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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, xx.xx.2009  
C(2009) yyy final

NOT TO BE PUBLISHED

**DECISION GRANTING FINANCIAL AID for an ACTION**

of [Insert date]

concerning the granting of Community financial aid for

***“insert the TITLE OF THE ACTION”***

***insert the ACTION NO***

**in the field of European Economic Recovery Plan Regulation (EEPR) for Gas and  
Electricity Interconnectors**

**ONLY THE ENGLISH TEXT IS AUTHENTIC.**

**DECISION GRANTING FINANCIAL AID for an ACTION**

of [Insert date]

**concerning the granting of Community financial aid for “insert the TITLE OF THE ACTION”  
insert the ACTION NO  
in the field of the European Economic Recovery Plan Regulation (EPR) for Gas and Electricity Interconnectors**

**ONLY THE ENGLISH TEXT IS AUTHENTIC.**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Regulation (EC) No XXX/2009 of the European Parliament and of the Council of laying down general rules for the granting of Community financial aid during 2009/2010 for projects in the fields of gas and electricity interconnection included in the European Energy Plan for Recovery.<sup>1</sup>

Whereas:

- (1) In accordance with Regulation (EC) No XXX/2009 Community financial aid to actions in the field of the trans-European networks may be granted only to projects identified in accordance with Article 156 of the Treaty within the fields of gas and electricity Interconnectors.
- (2) Articles 4 and 5 together with Part A of Annex I of the EPR regulation establish Community guidelines for the development of the trans-European energy network and identifies the projects within the fields of gas and electricity Interconnectors.
- (3) The Action to which this Decision relates is a project identified in part A of the Annex of the EPR regulation and contributes to the achievement of its objectives.
- (5) Pursuant to EPR Regulation, the Commission published a call for proposals on 15 May 2009 for the award of Community financial aid.
- (6) The Action to which this Decision relates meets satisfactorily the criteria established in the EPR regulation and defined in the call for proposals and it can contribute significantly to the improvement of the gas and electricity interconnections, to the functioning of the internal market, to security of supply in the European Union and to the recovery of the European Economy.
- (7) The selection and the maximum total amount of financial aid have been decided upon by Commission decision [Commission decision on the list of selected actions to be co-

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<sup>1</sup> OJ L 162, 22.6.2007, p.1

**financed]** in accordance with the opinion of the Committee set up under Article 26(1) of Regulation (EC) No XXX/2009,

HAS ADOPTED THIS DECISION:

*Article 1- PURPOSE OF THE FINANCIAL AID*

(1) A financial aid is awarded to

**[full official name(s)]**

referred to as “the **Beneficiary**“

for the Action entitled “**[...]**“ (“the Action”), under the terms and conditions set out in the present Decision and its Annexes.

(2) The **Beneficiary(ies)** shall undertake everything in **his/their** power to carry out the Action as described in the Annex II, acting on **his/their** own responsibility.

*Article 2 - FINANCING THE ACTION*

Community financial aid of no more than **[.....]** (in words: **[.....]**) euro is hereby granted to the **Beneficiary(ies)**.

*Article 3- CONDITIONS OF IMPLEMENTATION*

All other terms and conditions applicable to this Decision are specified in the Annexes indicated below. In the case of conflict of the provisions of these documents, the following list is established in order of descending precedence:

Annex I: Special conditions

Annex II: Description of the Action

Annex III: General conditions

*Article 4 - **ADDRESSEE**:*

This Decision is addressed to:

**[full official name]**

**[official legal form]** (*Only necessary if the Beneficiary is NOT a Member State*)

**[official registration n°]** (*Only necessary if the Beneficiary is NOT a Member State*)

**[official address in full]** (*Only necessary if the Beneficiary is NOT a Member State*)

**[Code of the Country] [Post Code] [Town]** (*Only necessary if the Beneficiary is NOT a Member State*)

And

*[In case the Beneficiary is not a Member State or an international organisation, add here the Member State(s) approving the Action according to Art. 7(2) EPR Regulation:]*

Done at Brussels,

*For the Commission*

*[Insert Name and  
function according to the delegation act]*

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# **ANNEX I: SPECIAL CONDITIONS**

## **Article I.1: Financing the Action**

1. The estimated budget gives a detailed breakdown of costs that are eligible for Community funding, under the terms of **Article III.3.7**, as well as of all receipts, so that receipts and costs are balanced.
2. The total eligible costs of the Action for which the Community financial aid is awarded are shown in the estimated budget in **Article II.3.3**.
3. Indirect costs are eligible for flat-rate funding of [...] % of the total direct costs eligible, subject to the provisions laid down in **Article III.3.7**, paragraph 4<sup>2</sup>.
4. The Commission shall contribute a maximum amount in euro as indicated in Article 2 of this Decision, equivalent to<sup>3</sup> [...] % of the estimated total eligible costs indicated in paragraph 2.
5. The final amount of the financial aid shall be determined, as specified in **Article III.3.8**.
6. The Community financial aid may not finance the entire costs of the Action. The amounts and sources of co-financing other than from Community funds shall be set out in the estimated budget referred to in **Articles II.3.2 and II.3.3**.

