Foundation within a reasonable period a press review of all events connected with the project.



- 5.10. In the event ERSTE Foundation prohibits the Project Partner from making any reference to ERSTE Foundation in publications, the Project Partner shall comply with such request.
- 5.11. By submitting its application and details to ERSTE Foundation, the Project Partner agrees that ERSTE Foundation will process and use Project Partner's submitted data.

6. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Project Partner grants ERSTE Foundation all rights, in particular all intellectual property rights, to use the projects, in particular the results and all other works related to the projects (such as publications, reports, studies, media works, pictures, etc.), as well as the name, logo, trademarks, etc. and any other detail of the Project Partner for any promotional and PR purpose on a worldwide basis without any limits in time. ERSTE Foundation's usage rights shall therefore not end upon the termination of its contractual relationship with the Project Partner and also include the right to create derivative work. ERSTE Foundation's rights shall especially include the right for usage on web-pages, in publications and any other printing material, in the media (including any digital, analogue and other media not yet existing at the time of granting this license), combination and compilation of media works, and in case of writings, the preparation of titles, headings, summaries and abridgements preserving the meaning, the standardization of spelling and translations according to prevailing conventions, and in case of visual and audiovisual media, the analogue and digital adaptation of images and sound works. Details of photographs may be created.
- 6.2. In the event ERSTE Foundation needs any documents, signatures, etc. of the Project Partner in order to exercise its usage rights, the Project Partner shall immediately upon ERSTE Foundation's request execute such necessary steps.
- 6.3. ERSTE Foundation shall be entitled to exercise its rights and licences to use the projects together with any third parties, e.g. publishing houses, media agencies, etc. and grant sublicenses.



- 6.4. ERSTE Foundation may, but is not obliged, to exercise any and all rights, in particular intellectual property rights granted to it. The Project Partner may not deduce and thus waives any consequences from ERSTE Foundation's non-use of any granted right.
- 6.5. In so far as the Project Partner wishes to grant any third parties rights and/or licences to use copyrighted project results, it shall require such third party to refer to or refrain from making reference to ERSTE Foundation according to paragraphs 5.5. and 5.10. of the Funding Guidelines, and to pass on these obligations to its legal successors.
- 6.6. The Project Partner guarantees that all material made available to ERSTE Foundation, such as pictures, movies, print material, texts, etc. is free of any third party rights, in particular that all intellectual property rights have been cleared for ERSTE Foundation's usage. The Project Partner shall indemnify and hold harmless ERSTE Foundation from and against any third party claims in this respect.

7. TERMINATION WITH CAUSE

- 7.1. ERSTE Foundation may withdraw from a funded project respectively terminate a funding agreement in writing and with immediate effect in particular out of the following reasons:
- if the Project Partner does not use any or part of the funding for the designated purpose;
 - if the Project Partner violates material obligations as outlined in these Funding Guidelines or any other undertaking with ERSTE Foundation, inter alia funding request, letter or agreement, e.g. use of funding as outlined in the project finance plan, obligations concerning reports and final accounts, promotional and PR activities, copyrights and other intellectual property rights;
 - if the Project Partner is not able to complete the project or significant parts thereof for any reason whatsoever as agreed with ERSTE Foundation; or



- if the Project Partner is subject to bankruptcy or liquidation proceedings or such motion is dismissed for lack of assets.

7.2. The Project Partner may withdraw from a funded project respectively terminate a funding agreement in writing and with immediate effect in the event ERSTE Foundation is in default of payment of the funds due despite having been granted a grace period of at least four weeks in writing and an explicit warning that the Project Partner will withdraw respectively terminate.

7.3. In the event of a termination with cause, any and all payments made by ERSTE Foundation to the Project Partner shall be immediately repaid to ERSTE Foundation by the Project Partner. However, this provision shall not apply to such portions of payments already made, for which the Project Partner provides written evidence that these payments were used in accordance with its written undertakings with ERSTE Foundation. An annual interest rate of 3 per cent above the applicable main refinancing interest rate of the European Central Bank shall be charged on any repayable funds from the date of their receipt until the date of their repayment.

7.4. In the event a termination with cause is applicable, such termination with cause may also be applied only to those parts of the funding, which have not yet been paid.

8. PLACE OF PERFORMANCE

Unless otherwise agreed in writing ERSTE Foundation's obligations shall be performed at its registered office at the respective time.

9. REQUIREMENT OF WRITTEN FORM AND RECEIPT OF NOTICES

9.1. The Project Partner shall immediately inform ERSTE Foundation in writing of any and all material developments, which might have an impact on the execution of the project, in particular of any circumstances which might lead to a modification of the tax treatment of the grants or the Project Partner. The written form requirement shall also be deemed to be met by notices sent by



fax or e-mail, provided that receipt is documented by means of a transmission confirmation.

- 9.2. Any amendments or changes shall be made in writing, this also applies to the waiver of this written form requirement.
- 9.3. Service shall be made to the contact persons specified in the funding agreements; on the Project Partner's side to the project manager in case of doubt. The agreed address shall be the address given in the funding agreement or the last address notified to the other party.

10. APPLICABLE LAW, JURISDICTION

- 10.1. Austrian substantive law shall apply.
- 10.2. Intellectual property rights and licences transferred to ERSTE Foundation shall also be deemed to have been granted under any local law governing usage outside Austria and include all rights of usage and defensive rights that the holder of the respective right is given under the local law. An agreed waiver of the entitlement to intellectual property rights by the Project Partner shall also apply to all kinds of usage under the local law as applicable.
- 10.3. For any disputes between the Project Partner and ERSTE Foundation, the Project Partner agrees to Vienna-Inner City, Austria, as the exclusive court of jurisdiction. In the event, Austrian judgements are not enforceable in Project Partner's country of domicile, all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Vienna, Austria shall be the arbitral venue.