

ANNEX II

GENERAL CONDITIONS

PART A: IMPLEMENTATION OF THE PROJECT

- Article II.1 - Definitions
- Article II.2 - Organisation of the *consortium* and role of the *coordinator*
- Article II.3 - Specific performance obligations of each beneficiary
- Article II.4 - *Project reports, deliverables* and certificates on financial statements
- Article II.5 - Approval of *reports* and *deliverables*, time-limit for payments
- Article II.6 - Subcontracts
- Article II.7 - Assignment
- Article II.8 - Suspension of the *project*
- Article II.9 - Amendments
- Article II.10 - Termination of the *grant agreement* or of the participation of a *beneficiary*
- Article II.11 - Financial and other consequences of termination

PART B: RULES RELATING TO INTELLECTUAL AND INDUSTRIAL PROPERTY, PUBLICITY AND CONFIDENTIALITY

- Article II.12 - Ownership of foreground
- Article II.13 - Protection of foreground
- Article II.14 - Use and dissemination of foreground
- Article II.15 - *Access rights* to *foreground*

- Article II.16 - Communication of data for evaluation, impact assessment and standardisation purposes
- Article II.17 - Information to be provided to Member States or *Associated Countries*
- Article II.18 - Publicity
- Article II.19 - Confidentiality

PART C: FINANCIAL PROVISIONS

- Article II.20 - *Eligible costs* - general principles
- Article II.21 - Direct costs
- Article II.22 - Indirect costs
- Article II.23 - Justification of costs
- Article II.24 - Receipts of the *project*
- Article II.25 - Financial contribution of the *Union*
- Article II.26 - Payment modalities

Article II.27 - Interest yielded by the pre-financing provided by the *Commission*

PART D: CONTROLS, RECOVERIES AND PENALTIES

Article II. 28 - Financial audit

Article II.29 - Technical review of the *project*

Article II.30 - Reimbursement to the *Commission* and Recovery Orders

Article II.31 - Penalties

Article II.32 - Liability

PART A: IMPLEMENTATION OF THE *PROJECT*

Article II.1 – Definitions

"Access rights" means licences and user rights to *foreground*.

"Associated Country" means a country which is party to an international agreement with the *European Union* under the terms or on the basis of which it makes a financial contribution to the programme under which the present *grant agreement* is financed.

"Beneficiary" means a legal entity which participates in this *grant agreement* concluded with the *European Union*.

"Change of control" means any change in the control exercised over a *beneficiary*. Such control may result in particular from:

- *direct or indirect holding* of a majority of the share capital of the *beneficiary* or a majority of the voting rights of the latter's shareholders or associates,

or

- *direct or indirect holding* in fact or in law of decision-making powers in the *beneficiary*.

"Commission" means the European Commission.

"Union" means the European Union.

"Consortium" means all the *beneficiaries* participating in *the project* covered by this *grant agreement*.

"Consortium agreement" means an agreement concluded between *beneficiaries* in order to specify or supplement, between themselves, the provisions of this *grant agreement*.

"Coordinator" means the *beneficiary* carrying out the tasks provided for in Article II.2(1).

"Date of entry into force" means the date referred to in Article 3(1) of this *grant agreement*.

"Deliverables" mean any document, information or other element set out in Annex I to be submitted by the *consortium* to the *Commission* in accordance with Article II.4.

"Dissemination" means the disclosure of *foreground* by any appropriate means other than that resulting from the formalities for protecting it, including the publication of *foreground* in any medium.

"Duration of the project" means the period of implementation of the *project* as referred to in Article 3(2) of this *grant agreement*.

"Eligible costs" means the costs referred to in Articles II.21 and II.22, in compliance with the conditions set out in Articles II.20 and II.23.

"Financial Regulation and its Implementing Rules" means Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the *Financial Regulation* applicable to

the General Budget of the European Communities² (as amended by Regulation (EC, Euratom) No 1995/2006 of 13 December 2006³) and *Commission* Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the *Financial Regulation* applicable to the General Budget of the European Communities⁴ (as amended by Regulation (EC, Euratom) No 478/2007 of 23 April 2007⁵), and any subsequent amendment thereto in force at the time of the signature of this *grant agreement*.

“*Force majeure*” means any unforeseeable and exceptional situation or event beyond the control of the *European Union* or the *beneficiaries* which prevents either of them from fulfilling any of their obligations under this *grant agreement*, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence.

“*Foreground*” means the results, including information, generated in the course of the *project*, whether or not they can be protected. Such results include rights related to copyright, design rights, patent rights, plant variety rights, or similar forms of protection.

“*Irregularity*” means any infringement of a provision of *European Union* law or a provision of this *grant agreement* resulting from an act or omission on the part of the *beneficiary(ies)* which causes or might cause a loss to the *Union* budget.

“*Pre-financing*” means any part of the financial contribution of the *Union* which is paid in order to provide advance funds for the *project*.

“*Project*” means the work set out in Annex I to this *grant agreement*.

“*Public body*” means any legal entity established as such by national law and international organisations.

“*Reports*” mean the documents and information mentioned in Article II.4, paragraphs 1 to 3.

“*Start date of the project*” means the date mentioned in Article 3(2) of this *grant agreement*.

Article II.2 – Organisation of the *consortium* and role of the *coordinator*

1. The *coordinator* shall be in charge of the technical, financial and administrative coordination of the *project*. In this respect, the *coordinator*
 - (a) shall be the intermediary between the *beneficiaries* and the *Commission*. In particular, it shall be responsible for transmitting to the *Commission* all documents and correspondence relating to the *project*. To this end the *coordinator* shall upon signature of the *grant agreement* inform the *Commission* of the address to be used in all communication relating to the grant and of the addresses of the *beneficiaries* communicated to it in accordance with Article II.3;

² OJ L 248, 16.9.2002, p. 1.

³ OJ L 390, 30.12.2006, p. 1

⁴ OJ L 357, 31.12.2002, p. 1.

⁵ OJ L 111, 28.04.2007, p. 13.