## **Article I.2: Payments**

### **I.2.1 Pre-financing**

1. Should there be a risk that the Beneficiary may go bankrupt pursuant to the law in force, it shall provide a guarantee, before the Commission makes the pre-financing, in order to limit the financial risks linked to the disbursement of pre-financings, in accordance with the **Article III.3.2**<sup>4</sup>. A pre-financing payment of [30% or any other as decided by DG TREN] of the amount specified in **Article 2 of this Decision** shall be made to the beneficiary within 30 calendar days from [date of request] [the receipt of a financial guarantee equal to the amount of pre-financing granted].<sup>5</sup>
2. [Such guarantee may be replaced by a joint and several guarantee by the Member State concerned referred to in **Article 4 of this Decision** or (where there are more than one Beneficiary) by the joint guarantee of the co-beneficiaries.

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<sup>2</sup> Under the terms of Article 181(3) of the Implementing Rules of the Financial Regulation, the Financial aid Decision may authorise flat-rate cover of indirect costs up to a maximum of 7% of total eligible direct costs for the Action.

<sup>3</sup> See Art. 164 I d MODEX.

<sup>4</sup> See Art. 182(1) MODEX

<sup>5</sup> Please delete on the basis of result of negotiations or request from the beneficiary(ies).

3. The guarantee shall be denominated in euro. The purpose of the guarantee is to make the co-beneficiary, the Member State concerned referred to in **Article 4 of this Decision** or the other co-beneficiaries stand as irrevocable collateral security for, or first-call guarantor of, the obligations of the co-beneficiary.]<sup>6</sup>

### **I.2.2 Interim payments**

1. Any request for interim payment shall be submitted at the latest 6 months before the finishing date of the Action as referred to in **Article II.2.1** and shall be accompanied by an interim technical implementation report and an interim financial statement as specified in **Article III.3.4**.
2. The Commission shall have 45 calendar days to approve or reject the interim technical implementation report or to request additional supporting documents or information under the procedure laid down in **Article III.3.4**. In that case, the Beneficiary shall have 45 calendar days to submit the additional information requested or a new report.
3. The amount of the interim payment shall be determined on the basis of the eligible costs actually incurred, as shown in the interim financial statement and validated by the Commission. In no circumstances may the interim payment exceed 70% of the maximum amount of the financial aid specified in **Article 2** of this Decision. The amount of any pre-financing previously paid to the Beneficiary shall be deducted.
4. Sums due for the interim payment shall be made within 30 calendar days following approval by the Commission of the documents accompanying the request for interim payment.
5. The Commission may suspend the period for payment in accordance with the procedure laid down in **Article III.3.6**.

### **I.2.3 Payment of the balance**

1. The request for payment of the balance shall be accompanied by the final technical implementation report and financial statement specified in **Article I.3.4** and **Article III.3.5** and by a certificate on the Action's financial statements and underlying accounts *for each amount exceeding 150.000 EUR per beneficiar*<sup>7</sup>.
2. In addition, for final payments, the final report submitted shall be certified by the Member State(s) concerned as mentioned in **Article I.2** of this Decision<sup>8</sup>.
3. The Commission shall have 45 calendar days to approve or reject the final technical and financial implementation report or to request additional supporting documents or information under the procedure laid down in **Article I.3**. In that case, the Beneficiary shall have 45 calendar days to submit the additional information or a new report.

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<sup>6</sup> Articles to be deleted or maintained depending on choice under art 1.2.1 (1).

<sup>7</sup> Art. 106(3)(b) MODEX: No more than 45 calendar days; or 60 calendar days involving technical Actions which are particularly complex to evaluate.

<sup>8</sup> See Art. 11(1) EEPR Regulation

4. A payment representing the balance of the financial aid determined in accordance with **Article III.3.8** shall be made to the Beneficiary within 30 calendar days following approval by the Commission of the technical implementation report accompanying the request for payment of the balance. The Commission may suspend the period for payment in accordance with the procedure laid down in **Article III.3.6**.

#### **I.2.4 Exchange rate applicable for the conversion of currencies into euro<sup>9</sup>**

1. The Beneficiary shall submit the payment requests in accordance with **Article III.3**, including the underlying financial statements, in euro.
2. By way of derogation from **Article III.3.6**, any conversion of actual costs into euro shall be made by the Beneficiary at the monthly accounting rate established by the Commission and published on its website applicable for the month following the end of the reporting period.

### **Article I.3: Reporting**

#### **I.3.1 General rules**

1. The compulsory models relating to the submission of the technical implementation reports, financial statements and other documents referred to in **Article I.3** will be communicated to the beneficiary immediately after the notification of the Decision.
2. The technical implementation reports, financial statements and other documents referred to in **Article I.3** shall be submitted in English, in paper copies as well as in electronic form.
3. The Commission shall have 45 calendar days from receipt to approve or reject the report, and the Beneficiary shall have 45 calendar days in which to submit additional information or a new report.
4. In case no reply from the Commission is received within a time period of 45 calendar days, the period for payment will start.

#### **I.3.2 Technical implementation summary "TIS"**

1. The Beneficiary shall submit the "TIS" within 6 months of the date of notification of the decision to the beneficiary, and subsequent summaries every 12 months from the date of submission of the first one. The "TIS" is not a prerequisite for payments.
2. The TIS has to include/address the minimum following issues:
  - (a) General Information:
    - Reporting period.

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<sup>9</sup> Use this option only where the conversion of local currencies is to be made by the Beneficiary. The Commission rate indicated is the InforEuro rate published on BudgWeb

- Action information: Action reference, Action title, Action start/end date, administrative information (name, address, telephone, fax and e-mail of the beneficiaries of the grant and of the Member State(s) concerned).
  - Action objectives: status at the beginning of the Action, main objectives of the Action.
  - Contact persons: name, address, telephone, fax and e-mail of the author(s) of the "TIS", the technical contact person(s) and financial contact person(s).
- (b) Technical summary
- Action progress: work and activities performed during the reporting period.
  - Action development: work to be undertaken in the next coming years.
  - Action risk assessment: description of potential problems, delays, deviations from the original targets and short description of the potential solutions.
  - Action publicity: short description of the measures that will be (or have already) been taken to acknowledge the financial support provided by the Community.
- (c) Financial summary
- Financial status: costs broken down by activities for the reporting period.
  - Financial forecast: estimated date when the expenditures will reach 70% of the maximum eligible costs.
  - Action control management: description of the management and control system used in accordance with Article 11 of Regulation (EC) No XXX/2009 shall be provided by the Member State(s) concerned.

### **I.3.3 Interim technical implementation report and financial statement "ITIR"**

1. The Beneficiary shall submit the "ITIR" referred to in **Article III.3.4**.
2. The ITIR have to include/address the minimum following issues:
  - (a) General Information:
    - Reporting period.
    - Action information: Action reference, Action title, Action start/end date, administrative information (name, address, telephone, fax and e-mail of the beneficiaries of the grant and of the Member State(s) concerned).
    - Action objectives: status at the beginning of the Action, progress achieved before the beginning of the Action, specific objectives of the Action (activities, problem ...).
    - Action description: detailed Action description split in part/phases, description, time table, expected output and results.
    - Contact persons: name, address, telephone, fax and e-mail of the author(s) of the interim technical implementation report, the technical contact person(s) and financial contact person(s)
  - (b) Technical report
    - Action executive summary: indication of the Action progress (in %) for each activities, presentation of the main milestones, current and future results and the conclusions, anticipated date of completion of the Action and submission date of the final documentation package, list of all technical reports available.

- Action progress: detailed description of the activities performed during the reporting period together with an explanation of the progress and results obtained for each activities, outstanding problems to be solved and critical decisions to be taken, technical reports produced.
- (c) Financial summary
- List of expenses giving a breakdown by activities of the eligible costs
  - Certification of the reality and the conformity of the expenditure incurred (Article 11(1) of Regulation No XXX/2009).
  - Are the public procurement procedures applicable to new contracts that have been signed during the reporting period? If not, explanations and supporting documents have to be submitted.

#### **I.3.4 Final technical implementation report and financial statement "FTIR"**

1. The Beneficiary shall submit the final report within 12 months from the end date of the Action as referred to in **Article II.2.1**
2. The Commission shall have 45 calendar days from receipt to approve or reject the report, and the Beneficiary shall have 45 calendar days in which to submit additional information or a new report. In case no reply from the Commission has been received within a time period of 45 calendar days, the period for payment shall start to run.
3. The FTIR have to include a full description, with the results obtained of the various activities of the Action, the conclusions and final recommendations of the whole Action, including an Implementation Plan for studies only. The FTIR should include/address the following minimum issues:

(a) General information

- Complete Reporting period.
- Action information: Action reference, Action title, Action start/end date, administrative information (name, address, telephone, fax and e-mail of the beneficiaries of the grant and of the Member State(s) concerned).
- Action objectives: progress achieved before the beginning of the Action, specific objectives of the Action (activities, problem ...).
- Action description: detailed Action description split in activities, description, time table, expected output and results.
- Contact persons: name, address, telephone, fax and e-mail of the author(s) of the final technical implementation report, the technical contact person(s) and financial contact person(s).

(b) Technical report

- Action executive summary: detailed explanation of the activities carried out and the conclusions, including the results, problem encountered recommendation, explanation of the prospects of implementation of the results of the Action, list of all technical reports available.
- Action risk assessment: Deviations from the planned activities detailed description of potential technical problems/deviations; detailed description of potential time/budgetary deviations; detailed description of the potential solutions of those deviations.

- Action publicity: description of the measures that will be taken (or have already been taken) to acknowledge the financial support provided by the Community.
  - Validation of the technical report by the Member State concerned (if mentioned in **Article 4 of this Decision**).
- (c) Financial report
- List of all expenses giving a breakdown by activities of the eligible costs (including supporting documents).
  - Certification of the reality and the conformity of the expenditure incurred (Article 11(1) of Regulation No XXX/2009 EEPR Regulation).
  - Are the public procurement procedures applicable to contracts that have been signed during the acting period? If not, explanations and supporting documents have to be submitted

## **ANNEX II: DESCRIPTION OF THE ACTION AND ESTIMATED BUDGET**

### **Article II.1: Financial Aid Granted**

#### **II.1.1 Form of Financial Aid Granted**

*[Insert the relevant form forms]*

### **Article II.2: Technical Information**

#### **II.2.1 Period of Implementation of the Action**

1. Start date of the Action: *[Insert - date]*
2. Completion date of the Action: *[Insert - date]*

#### **II.2.2 Location of the Action**

1. Member State(s): *[Insert – Member state(s)]*
2. Region(s) (following NUTS 2 nomenclature): *[Insert - code]*
3. Geographical co-ordinates *[if applicable]*

Geographical system: [...]