- (b) in its capacity as representative of the *beneficiaries*, shall make payment requests on behalf of the *beneficiaries* and receive, subject to the special conditions set out in Article 8 of this *grant agreement*, all the payments made by the *Commission* to the account referred to in Article 6(2) of this *grant agreement*. It shall administer the financial contribution of the *Union* regarding its allocation between *beneficiaries* in accordance with this *grant agreement*, in particular the indicative breakdown of the budget and the financial contribution of the *Union* in Annex I to this *grant agreement*, as well as the *consortium agreement* where applicable. It shall ensure that all the appropriate payments are made to *beneficiaries* within 45 days of the day on which the bank account under Article 6(2) has been credited;
- (c) shall keep records and financial accounts so that it is possible to determine at any time what portion of the financial contribution of the *Union* has been paid to each *beneficiary*;
- (d) shall inform the *Commission* of the distribution of the financial contribution of the *Union* and of the date of transfer to the *beneficiaries*, when required by Article II.4(3) of this *grant agreement* or by the *Commission*;
- (e) shall review the *reports* and *deliverables* to verify consistency with the *project* tasks before transmitting them to the *Commission*;
- (f) shall monitor the compliance by *beneficiaries* with their obligations under this *grant agreement*;
- (g) shall inform the other *beneficiaries* and the *Commission* of any event liable to substantially affect the *project* of which it is aware.

The *coordinator* may not subcontract the above-mentioned tasks.

Without prejudice to termination of the *coordinator*'s participation in accordance with Article II.10(3), point (c), should the *coordinator* fail to meet its obligations, the *Commission* may, in agreement with the other *beneficiaries*, designate another *coordinator* from among the *beneficiaries*.

2. *Beneficiaries* shall fulfil the following obligations as a *consortium*:

- (a) provide all detailed data requested by the *Commission* for the purpose of the proper administration of the *project*;
- (b) carry out the *project* jointly and severally vis-à-vis the *Union*, taking all necessary and reasonable measures to ensure that the *project* is carried out in accordance with the terms and conditions of this *grant agreement*;
- (c) make appropriate internal arrangements, consistent with the provisions of this *grant agreement*, for the internal operation and management of the *project*, including where appropriate intellectual property provisions, to ensure the efficient implementation of the *project*. Where provided for in Article 1(3) of this *grant agreement*, these internal arrangements shall take the form of a written *consortium agreement*;
- (d) allow the *Commission* to take part in meetings concerning the *project*.

Article II.3 - Specific performance obligations of each *beneficiary*

Each *beneficiary* shall:

- (a) carry out the work described in Annex I correctly and in a timely fashion;
- (b) inform the other *beneficiaries* and the *Commission* through the *coordinator* in due time of:
 - its contact address as well as any changes to that information;
 - the names and contact details of the person(s) who are to manage and monitor its work and ensure that the tasks assigned are correctly performed, as well as any changes to this information;
 - any event that might affect the implementation of *the project* and the rights of the *Union*;
 - any change in its legal name, address and its legal representatives, and any changes with regard to its legal, financial, organisational or technical situation, including any *change of control*;
- (c) keep duly signed original copies of subcontracts, if any have been concluded;
- (d) forward to the *coordinator* the data needed to draw up the *reports* and *deliverables* and forward any corresponding financial statements;
- (e) take part in meetings concerning the supervision, monitoring and evaluation of the *project* which are relevant to them;
- (f) provide all detailed information requested by the *Commission* for the purpose of the proper administration of this *grant agreement*;
- (g) undertake to take all the necessary measures to prevent any risk of conflicts of interest which could affect the impartial and objective performance of the *agreement*. Such conflicts of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other shared interest;
- (h) provide the *Commission*, including the European Anti-Fraud Office (OLAF) and the Court of Auditors directly with all information requested in connection with controls and audits;
- (i) carry out the *project* in accordance with fundamental ethical principles.

Article II.4 – *Project reports, deliverables and certificates on financial statements*

1. The *consortium* shall submit the following reports to the *Commission* for each reporting period not later than 60 days after the end of the respective period:

- (i) a progress report, including a publishable summary, containing information about the progress of work, including achievements and attainment of any milestones and *deliverables* identified in Annex I. In addition, this report shall contain information on the resources employed and departures from the work schedule;
- (ii) for interim and final payments, the financial statements from each *beneficiary* together with a summary financial report consolidating the *Union* contribution claimed by all the beneficiaries in an aggregate form. The format and layout shall conform to the rules communicated by the *Commission*. *Beneficiaries* who do not receive a financial contribution from the *Union* are required to submit only a description of the efforts

made and the resources used to carry out the *project*. In the case of Thematic Networks financed by lump sums and flat-rates based on scale-of-unit costs, the *Commission* may request a simplified financial statement to be submitted only by the *coordinator*;

- (iii) any other information to be supplied in response to a request by the *Commission*.

2. The *consortium* shall submit a final *report* to the *Commission* within 60 days after the end of the *project*. This final report shall comprise a final publishable summary *report* covering the results, conclusions and socio-economic impact of the *project*.

3. The coordinator shall submit a *report* on the distribution of the financial contribution of the *Union* between *beneficiaries*. This *report* shall be submitted not later than 30 days after receipt of the final payment.

4. *Reports* shall be submitted through the *coordinator* in one original (paper) copy and one electronic copy. The data in the original (paper) copy shall be regarded as authentic should there be a difference with the electronic copy. Only the date of receipt of the original (paper) copy by the *European Union* shall be taken into account for the time limits set out in the agreement. The format and layout of the *reports* shall conform to the rules communicated by the *Commission*.

5. The *reports* submitted to the *Commission* for publication shall be of a suitable quality to enable direct publication and their submission to the *Commission* in publishable form shall indicate that no confidential material is included therein.

6. *Deliverables* identified in Annex I shall be submitted as described therein.

7. A certificate on financial statements shall be submitted for claims of interim payments and final payments where the cumulative amount of requests for payment by a *beneficiary* is equal to or superior to €325 000.

Without prejudice to the first sub paragraph above, the *Commission* may request, on the basis of an analysis of risks, the submission of a certificate on the financial statement from any *beneficiary* at any time until the date of the final payment.

Certificates on financial statements shall certify that the costs claimed in the financial statements and the receipts declared, as well as the declaration of the interest yielded by the *pre-financing*, meet the conditions of this *grant agreement*. They shall be prepared and certified by an external auditor. The format and layout of these certificates shall conform to the rules communicated by the *Commission*.

Each *beneficiary* is free to choose any external auditor, including its usual external auditor, provided that they meet both the following professional requirements:

- (i) the external auditor must be independent from the *beneficiary*;
- (ii) the external auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the Eighth Council Directive 84/253/EEC⁶ or Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts⁷ replacing the

⁶ Council Directive of 10 April 1984, OJ L 126, 12.05.1984, p. 20.

⁷ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006, OJ L 157, 9.06.2006, p. 87.

Eighth Council Directive, or, in the case of *beneficiaries* established in third countries, national regulations in the same field.