	<b>Long (X)</b>	<b>Lat (Y)</b>
<b>Start point</b>		
<b>Interim point 1</b>		
<b>Interim point 2</b>		
<b>...</b>		
<b>Interim point n</b>		
<b>End point</b>		

## II.2.3 Activities and Milestones of the Action

### 1. Main objectives of the Action

*[The section shall provide a description of the main objectives of the Action on the basis of the information provided in the application form]*

### 2. Activities

*[Please list the different activities, which can be grouped into work-packages, parts or phases describing the Action. Note that the same subdivision has to be used (mandatory) for the detailed description here as in the cost tables in Article II.3.3]*

Activity number	Activity name	Indicative start date	Indicative end date	Milestone Number

### 3. Activity description:

*[Please describe in detail what the Action is about, using the same subdivision into parts as listed in paragraph 2]*

- Activity 1 – <Title of the Activity 1>

*[Please give a detailed description of activity 1 and, if necessary, its sub-activities]*

- Activity 2 – <Title of the Activity 2>

*[Please give a detailed description of activity 1 and, if necessary, its sub-activities]*

- Activity N – <Title of the Activity N>

*[Please give a detailed description of activity 1 and, if necessary, its sub-activities]*

### 4. Milestones

*[Please describe the milestones of the Action on the basis of the information provided in the application form]*

Milestone number [As listed under paragraph 2]	Milestone name	Indicative expected date	Means of verification

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5. Milestones and means of verification of Milestones:

- Milestone 1 – <Title of the Milestone 1>

*[Please give a detailed description of the Milestone]*

- Milestone y 2 – <Title of the Milestone 2>

*[Please give a detailed description of the Milestone]*

- Milestone N – <Title of the Milestone N>

*[Please give a detailed description of the Milestone]*

#### **II.2.4 Member States' Responsibilities**

As provided for by the EPR Regulation, Member States shall undertake the technical monitoring and financial control of projects in close cooperation with the Commission and shall certify the amount and the conformity with this Regulation of the expenditure incurred in respect of projects or parts of projects. Member States may request the participation of the Commission during on-the-spot checks.

In addition, Member States shall inform the Commission of the measures taken under paragraph 1 and, in particular, shall supply a description of the control, management and monitoring systems established to ensure that projects are successfully completed.

## Article II.3: Estimated Budget

### II.3.1 Estimated Total Eligible Cost of the Action

The total estimated eligible cost for the Action is [...] (in words: [...]) euro

### II.3.2 Planned Sources of Co-Financing for the Action

*[For multi-Beneficiary actions, please give only the total amounts per category]*

PLANNED SOURCES OF FINANCING IN BALANCE WITH THE ESTIMATED TOTAL ELIGIBLE COST	
1. State budget (-s)	
2. Regional/local budget	
3. Action promoter (Public or Private)	
4. EIB loan	
5. Other loans	
6. EEPR financing	
7. Other sources	
Total	

### II.3.3 Indicative Breakdown of Estimated Eligible Costs of the Action by Activity:

Activities	TOTAL
<b>1.DIRECT COST</b>	
<b>Activity 1</b>	
<b>Activity 2</b>	
<b>Activity 3</b>	
<b>Activity 4</b>	
<b>Activity 5</b>	
<b>Activity 6</b>	
....	
<b>1.N Activity N</b>	
<b>TOTAL DIRECT COST</b>	
<b>2. INDIRECT COST</b>	
Flat rate funding Yes/No [Flat rate between 0-7%- enter exact percentage]	
<b>TOTAL ELIGIBLE COST</b>	

**OPTION FOR MULTI-BENEFICIARY CASES:**

**II.3.4 Indicative Amount of Financial Aid per Beneficiary**

Name of Beneficiary	Indicative amount per Beneficiary in euro
Beneficiary 1	
...	
Beneficiary N	

**OPTION FOR ACTIONS COMPOSED OF COMPONENTS TO WHICH DIFFERENT CO-FINANCING LIMITS APPLY:**

**II.3.4 Indicative Amount of Financial Aid per Sub-action**

Sub-action	Indicative amount per Sub-action in euro
Sub-action 1	
...	
Sub-action N	

## **ANNEX III: GENERAL CONDITIONS**

The award of a financial aid by the European Commission shall be governed by these General Conditions. The General Conditions bind the Beneficiary to whom the financial aid is awarded as well as the European Commission.

### **Article III.1: Administrative Information**

#### **III.1.1 Contacts and Communications**

1. Any communication addressed to the Commission in connection with the present Decision in writing shall be addressed, indicating the number of the Decision, to:
  - European Commission  
Directorate-General for Energy and Transport  
Directorate C: Security of supply and energy markets  
Unit C1: Energy policy & Security of supply  
Rue De Mot 24  
B – 1040 Brussels  
Belgium
2. Ordinary mail shall be considered to have been received by the Commission on the date on which it is formally registered by the Commission unit responsible referred to above.
3. If the Beneficiary uses registered mail, a delivery service or delivery by hand, the mail shall be addressed to the Central Mail of the European Commission:
  - European Commission  
Directorate-General for Energy and Transport  
Directorate C: Security of supply and energy markets  
Unit C1: Energy policy & Security of supply  
Avenue du Bourget, 1  
B-1140 Brussels (Evere)  
Belgium

The delivered mail shall be considered to have been received on the date of the proof of delivery.

4. Mail sent by fax shall be considered to have been received on the date of the proof of the transmission to the fax number indicated under paragraph 1.

Documents can be submitted by fax in order to meet the deadline. The documents sent by fax have to be sent by ordinary mail or delivery service. They have to be identical with the version sent by fax. In case of discrepancy between the two versions, the version sent by ordinary mail or delivery service shall prevail with the consequence that the deadline might not have been met.

5. E-mail shall be considered received on the date it is received. However, if the Beneficiary receives a reply asking him to re-direct the e-mail, it shall not be considered received until the correctly re-directed e-mail is received.

Documents can be submitted by e-mail in order to meet the deadline. To this purpose, documents which require signature shall be scanned. The documents sent by e-mail have to be sent by ordinary mail or delivery service. They have to be identical with the version sent by e-mail. In case of discrepancy between the two versions, the version sent by ordinary mail or delivery service shall prevail with the consequence that the submission date shall be revised and the deadline might not have been met.

However, if the electronic document is signed by an advanced electronic signature as defined in Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council (OJ L 13 of 19.1.2000, p. 12) and accompanied by signature verification data as defined in Article 2(7) of Directive 1999/93/EC, the electronic documents sent by e-mail have not to be sent by ordinary mail or delivery service.

### **III.1.2 Authorised Representatives of the Beneficiary**

1. The Beneficiary shall be responsible of designating a(n) (number of) authorised representative(s) to act on its behalf.
2. This(ese) authorised representative(s) shall be adequately empowered to commit the Beneficiary for what concerns any decisions to be taken on its behalf and he/she/they shall be the main contact point for the Commission representatives within the organisation of the Beneficiary.
3. The Beneficiary shall guarantee the continuous presence of at least one authorised representative throughout the duration of the Action subject matter of the present Decision.

## **Article III.2: Execution of the Action**

### **III.2.1 Ownership/use of the results**

1. Unless stipulated otherwise in the annexes to the Decision, ownership of the results of the Action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the Beneficiary.
2. The Beneficiary grants the Commission the right to make free use of the results of the Action as it deems fit, provided they do not thereby breach their confidentiality obligations or existing industrial and intellectual property rights.

### **III.2.2 Confidentiality**

The Commission and the Beneficiary undertake, even beyond the completion of the Action, to preserve the confidentiality of any document, information or other material directly related to the subject of the Action that is duly classed as confidential, if disclosure could cause prejudice to either the Commission or the Beneficiary.

### **III.2.3 Information and Publicity**

1. Unless the Commission requests otherwise, any communication or publication about the Action by the Beneficiary or Member State concerned as defined in **Article 4** of this Decision, including at a conference or seminar, shall indicate that the Action has received funding from the Community.
2. Any communication or publication by the Beneficiary or Member State concerned as defined in **Article 4** of this Decision, in any form and medium, shall indicate that sole responsibility lies with the author and that the Commission is not responsible for any use that may be made of the information contained therein, except in cases where the Commission has agreed in advance to this communication or publication.
3. The Beneficiary authorises the Commission to publish the following information in any form and medium, including via the Internet:
  - the Beneficiary's name and the address,
  - the subject and purpose of the financial aid,
  - the amount granted and the proportion of the total cost of the Action covered by the funding.
4. Upon a reasoned and duly substantiated request by the Beneficiary, the Commission may agree to forego such publicity, if disclosure of the information indicated above would risk compromising the Beneficiary's security or prejudicing his commercial interests.

### **III.2.4 Evaluation**

1. The Commission and the Beneficiary may undertake an evaluation of the methods of carrying out actions as well as the impact of their implementation, in order to assess

whether the objectives, including those relating to environmental protection, have been attained. If the Beneficiary is not a Member State, the Beneficiary will assist in this evaluation. In case a Joint Undertaking or an international organisation is the Beneficiary, such an evaluation by the Member State shall not apply (see Article [...] of Regulation (EC) N° XXX/2009).

2. The Commission may request a Beneficiary Member State to provide a specific evaluation of actions financed under the Regulation (EC) N° XXX/2009 or, where appropriate, to supply it with the information and assistance required to undertake an evaluation of such actions (see Article [...] of Regulation (EC) N° XXX/2009).
3. The Beneficiary undertakes to make available to the Commission, and/or persons authorised by it, all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access to sites and premises where the Action is carried out and to all the information, including information in electronic format.

### **III.2.5 Award of contracts**

1. If the Beneficiary has to conclude contracts in order to carry out the Action and those contracts constitute costs of the Action under an item of eligible direct costs in the estimated budget, he shall award the contract to the tenderer offering best value for money; in doing so, he shall take care to avoid any conflict of interests.
2. Contracts may be awarded only on the following basis:
  - (a) Recourse to the award of contracts must be justified having regard to the nature of the Action and what is necessary for its implementation;
  - (b) The tasks concerned and the corresponding estimated costs shall be set out in detail in the annexes to the Decision granting financial aid;
  - (c) The Beneficiary shall undertake to make the necessary arrangements to ensure that the contractor(s) waive(s) all rights in respect of the Commission;
  - (d) The Beneficiary shall undertake to ensure that the conditions applicable to him concerning conflict of interests, ownership/use of the results, confidentiality, publicity, evaluation, suspension, assignment, checks and audits are also applicable to the contractor(s).
3. The Beneficiary shall abide by the rules on procurement contained in the respective Community legislation on public procurement.