Where a *beneficiary* is a *public body*, it may opt for a competent public officer to provide its certificate on financial statements, provided that the relevant national authorities have established this officer's legal capacity to audit that entity and that the independence of the officer, in particular regarding the preparation of the financial statements, can be ensured.

Certificates by external auditors do not affect the liability of *beneficiaries* under this *grant agreement* nor the rights of the *Union* arising from this *grant agreement* and in particular Article II.28.

Article II.5 – Approval of reports and deliverables, time-limit for payments

1. At the end of each reporting period, the *Commission* shall evaluate the *project reports* and *deliverables* required by Annex I and disburse the corresponding payments within 105 days of their receipt unless the time-limit, the payment or the *project* has been suspended. The *Commission* may be assisted by external experts in the analysis and evaluation of *reports* and *deliverables*.

2. Payments shall be made after the *Commission's* approval of the *reports* and/or *deliverables*. The absence of a response from the *Commission* within the time-limit shall not imply approval. The *Commission* may reject *reports* and *deliverables* even after the time-limit for payment. Approval of the *reports* shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and shall not imply exemption from any audit or review.

3. After reception of the *reports* and *deliverables* the *Commission* may:

- (a) approve the *reports* and *deliverables* in whole or in part or make the approval subject to certain conditions;
- (b) reject the *reports* and *deliverables* by giving an appropriate justification and, if appropriate, start the procedure for suspension or termination of the *grant agreement*;
- (c) suspend the time-limit if one or more of the *reports* or *deliverables* have not been supplied or are not complete or if some clarification or additional information is needed or there are doubts concerning the eligibility of costs claimed in the financial statement and/or additional checks are being conducted. The suspension shall be lifted from the date when the last report, deliverable or additional information requested is received by the *Commission*, or where the *Commission* decides to proceed with an interim payment in part in accordance with paragraph 4.

The *Commission* shall inform the *consortium* in writing via the *coordinator* of any such suspension and the conditions to be met for the lifting of the suspension.

Suspension shall take effect on the date when notice is sent by the *Commission*;

- (d) suspend the payment at any time, in whole or in part, of the amount intended for the *beneficiary(ies)* concerned:
 - if the work carried out does not comply with the provisions of the *grant agreement*;

- if a *beneficiary* has to reimburse to its national state an amount unduly received as state aid;
- if the provisions of the *grant agreement* have been infringed or if there is a suspicion or presumption thereof, in particular following any audits and checks provided for in Articles II.28 and II.29;
- if there is a suspicion of an *irregularity* committed by one or more *beneficiary(ies)* in the performance of the *grant agreement*;
- if there is a suspected or established *irregularity* committed by one or more *beneficiary(ies)* in the performance of another *grant agreement* funded by the general budget of the European Union or by budgets managed by the latter. In such cases, the payments shall be suspended where the *irregularity* (or suspected *irregularity*) is of a serious and systematic nature likely to affect the performance of the current *grant agreement*.

Where the *Commission* suspends payment, the *consortium* shall be duly informed of the reasons why payment in whole or in part will not be made.

4. The *Commission* may proceed with an interim payment in part if some *reports* or *deliverables* are not submitted as required, or are only partially or conditionally approved. Any reports and deliverables due for one reporting period which are submitted late shall be evaluated together with the *reports* and *deliverables* of the next reporting period.

5. On expiry of the time-limit for approval of the *reports* and payments, and without prejudice to suspension by the *Commission* of this time-limit, the *beneficiaries* shall be entitled to interest on late payment in accordance with the conditions set out in the *Financial Regulation* and its *Implementing Rules*, at the rate applied by the European Central Bank for its main refinancing operations in euros plus three and a half points. This reference rate shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union.

Interest on late payment shall cover the period from the final date of the period for payment, exclusive, up to the date when the payment is debited to the *Commission's* account, inclusive. The interest shall not be treated as a *receipt* for the *project* for the purposes of determining the final grant. Any such interest payment is not considered as part of the financial contribution of the *Union*.

Where the amount of interest calculated in accordance with the subparagraphs above is lower than or equal to €200, it shall be paid only upon a request submitted by the *coordinator* on behalf of the *beneficiaries* within two months of receipt of the late payment.

The above provisions shall not apply to *beneficiaries* that are *public bodies* of the Member States of the European Union.

6. The suspension of the time-limit, of payment or of the *project* by the *Commission* may not be considered as late payment.

7. At the end of the *project*, the *Commission* may decide not to make the payment of the corresponding financial contribution of the *Union*, subject to one month's written notice of non-receipt of a report, a certificate on financial statements or other *project* deliverable.

8. The *Commission* shall inform the *coordinator* of the amount of the final payment of the financial contribution of the *Union* and shall justify this amount. The *coordinator* shall have two months from the date of receipt to communicate reasons for any disagreement. After the end of this period such communications shall no longer be considered and the *consortium* is deemed to have accepted the *Commission's* decision. The *Commission* undertakes to reply in writing within two months following the date of receipt of such communications, giving reasons for its reply. This procedure is without prejudice to the *beneficiary's* right to appeal against the *Commission's* decision.

Article II.6 - Subcontracts

1. A subcontractor is a third party that has entered into an agreement on business conditions with one or more *beneficiaries* in order to carry out part of the work of the *project* without the direct supervision of the *beneficiary* and without a relationship of subordination.

Beneficiaries shall ensure that the work to be performed, as described in Annex I, can be carried out by them. However, where it is necessary to subcontract certain elements of the work, the following conditions shall be fulfilled:

- recourse to the award of subcontracts must be duly justified in Annex I having regard to the nature of the *project* and what is necessary for its implementation;
- the tasks concerned and an estimation of the corresponding costs must be indicated in Annex I.

Any subcontract for which the costs are to be claimed as *eligible costs* shall be awarded according to the principle of best value for money (best price-quality ratio), under conditions of transparency and equal treatment. Beneficiaries shall take care to avoid any conflict of interest in awarding a subcontract. Subcontracting costs shall be in accordance with market prices. Subcontracts concluded on the basis of framework contracts entered into between the *beneficiary* and a subcontractor prior to the beginning of the *project* in accordance with the *beneficiary's* usual management principles may also be accepted.

2. The *beneficiary* shall ensure that subcontracts:

- oblige the subcontractor to submit invoices making reference to the *project* and giving details of the service or supply rendered,
- oblige the subcontractor to abide by the terms of Articles II.7, II.12 to II.19 and II.32 and to submit to the audits and reviews provided for in Articles II.28 and II.29,
- provide that the subcontractor has no rights in respect of the *Commission* under this *grant agreement*.