### **III.2.6 Conflict of interests**

1. The Beneficiary undertakes to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective implementation of the Action. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.

2. Any situation constituting or likely to lead to a conflict of interests during the implementation of the Action must be brought to the attention of the Commission, in writing, without delay. The Beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once.
3. The Commission reserves the right to check that the measures taken are appropriate and may demand that the Beneficiary take additional measures, if necessary, within a certain time.

### **III.2.7 Modifications**

1. Modifications to the indicative cost break-down of the budget

The Beneficiary may, when carrying out the Action, proceed to adjustment to the costs of individual activities which are described in the breakdown of the budget stated in **Article II.3.3**, provided that this adjustment is necessary for meeting the objectives of the Action and the transfer between activities does not exceed 20% of the total eligible cost referred to in the **Article II.3.1**.

The approval of the Commission is required, however, whenever the cost adjustment between activities exceeds 20% of the total eligible costs, even when the threshold of 20% is exceeded due to the cumulative effect of different minor adjustments.

The same applies:

- in multi-Beneficiary cases, to transfers of budgets between the Beneficiaries, i.e. if the transfer between beneficiaries exceeds 20% of the total eligible costs of the Action indicated in **Article II.3.1**.
- to transfers between direct and indirect costs if no flat-rate for indirect costs applicable.

The Commission will approve or refuse the request, or request additional information within 60 calendar days from the date of the receipt of the request. In case additional information is requested, the Beneficiary shall have 30 calendar days to provide the additional information. In the event the Commission fails to reply within 60 calendar days, the request shall be deemed to have been accepted. If the Commission has accepted the request, an amendment of the Decision according to paragraph 2 is not required.

For changes to the cost breakdown as referred to in **Article II.3.3**, the Beneficiary shall send such request to the Commission at the latest together with the request for the payment of the balance.

2. Other modifications of the Action

Notwithstanding the provisions of paragraph 1 any modification to the conditions of the Community financial aid shall be subject to an amendment of the Decision.

The Beneficiary shall submit to the Commission any request for amendment of this Decision to grant Community financial aid by a specific letter, even if the Beneficiary has already mentioned the modifications in the reports referred to in

**Article I.3.** If the Beneficiary is not a Member State, a Joint Undertaking or an international organisation, such request for modification requires the prior approval of the Member State concerned referred to in **Article 4** of this Decision.

Modifications shall not have the purpose or the effect of calling into question the Decision to grant the Community financial aid and shall not result in unequal treatment of applicants.

If the request for modification is made by the Beneficiary, it shall submit such request to the Commission in due time prior to the moment it will take effect and, at the latest, one month before the completion date of the Action as referred to in **Article II.2.1**, except in cases duly substantiated by the Beneficiary and accepted by the Commission.

## **Article III.3: Payments**

### **III.3.1 Request for payments and bank account**

1. Payments shall be made in line with the conditions laid down in Article [...] of Regulation (EC) N° XXX/2009.
2. The bank account to which the Community financial aid shall be paid is the one submitted with the application form on the financial identification form.
3. Each Beneficiary is responsible for the correctness of bank account submitted to the Commission. In each case any change to the information given in the financial identification form is requested, the Beneficiary shall send a newly completed form to the Commission by registered letter.

### **III.3.2 Pre-financing**

1. Pre-financing is intended to provide the Beneficiary with a float.
2. Where required by the provisions of **Article I.2.1**, the Beneficiary shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.
3. The guarantor shall stand as first call guarantor and shall not require the Commission to have recourse against the principal debtor (the Beneficiary).
4. The financial guarantee shall remain in force until final payments by the Commission match the proportion of the total financial aid accounted for by pre-financing. The Commission undertakes to release the guarantee within 30 calendar days following that date.

### **III.3.3 Further pre-financing payments**

1. Where pre-financing is divided into several instalments, the Beneficiary may request a further pre-financing payment once he has used up the percentage of the previous payment specified in the provisions of the Decision on further pre-financing. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred;
  - where required by the provisions of the Decision granting financial aid, a financial guarantee;
  - any other documents in support of his request that may be required in support of the request for further pre-financing payments.
2. The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in the Decision granting financial aid.

### **III.3.4 Interim payments**

1. Interim payments are intended to reimburse the Beneficiary for expenditure on the basis of a detailed statement of the costs incurred, once the Action has reached a certain level of completion. It may clear all or part of any pre-financing.
2. By the appropriate deadline indicated in the Decision granting financial aid, the Beneficiary shall submit a request for interim payment accompanied by the following documents
  - (a) an interim technical implementation report;
  - (b) an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget.
3. The documents accompanying the request for payment shall be drawn up in accordance with **Article I.3**. The Beneficiary shall certify that the information provided in his request for payment is full, reliable and true. In particular, he shall certify that the costs incurred can be considered eligible in accordance with the Decision granting financial aid, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.
4. On receipt of these documents, the Commission shall have the period specified in **Article I.3.1** in order to:
  - (a) approve the interim report;
  - (b) ask the Beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
  - (c) reject the report and ask for the submission of a new report.
5. Failing a written reply from the Commission within the time limit for scrutiny specified in **Article I.3.1** paragraph 3, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain.
6. If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The Beneficiary shall be

informed of that request and the extension of the delay for scrutiny by means of a formal document. The Beneficiary shall have the period laid down in specified in **Article I.3.1** paragraph 3 to submit the information or new documents requested.

7. Extension of the delay for approval of the report may delay the payment by the equivalent time.
8. Where a report is rejected and a new report requested, the approval procedure described above shall apply.
9. In the event of renewed rejection, the Commission reserves the right to terminate the financial aid.

### **III.3.5 Payment of the balance**

1. Payment of the balance, which may not be repeated, is made after the end of the Action on the basis of actual implementation. It may take the form of a recovery order, if previous pre-financing payments exceed the amount of the final financial aid determined in accordance with the Decision granting financial aid.
2. By the appropriate deadline indicated in the Decision granting financial aid, the Beneficiary shall submit a request for payment of the balance accompanied by the following documents:
  - (a) a final technical implementation report;
  - (b) a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget, supported by detailed statements of the actual receipts and final expenditure for the implementation of the Action.
3. The documents accompanying the request for payment shall be drawn up in accordance with **Article I.3.1**. The Beneficiary shall certify that the information provided in his request for payment is full, reliable and true. In particular, he shall certify that the costs incurred can be considered eligible in accordance with the Decision granting financial aid, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.
4. On receipt of these documents, the Commission shall have the period specified in **Article I.3.1** in order to:
  - (a) approve the final report on implementation of the Action;
  - (b) ask the Beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
  - (c) reject the report and ask for the submission of a new report.
5. Failing a written reply from the Commission within the time limit for scrutiny indicated in **Article I.3.1** paragraph 3, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not

imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

6. Requests for additional information or a new report shall be notified to the Beneficiary in writing. The Beneficiary shall have the period laid down in **Article I.3.1** paragraph 3 to submit the information or new documents requested.
7. If additional information is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information.
8. Where a report is rejected and a new report requested, the approval procedure described above shall apply.
9. In the event of renewed rejection, the Commission reserves the right to terminate the financial aid.

### **III.3.6 General Provisions on Payments**

1. Payments due by the Commission shall be made in euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Commission, unless the Decision granting financial aid lay down specific provisions.
2. Payments by the Commission shall be deemed to be effected on the date when they are debited to the Commission's account.
3. The Commission may suspend the period for payment laid down in the Decision granting financial aid at any time by notifying the Beneficiary that his request for payment cannot be met, either because it does not comply with the provisions of the Decision granting financial aid, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the financial statement are not eligible and additional checks are being conducted.
4. The Commission may also suspend its payments at any time if the Beneficiary is found or presumed to have infringed the provisions of the Decision granting financial aid, in particular on the basis of findings arising from any audits or checks.
5. The Commission shall inform the Beneficiary of any such suspension by registered letter with acknowledgement of receipt or equivalent.
6. Suspension shall take effect on the date when notice is sent by the Commission. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Commission.
7. On expiry of the period for payment specified in the Decision granting financial aid, the Beneficiary is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies 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. This provision shall not apply to recipients of a financial aid which are public authorities of the Member States of the European Union.

8. Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 2, inclusive. The interest shall not be treated as a receipt for the Action for the purposes of determining the final financial aid. The suspension of payment by the Commission may not be considered as late payment.
9. By way of exception, when the interest calculated in accordance with the provisions of the subparagraphs seven and eight is lower than or equal to EUR 200, it shall be paid to the Beneficiary only upon demand submitted within two months of receiving late payment.
10. The Commission shall deduct the interest yielded by pre-financing which exceeds EUR 50 000 from the payment of the balance of the amount due to the Beneficiary. The interest shall not be treated as a receipt for the Action within the meaning of **Article III.3.8**.
11. Where the pre-financing payments exceed EUR 750 000 per Decision granting financial aid at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of Actions financed, the Commission may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.
12. Where the interest yielded exceeds the balance of the amount due to the Beneficiary, as indicated in **Article III.3.5**, or is generated by pre-financing referred to in **Article III.3.3**, the Commission shall recover it in accordance with **Article III.3.9**.
13. Interest yielded by pre-financing paid to Member States is not due to the Commission.
14. The Beneficiary shall have two months from the date of notification by the Commission of the final amount of the financial aid determining the amount of the payment of the balance or the recovery order, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final financial aid, giving reasons for any disagreement. After this time, such requests will no longer be considered. The Commission undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply.
15. This procedure is without prejudice to the Beneficiary's right to appeal against the Commission's Decision. Under the terms of Community legislation in this matter, such appeals must be lodged within two months following the notification of the Decision to the applicant or, failing that, following the date on which the applicant learned of the Decision.

### III.3.7 Eligibility of costs

1. To be considered as eligible costs of the Action, costs must satisfy the following general criteria:
  - (a) they are incurred during the duration of the Action as specified in the Decision granting financial aid, with the exception of costs relating to final reports and audit certificates on the Action's financial statements and underlying accounts;
  - (b) they are connected with the subject of the Action and they are indicated in the estimated overall budget of the Action;
  - (c) they are necessary for the implementation of the Action which is the subject of the financial aid;
  - (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiary and determined according to the applicable accounting standards of the country where the Beneficiary is established and according to the usual accounting practices of the Beneficiary;
  - (e) they comply with the requirements of applicable tax and social legislations;
  - (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.
2. The Beneficiary's accounting and internal auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the Action with the corresponding accounting statements and supporting documents.
3. The eligible direct costs for the Action are those costs which, with due regard for the conditions of eligibility set out in paragraph 1, are identifiable as specific costs directly linked to performance of the Action and which can therefore be booked to it directly. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in the previous paragraph:
  - (a) the cost of staff assigned to the Action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the Beneficiary's usual policy on remuneration;
  - (b) The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the action concerned were not undertaken;
  - (c) travel and subsistence allowances for staff taking part in the Action, provided that they are in line with the Beneficiary's usual practices on travel costs and do not exceed the scales approved annually by the Commission;
  - (d) the purchase cost of equipment (new or second-hand), provided that it is written off 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 Action and the rate of actual use for the purposes of the Action 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;