3. The *beneficiary* shall retain sole responsibility for carrying out the work described in Annex I and for compliance with the provisions of the *grant agreement*.

4. *Beneficiaries* may use external support services for ancillary tasks.

Article II.7 Assignment

The *beneficiaries* shall not assign any of the rights and obligations arising from the *grant agreement* without the prior written authorisation of the *Commission* and the other *beneficiaries*.

Article II.8 - Suspension of the project

1. The *coordinator* shall immediately inform the *Commission* of any event affecting or delaying the implementation of the *project*.
2. The *coordinator* may propose to suspend the *project* if *force majeure* or exceptional circumstances render its execution excessively difficult or uneconomic. The *coordinator* shall inform the *Commission* without delay of such circumstances, including all justifications and information relating to the event, as well as an estimation of the date when the work on the *project* may begin again. The suspension shall be subject to written approval by the *Commission* and shall take effect on the date when the *coordinator* receives notification from the *Commission* of its approval.
3. The *Commission* may suspend all of the work under the *project* where it considers that the *consortium* is not fulfilling its obligations under this *grant agreement*, in order to re-negotiate with it and propose the necessary amendments to the *grant agreement* to redress the situation. It shall notify the *coordinator* without delay of the justifications for suspension as well as of the conditions necessary for the work to be resumed. This suspension shall take effect on the date when the *coordinator* receives notification from the *Commission*.
4. During the period of suspension, no costs may be charged to the *project*.
5. The suspension of the *project* may be lifted once both parties have agreed on its continuation and, as appropriate, once any necessary modification, including the extension of the duration, has been made by means of a written amendment.

Article II.9 - Amendments

1. All amendments to the *grant agreement* shall be made in writing and conform to the rules communicated by the *Commission*, where applicable.
2. Any request for and any acceptance of an amendment by the *consortium* shall be submitted by the *coordinator*. The *coordinator* shall be deemed to act on behalf of all *beneficiaries* when submitting a request for an amendment and when accepting or rejecting an amendment requested by the *Commission*. The *coordinator* shall ensure that adequate proof exists of the *consortium's* agreement to the amendment request or of its acceptance or rejection of an amendment and is made available in the event of an audit.
3. In the case of change of *coordinator* without its agreement, the request shall be submitted or accepted by all other *beneficiaries* or by one of them representing the others.
4. The absence of a response to an amendment request shall not constitute approval of the request.
5. Requests for the addition of a new *beneficiary* shall include a duly completed and signed Form B (set out in Annex IV). Subject to acceptance in writing by the *Commission* of the request, the new *beneficiary* shall assume the rights and obligations of *beneficiaries* as established by this *grant agreement* with effect from the date of its accession as specified in Form B.
6. Amendments may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of the *beneficiaries*.

Article II.10 - Termination of the *grant agreement* or of the participation of a *beneficiary*

1. The *consortium* may request

- (a) the termination of the *grant agreement* at the written request of the *coordinator* in agreement with all the other *beneficiaries* on the following grounds:
 - for major technical or economic reasons substantially affecting the *project* (including where the resumption of the performance of the agreement following its suspension on account of *force majeure* proves impossible),
 - if the use potential of the results of the *project* considerably diminishes.
- (b) the termination of the participation of a *beneficiary* in the *project*. Any such request of the *consortium* shall include the *consortium's* proposal for reallocation of the tasks and budget of that *beneficiary*, the reasons for requesting the termination and a letter containing the opinion of the *beneficiary* whose participation is requested to be terminated. The letter containing the opinion of the *beneficiary* concerned may be substituted by proof that this *beneficiary* has been requested in writing to express its opinion on the proposed termination of its participation within the time-limit established by that notification. This time-limit shall not be inferior to one month.

In case of the termination of the participation of the *coordinator* without its agreement, the request shall be submitted by all other *beneficiaries* or by one of them representing the others.

The termination of the *grant agreement* or the participation of a *beneficiary* shall take effect on the date agreed by the parties; where there is no date specified, termination shall take effect on the date of the *Commission's* approval notified to the *coordinator*, which receives it on behalf of the *consortium*. In case of termination of the participation of one or more beneficiaries, the *Commission* shall send a copy to the *beneficiary(ies)* concerned.

2. The *Commission* may terminate this *grant agreement* or the participation of a *beneficiary*:

- (a) where one or more of the legal entities identified in Article 1(2) do not accede to this *grant agreement* within the deadline established in Article 2(1),
- (b) where the *project* has not effectively commenced within three months of the *start date of the project* and the new date proposed is considered unacceptable by the *Commission*,
- (c) where the *beneficiary* directly concerned or the *consortium* has not fully performed its contractual obligations despite a written request from the *Commission* to remedy a failure to comply with these obligations within a period not exceeding one month,
- (d) where a legal, financial, organisational or technical change or *change of control* over a *beneficiary* is likely to substantially affect the *project* or the interests of the *Union*, or calls into question the decision to accept its participation in the *grant agreement* or to grant the financial contribution of the *Union*,

- (e) on the grounds referred to in paragraph 1, point (a) of this Article,
- (f) in the event of bankruptcy, winding up, cessation of trading, winding up by court order or composition, or suspension of activities of a *beneficiary* or any similar proceedings provided for by national laws or regulations and leading to a similar result,
- (g) in the event of an *irregularity* or fraud on the part of a *beneficiary* in the performance of any contract or grant agreement with the *Commission*,
- (h) where a *beneficiary* is guilty of misrepresentation in supplying the information required by the *Commission* or has deliberately withheld information in order to obtain the financial contribution of the *Union* or any other advantage provided for in the *grant agreement*.
- (i) where further to the termination of the participation of one or more *beneficiaries*, the *consortium* does not propose to the *Commission* an amendment to the *grant agreement* with the necessary modifications for the continuation of the *project* including the reallocation of tasks of the *beneficiary(ies)* whose participation is terminated within the time-limit determined by the *Commission*, or where the *Commission* does not accept the proposed modifications.

In the event of termination pursuant to points (a), (b), (c), (d), (f), (g), (h) and (i), the termination shall be effective on the date of receipt of the registered letter with acknowledgement of receipt sent by the *Commission*.

In the event of termination pursuant to points (e), the *Commission* shall determine the period of notice for termination in a registered letter with acknowledgement of receipt, whereby this period shall not exceed one month from the date of receipt of the letter.

3. Any letter from the *Commission* to terminate the participation of a beneficiary shall be addressed to the *beneficiary* concerned with a copy to the *coordinator* in accordance with the procedure set out in paragraph 2 of this Article. Any letter to terminate the *agreement* shall be sent to the *coordinator* who shall notify all the other beneficiaries.

Article II.11 - Financial and other consequences of termination

1. *Beneficiaries* shall take appropriate action to cancel or reduce their commitments upon receipt of the letter from the *Commission* notifying them of the termination of the *agreement* or of their participation or upon the dispatch of the request for termination of their participation, as the case may be.

2. In the event of termination of the *grant agreement* or of the participation of a *beneficiary*, the *beneficiaries* or the *beneficiary* whose participation has been terminated shall submit the *reports*, including the financial statements, and *deliverables* relating to the work performed until the date of termination of the *grant agreement* or the date when the beneficiary's participation ends in conformity with the provisions of Article II.4 within 60 days from the date of termination. If these documents are not received within the above time-limits, the *Commission* may decide not to consider any further cost claims and not to make any further reimbursement and, where appropriate, require the reimbursement of any *pre-financing* paid to the *beneficiary(ies)*.

3. In the event of termination, payments by the *Commission* shall be limited to those *eligible costs* incurred and accepted up to the effective date of termination and to any legitimate commitments undertaken prior to that date which cannot be cancelled.

4. By derogation from the above paragraph:

- In the event of termination pursuant to Article II.10, paragraph 2, points (b), (c),(g), (h) or (i), the *Commission* may require repayment of all or part of the financial contribution of the *Union*, taking into account the nature and results of the work carried out and its usefulness to the *Union* in the context of the present programme.
- In the event of termination pursuant to Article II.10, paragraph 2, point (a), no costs incurred by the *consortium* under the *project* shall be accepted as eligible for reimbursement by the *Union*. Any *pre-financing* provided to the *consortium* and any interest generated by the *pre-financing* shall be returned in full to the *Commission*.

5. Where the *Commission* makes a payment after the termination of the participation of a *beneficiary* or after termination of the *grant agreement*, this payment shall be considered as a final payment in relation to this *beneficiary* or to the *project*, respectively, and in any case shall be done through the *coordinator*.

6. The termination of the *grant agreement* or of the participation of a *beneficiary* shall not affect any rights or obligations of the parties which arise before the date of termination.

7. The *Commission* may exercise all rights under this *grant agreement* to accept or reject *reports* and *deliverables*, to accept, reduce or reject a cost claim and to initiate an audit or a technical review.

8. Notwithstanding the termination of the *grant agreement* or the participation of a *beneficiary*, the provisions in Part B and Part D of Annex II continue to apply after the termination of the *grant agreement* or the termination of a *beneficiary's* participation. Any other provisions in this *grant agreement* which specifically indicate their continued application after the termination shall also apply for the duration specified in those provisions.

PART B: RULES RELATING TO INTELLECTUAL PROPERTY, PUBLICITY AND CONFIDENTIALITY

Article II.12 - Ownership of *foreground*

1. *Foreground* shall be the property of the *beneficiary* carrying out the work generating that *foreground*.

2. Where several *beneficiaries* have jointly carried out the work generating the *foreground* and where their respective shares of the work cannot be ascertained, they shall have joint ownership of the *foreground*. They shall establish an agreement⁸ among themselves on the allocation and exercise of that joint ownership.

⁸ The joint owners may agree not to continue with joint ownership but decide on an alternative regime (for example, a single owner with access rights for the other beneficiaries that transferred their ownership share).

3. If persons hired by a *beneficiary* are entitled to claim rights to *foreground*, the beneficiary shall ensure that these rights are exercised in a manner compatible with its obligations under this *grant agreement*.

Article II.13 – Protection of *foreground*

Where *foreground* is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, having due regard to its own legitimate interests and the legitimate interests, particularly the commercial interests, of the other *beneficiaries*.

Where a *beneficiary* which is not the owner of the *foreground* invokes its legitimate interests, it shall show that it would suffer disproportionately great harm.

Article II.14 – Use and dissemination of *foreground*

1. The *beneficiaries* shall use the *foreground* which they own or ensure that it is used.
2. Each *beneficiary* shall ensure that the *foreground* which it owns is disseminated as swiftly as possible. If it fails to do so, the *Commission* may disseminate that *foreground*.
3. *Dissemination* activities shall be compatible with the protection of intellectual property rights, confidentiality obligations and the legitimate interests of the owner(s) of the *foreground*.
4. At least 45 days prior notice of any *dissemination* activity shall be given to the other *beneficiaries* concerned, including sufficient information concerning the envisaged *dissemination* activity and the data to be disseminated.

Following notification, any of those *beneficiaries* may object to the envisaged *dissemination* activity within 30 days of notification if it considers that its legitimate interests in relation to its *foreground* could suffer disproportionately great harm. In such cases, the *dissemination* activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.

The *beneficiaries* may agree in writing on different time-limits to those set out in this paragraph, which may include a deadline for determining the appropriate steps to be taken, or may waive their right to prior notice for specific or all dissemination activities.

Article II.15 – Access rights to *foreground*

1. *Access rights to foreground* shall be granted to the other *beneficiaries*, if it is needed to enable those *beneficiaries* to carry out their own work under the *project*.
2. *Beneficiaries* shall enjoy *access rights to foreground*, if it is needed to use their own *foreground*. A request for such *access rights* for use may be made up to one year after the end of the *project* or termination of participation by the owner of the *foreground* concerned, unless the *beneficiaries* concerned agree on a different time-limit.
3. *Access rights* shall be granted on a royalty-free basis, unless the *beneficiaries* concerned agree otherwise.

Article II.16 – Communication of data for evaluation, impact assessment and standardisation purposes

1. *Beneficiaries* shall provide, at the request of the *Commission*, the data necessary for:
 - the continuous and systematic review of the ICT PSP as part of the CIP;

- the evaluation and impact assessment of *Union* activities, including the *use* and *dissemination of foreground*.

Such data may be requested throughout the duration of the *project* and up to five years after the end of the *project*.

The data collected may be used by the *Commission* in its own evaluations but shall not be published other than on an anonymous basis.

2. Without prejudice to the provisions regarding protection of *foreground* and confidentiality, the *beneficiaries* shall, where appropriate, during the *project* and for two years following its end, inform the *Commission* and the European standardisation bodies about *foreground* that may contribute to the preparation of European or international standards.

Article II.17 - Information to be provided to Member States or Associated Countries

1. The *Commission* shall, upon request, make available to any Member State or *Associated Country* any useful information in its possession on *foreground*, provided that both the following conditions are met:

- the information concerned is relevant to public policy;
- the *beneficiaries* have not provided sound and sufficient reasons for withholding the information concerned.

2. The provision of information pursuant to paragraph 1 shall not transfer to the recipient any rights or obligations and the recipient shall be required to treat any such information as confidential until it becomes duly public or unless it was communicated to the *Commission* without restrictions on its confidentiality.

Article II.18 – Publicity

1. The Commission shall be authorised to publish the following information in any form and medium, including the Internet:

- the names and contact addresses of the *beneficiaries*;
- the subject and purpose of the grant;
- the amount and rate of the financial contribution of the *Union* foreseen for the *project* and the estimated amount and rate for each *beneficiary* foreseen in the indicative breakdown of the budget and the financial contribution of the *Union* between *beneficiaries* in Annex I; after the final payment, the amount and rate of the financial contribution of the *Union* accepted by the Commission for the *project* and for each *beneficiary*;
- any picture or any audiovisual or web material provided to the *Commission* in connection with the *project*;
- any publishable report or other publishable deliverable submitted to it.

The *consortium* shall ensure that all necessary authorisations for such publications have been obtained and that the publication of the information by the *Commission* does not infringe any rights of third parties.

Upon a reasoned and duly substantiated request by the *beneficiary*, the *Commission* may agree to forego publication if disclosure of the information indicated above would risk compromising the *beneficiary's* security or prejudicing its commercial interests.

2. The *beneficiaries* shall, throughout the *duration of the project*, take appropriate measures to engage with the public and the media about the *project* and to highlight the financial support of the *Union*. Unless the *Commission* requests otherwise, any communication or publication by the *beneficiary* about the *project*, including at a conference or seminar, or any type of information or promotional material (brochure, leaflet, poster, presentation, etc), shall mention that the *project* has received funding from the *Union's* ICT Policy Support Programme as part of the Competitiveness and Innovation Framework Programme, and shall display the European emblem. When displayed in association with a logo, the European emblem shall be given appropriate prominence. This obligation to use the European emblem in respect of *projects* to which the *Union* contributes implies no right of exclusive use. It is subject to general third-party use restrictions that do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, *beneficiaries* are exempted from the obligation to obtain prior permission from the *Commission* to use the emblem. Further detailed information on the EU emblem may be found on the Europa web page.

Any communication or publication by the *beneficiary* in respect of the *project*, in any form or medium, including the Internet, shall state that it reflects only the author's views and that the *Union* is not liable for any use that might be made of information contained therein.

Article II.19 - Confidentiality

1. The *beneficiaries* and the *Commission* undertake to preserve the confidentiality of any data, documents or other material that is identified as confidential in relation to the execution of the *project* ("confidential information").

This obligation shall no longer apply where:

- the confidential information becomes publicly available by means other than a breach of confidentiality obligations,
- the confidential information is subsequently communicated to the recipient without any confidentiality restrictions by a third party who is in lawful possession thereof and under no obligation of confidentiality or where the disclosing party subsequently waives its confidentiality;
- the disclosure or communication of the *confidential information* is provided for by other provisions of this grant agreement.

2. The *beneficiaries* and the *Commission* undertake to use such confidential information only in relation to the execution of the *project*, unless otherwise agreed with the disclosing party.

Part C: FINANCIAL PROVISIONS

Article II.20 - *Eligible costs* - general principles

1. Eligible costs are the costs defined in Articles II.21 and II.22. They shall fulfil the following conditions:

- be indicated in the indicative breakdown of the budget and the financial contribution of the *Union* between beneficiaries in Annex I;
- be necessary for the implementation of the *project*;
- be actually incurred by the *beneficiary*;
- be identifiable and verifiable, be recorded in the *beneficiary's* accounts and determined in accordance with the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary. The beneficiary's internal accounting and auditing procedures must permit the direct reconciliation of the costs and receipts declared in respect of the *project* with the corresponding financial statements and supporting documents;
- comply with the requirements of the applicable tax and social legislation;
- be reasonable and justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency, and
- be incurred during the *duration of the project*.

Without prejudice to the provisions of the first subparagraph,

- the costs for drawing up the final report and certificates on financial statements required for the final period and
- the costs of participation in technical reviews pursuant to Article II.29

shall be eligible if they are incurred within not more than 60 days after the end of the *duration of the project*.

2. Non-eligible costs are in particular the following:

- costs of capital employed,
- provisions for possible future losses or charges,
- interest owed,
- exchange losses,
- provisions for doubtful debts,
- resources made available to a *beneficiary* free of charge,
- value of contributions in kind,
- unnecessary or ill-considered expenses,
- marketing, sales and distribution costs for products and services,
- indirect taxes and duties, including VAT (unless the *beneficiary* can show that it is unable to recover it),

- entertainment or hospitality expenses, except reasonable expenses accepted by the *Commission* as being absolutely necessary for carrying out *the project*,
- any cost incurred or reimbursed in respect of, in particular, another *Union*, international or national project.

3. No cost may be charged to more than one of the *eligible cost* categories referred to in Articles II.21 and II.22.

Article II.21 - Direct costs

1. Direct costs are those eligible costs that can be attributed directly to the *project* and are identified by the *beneficiary* as such, in accordance with its accounting principles and its usual internal rules.

2. Personnel

With regard to personnel costs,

(a) Only the costs of the actual hours worked by the persons directly carrying out work under the *project* may be charged to the *grant agreement*.

Such persons must:

- be directly hired by the *beneficiary* in accordance with its national legislation,
- work under the sole technical supervision and responsibility of the *beneficiary*, and
- be remunerated in accordance with the normal practices of the *beneficiary*, provided that these are regarded as acceptable by the *Commission*.

(b) Personnel costs shall comprise the actual costs (gross remuneration and related charges).

(c) Costs related to parental leave for persons who are directly carrying out the *project* are eligible costs, in proportion to the time dedicated to the *project*, provided that they are mandatory under national law.

3. Subcontracting

With the exception of costs charged to the *grant agreement* pursuant to paragraph 1 of this Article, the actual costs of subcontracts may be charged to the *grant agreement* if they are incurred in compliance with the conditions set out in Article II.6.

4. Other specific direct costs

These costs include, in particular,

- travel and subsistence allowances for personnel taking part in the *project*, provided that they are in line with the *beneficiary's* usual practices on travel costs;
- the purchase cost of equipment (new or second-hand), provided that it is depreciated in accordance with the tax and accounting rules applicable to the *beneficiary* and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the *duration of the project* at the

rate of actual use for the *project* may be taken into account by the *Commission*, except where the nature and/or the context of its use justifies different treatment by the *Commission*;

- costs arising directly from requirements imposed by the *grant agreement*, including for the dissemination of information, or any financial guarantees. Such costs may also include specific costs incurred by the *coordinator* in fulfilling its responsibilities as the body responsible for the overall management of the *project* and for the *coordination* of the *beneficiaries*.

Article II.22 - Indirect costs

1. Indirect costs are all those eligible costs that cannot be identified by the *beneficiary* as being directly attributed to the *project*, but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the *project*. They may not include any eligible direct costs.

2. *Beneficiaries* of Pilot projects may charge indirect costs calculated on a flat-rate basis of 30% of the personnel costs. A *beneficiary* shall request a lower percentage when this is required, for instance, by its internal rules.

In the case of Thematic Networks, the reimbursement of indirect eligible costs shall for each *beneficiary* comprise a flat-rate of 7% of the direct eligible costs, excluding the direct eligible costs for subcontracting. This flat-rate for indirect costs shall not apply to Thematic Networks financed in the form of lump sums and flat-rate financing based on scale-of-unit costs.

In the case of Best Practice Networks, no indirect costs shall be eligible.

Article II.23 - Justification of costs

Eligible costs shall be reimbursed where they are justified by the *beneficiary*.

To this end, the *beneficiary* shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which it is established, the accounts for the *project* and appropriate documentation to support and justify in particular the costs and time reported in its financial statements. These accounts shall be maintained for at least 5 years after the date of the final payment. All the working time charged to the agreement shall be recorded throughout the *duration of the project*, or not later than 60 days from the end of the *duration of the project*, and shall be certified by the person in charge of the work as designated by the *beneficiary* in accordance with Article II.3(b) or by the duly authorised financial officer of the *beneficiary*.

This documentation shall be precise, complete and effective.

Article II.24 – Receipts of the project

1. Resources made available by third parties to the *beneficiary* by means of financial transfers or contributions in kind free of charge
 - a) shall be considered a *receipt* of the *project* for the *beneficiary* if they have been contributed by the third party specifically to be used in the *project*;
 - b) shall not be considered a *receipt* of the *project* for the *beneficiary* if their use is at the discretion of the *beneficiary's* management.
2. Income generated by the *project*

- a) shall be considered a *receipt* of the *project* for the *beneficiary* when generated by actions undertaken in carrying out the *project* and from the sale of assets purchased under the *grant agreement* up to the value of the cost initially charged to the *project* by the *beneficiary*;
- b) shall not be considered a *receipt* of the *project* for the *beneficiary* when generated from the *use* of the *foreground* resulting from the *project*.

Article II.25 – Financial contribution of the Union

1. The financial contribution of the *Union* to the *project* shall be determined by applying the funding limits indicated in this *grant agreement* and in the indicative breakdown of the budget and the financial contribution of the *Union* to the eligible costs and/or to the flat-rates and/or lump sums accepted by the *Commission*.
2. The financial contribution of the *Union* shall be paid based on the accepted costs of each *beneficiary*.
3. The financial contribution of the *Union* may not give rise to any profit for any *beneficiary*. For this purpose, at the submission of the last financial statement, the final amount of the financial contribution of the *Union* shall take into account any *receipts* of the *project* received by each *beneficiary*. For each *beneficiary*, the financial contribution of the *Union* may not exceed the total costs minus the *receipts* of the *project*.
4. The total amount paid by the *Commission* shall not exceed in any circumstances the maximum amount of the financial contribution of the *Union* referred to in Article 5(1).
5. Without prejudice to the right to terminate the *grant agreement* under Article II.10 and without prejudice to the right of the *Commission* to apply penalties as referred to in Article II.31, if the *project* is not implemented or is implemented poorly, partially or late, the *Commission* may reduce the grant initially provided in line with the actual implementation of the *project* on the terms laid down in this *grant agreement*.

Article II.26 – Payment modalities

1. The *Commission* shall make the following payments:
 - *pre-financing* in accordance with Article 6;
 - interim payments of the financial contribution of the *Union* corresponding to the amount accepted for a reporting period in accordance with Article 6;
 - a final payment corresponding to the amount accepted for the last reporting period, or, if the *consortium* has received only *pre-financing*, to the amount accepted for the *project*, plus any adjustment needed.

Where the amount of the financial contribution of the *Union* is less than the amount already paid to the *consortium*, the *Commission* shall recover the difference.

Where the amount of the financial contribution of the *Union* is more than the amount already paid to the *consortium*, the *Commission* shall pay the difference as the final payment up to the limits defined in Article 5(1).

2. The total amount of the *pre-financing* and interim payments shall not exceed 90% of the maximum financial contribution of the *Union* defined in Article 5(1).
3. Payments by the *Commission* shall be made in euros.

4. Costs incurred shall be reported in euros. Beneficiaries with accounts in a currency other than the euro shall report costs by using the conversion rate published by the European Central Bank and applicable on the first day following the end of the reporting period. *Beneficiaries* with accounts in euros shall convert costs incurred in other currencies according to their normal accounting practice.

5. The payments by the *Commission* shall be regarded as having been effected on the date on which the *Commission's* account is debited.

6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of the audit or review.

Article II.27 – Interest yielded by the *pre-financing* provided by the *Commission*

1. *Pre-financing* remains the property of the *Union* until the final payment.

2. The *Commission* shall recover from the *coordinator*, for each reporting period following the entry into force of the agreement, the amount of interest generated where the *pre-financing* exceeds the amounts fixed in the *Financial Regulation* and its *Implementing Rules*.

PART D: CONTROLS, RECOVERIES AND PENALTIES

Article II.28 - Financial audit

1. The *Commission* may initiate an audit in respect of a *beneficiary* at any time during the implementation of the *project* and up to five years after the date of the final payment. The audit procedure in respect of a *beneficiary* shall be deemed to be initiated on the date of receipt by the latter of the relevant registered letter with acknowledgement of receipt sent by the *Commission*.

The audit procedure may be carried out by external auditors or by the *Commission* services themselves, including OLAF. The audit procedure shall be carried out on a confidential basis.

2. The beneficiaries shall make available directly to the *Commission* all detailed information and data that may be requested by the *Commission*, or any representative authorised by it, with a view to verifying that the *grant agreement* is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it.

3. The beneficiaries shall ensure that the *Commission*, or any external body authorised by it, has on-the-spot access, at any reasonable time, in particular to the *beneficiary's* offices, the personnel of the *beneficiaries* connected with the *project*, the documentation referred to in Article II.23 needed to carry out the audit, including information on individual salaries of persons involved in the *project*, accounting data, computer records and equipment. In this connection, the *Commission*, or any external body authorised by it, may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs.

4. On the basis of the findings made during the financial audit of a *beneficiary*, a provisional report shall be drawn up. It shall be sent by the *Commission* to the *beneficiary* concerned, which may make observations regarding the report within one month of receiving it. The *Commission* may decide not to take into account any observations conveyed after that deadline. The final report shall be sent to the *beneficiary* concerned.

5. On the basis of the conclusions of the audit, the *Commission* shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it and the application of any applicable sanction.

6. The Court of Auditors shall have the same right as the *Commission*, notably the right of access, for the purpose of checks and audits, without prejudice to its own rules.

7. In addition, the *Commission* may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the *Commission* in order to protect the European Communities' financial interests against fraud and other irregularities⁹, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁰ and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹¹.

Article II.29 - Technical review of the *project*

1. The *Commission* may initiate a technical review at any time during the implementation of the *project* and up to five years after the end of the *duration of the project* in order to verify that the *project* is being or has been carried out in accordance with the conditions governing this *grant agreement*, in particular with respect to the Description of Work (Annex I). The technical review shall assess the work carried out under the *project* by, among other things, evaluating the *project* reports and deliverables, the proper use of resources in particular with respect to efficiency and effectiveness, the management of the *project* and the expected impact.

The technical review shall be deemed to be initiated on the date of receipt by the *coordinator* of the relevant notification sent by the *Commission*.

The technical review procedure shall be carried out on a confidential basis.

2. For the technical review, the *Commission* may be assisted by independent experts.

The *Commission* shall take appropriate steps to ensure that such experts treat confidentially the data that are communicated to them. Prior to the technical review, it shall communicate to the *coordinator* the identity of the experts who are intended to assist it. It shall take account of any objection on the part of *beneficiaries* based on legitimate interests.

3. Technical reviews may be carried out remotely at the experts' home or place of work or involve sessions with *project* representatives either at the *Commission* premises or at the premises of *beneficiaries*. The *Commission* or the external experts may have access to the locations and premises where the work is being carried out and to any document concerning the work.

4. The *beneficiaries* shall make available to the *Commission* and any external experts all detailed information and data that may be requested by it or the experts for the technical review.

5. A report on the technical review of the *project* shall be sent to the *coordinator*. The latter may communicate observations to the *Commission* within a month of receiving it. The

⁹ OJ L 292, 15.11.1996, p. 2.

¹⁰ OJ L 136, 31.5.1999.

¹¹ OJ L 136, 31.5.1999.

Commission may decide not to take into account any observations conveyed after that deadline.

6. On the basis of the conclusions of the technical review, the *Commission* shall take all appropriate measures which it considers necessary, including the rejection of any *reports* and *deliverables*, the termination of the agreement pursuant to Article II.10 and II.11 and the reduction of the grant pursuant to Article II.25(5).

Article II.30 - Reimbursement to the *Commission* and Recovery Orders

1. Where an amount paid by the *Commission* to the *coordinator* in its capacity as the recipient of all payments is to be recovered under the terms of this *grant agreement*, the *beneficiary* concerned undertakes to repay the *Commission* the sum in question, on whatever terms and by whatever date it may specify.

2. If the obligation to pay the amount due is not honoured by the date set by the *Commission*, the sum due shall bear interest at the rate indicated in Article II.5(5). Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the *Commission* receives full payment of the amount owed, inclusive.

Any partial payment shall be entered first against charges and interest on late payment and then against the principal.

3. If payment has not been made by the due date, sums owed to the *Commission* may be recovered by offsetting them against any sums owed to the concerned *beneficiary* after informing it accordingly or by calling in a financial guarantee. In exceptional circumstances, justified by the need to safeguard the financial interests of the Union, the *Commission* may recover by offsetting before the due date of the payment. The *beneficiary's* prior consent shall not be required.

Bank charges occasioned by the recovery of the sums owed to the *Commission* shall be borne solely by the *beneficiary*.

4. The *beneficiaries* understand that under Article 299 of the Treaty on the functioning of the European Union, the *Commission* may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.

Article II.31- Penalties

1. Any *beneficiary* that has been guilty of making false declarations or has been found to have seriously failed to meet its obligations under this grant agreement shall be liable to financial penalties of between 2% and 10% of the value of the financial contribution of the *Union* received by that *beneficiary*. The rate may be increased to between 4% and 20% in the event of a repeated offence within five years following the first infringement.

The *Commission* is entitled to recover the full amount of any undue payments made to a *beneficiary* on a lump sum or flat-rate financing, where the generating event has not occurred. Furthermore, in the case of a false declaration regarding the lump sum or flat-rate financing, the *Commission* may impose financial penalties up to 50% of the total amount of the lump sum or flat rate financing.

2. In the cases specified in paragraph 1, *beneficiaries* may be excluded from all *Union* grants for a maximum of two years from the date the infringement has been established.

3. The provisions of this Article shall be without prejudice to any other administrative or financial sanction that may be imposed on any defaulting *beneficiary* in accordance with the *Financial Regulation* or to any other civil remedy to which the *Union* or any other

beneficiary may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the authorities of the Member States.

Article II.32 - Liability

1. The *Union* may not be held liable for any acts or omissions of the *beneficiaries* in relation to this *grant agreement*. It shall not be liable for any defects in respect of any products, processes or services created on the basis of *foreground*, including, for instance, anomalies in their functioning or performance.

2. Each *beneficiary* shall bear sole responsibility for ensuring that their acts in connection with this *project* do not infringe third party rights, including the use of acronyms of the *project*.

3. The *beneficiaries* shall fully guarantee the *Union* and agree to indemnify it in the case of any action, complaint or proceeding brought by a third party against it as a result of damage caused either by an act or omission in relation to this *grant agreement* or by any products, processes or services created on the basis of *foreground* resulting from *the project*.

In the event of any action brought by a third party against the *Union* in connection with the performance of this agreement, the *beneficiaries* who may bear responsibility shall assist the *Union* upon written request.

4. In the event of any action brought by a third party against a *beneficiary* in connection with the performance of this agreement, the *Commission* may, without prejudice to paragraph 1 of this Article, assist the latter upon written request. The costs incurred by the *Commission* in this connection shall be borne by the *beneficiary* concerned.