- (e) costs of consumables and supplies, provided that they are identifiable and assigned to the Action;
  - (f) costs entailed by other contracts awarded by a Beneficiary for the purposes of carrying out the Action;
  - (g) costs arising directly from requirements imposed by the Decision granting financial aid (dissemination of information, specific evaluation of the Action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees).
4. The eligible indirect costs for the Action are those costs which, with due regard for the conditions of eligibility described in paragraph 1, are not identifiable as specific costs directly linked to performance of the Action which can be booked to it direct, but which have nevertheless been incurred in connection with the eligible direct costs for the Action. They may not include any eligible direct costs.
5. The indirect costs incurred in carrying out the Action may be eligible for flat-rate funding fixed at not more than 7% of the total eligible direct costs. If provision is made in the Decision granting financial aid for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.
6. The following costs shall not be considered eligible:
- (a) return on capital;
  - (b) debt and debt service charges;
  - (c) provisions for losses or potential future liabilities;
  - (d) interest owed;
  - (e) doubtful debts;
  - (f) exchange losses;
  - (g) VAT, unless the Beneficiary can show that he is unable to recover it (Article 23.3 Regulation (EC) N° XXX/2009)
  - (h) costs declared by the Beneficiary and covered by another action or work programme receiving a Community financial aid;
  - (i) excessive or reckless expenditure.
7. Contributions in kind shall not constitute eligible costs. However, the Commission can accept, if considered necessary and appropriate, that the cofinancing of the Action should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- (a) the costs actually borne and duly substantiated by accounting documents of the third parties who made these contributions to the Beneficiary free of charge but bear the corresponding costs;
  - (b) the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.
8. Contributions involving buildings shall not be covered by this possibility.
  9. In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount shall be included in the costs of the Action as ineligible costs and in receipts from the Action as co-financing in kind.
  10. Indirect costs shall not be eligible under an action awarding financial aid to a Beneficiary who already receives an operating grant from the Commission during the period in question.

### **III.3.8 Determining the final amount of the financial aid**

1. Without prejudice to information obtained subsequently pursuant to **Article III.6**, the Commission shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in **Article III.3.5**.
2. The total amount paid to the Beneficiary by the Commission may not in any circumstances exceed the maximum amount of the financial aid laid down in the Decision granting financial aid, even if the total actual costs eligible exceed the estimated total eligible costs as specified in the Decision granting financial aid.
3. If the total actual eligible costs, when the Action ends, are lower than the estimated total eligible costs, the Commission's contribution shall be limited to the amount obtained by applying the percentage specified in the Decision granting financial aid to the actual eligible costs approved by the Commission.
4. The Beneficiary hereby agrees that the financial aid shall be limited to the amount necessary to balance the Action's receipts and expenditure and that it may not in any circumstances produce a profit for him.
5. Profit shall mean any surplus of total actual receipts attributable to the Action over the total actual costs of the Action. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the Beneficiary for financing other than the Community financial aid, to which shall be added the amount of the financial aid determined by applying the principles laid down in the second and third paragraph. Only actual costs falling within the categories set out in the estimated amount shall be taken into account; non-eligible costs shall always be covered by non-Community resources.
6. Any surplus determined in this way shall result in a corresponding reduction in the amount of the financial aid.
7. Without prejudice to the right to terminate the financial aid, and without prejudice to the right of the Commission to apply the penalties referred, if the Action is not

implemented or is implemented poorly, partially or late, the Commission may reduce the financial aid initially provided for in line with the actual implementation of the Action on the terms laid down in the Decision granting financial aid.

8. On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the Decision granting financial aid, the Commission shall set the amount of the payment of the balance as being the amount still owing to the Beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final amount of the financial aid, the Commission shall issue a recovery order for the surplus.

### **III.3.9 Recovery**

1. If any amount is unduly paid to the Beneficiary or if recovery is justified under the terms of the Decision granting financial aid, the Beneficiary undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.
2. If the Beneficiary fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in **Article III.3.6**. 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.
3. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.
4. 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 Beneficiary, after informing him accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee if provided for. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the Commission may recover by offsetting before the due date of the payment. The Beneficiary's prior consent shall not be required.
5. Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the Beneficiary.
6. The Beneficiary understands that under Article 256 of the Treaty establishing the European Community, the Commission may adopt an enforceable Decision formally establishing an amount as receivable from persons other than States. An action may be brought against such a decision before the Court of First Instance of the European Communities.
7. A period of 45 calendar days shall be allowed for the reimbursement of amounts to be recovered by the Commission. However, if the Beneficiary is a Member State, a period of four months shall be allowed. This period shall run from the date of receipt of the letter from the Commission requesting reimbursement (debit note).

### **III.3.10 Financial penalties**

1. By virtue of the Financial Regulation applicable to the General Budget of the European Communities, any Beneficiary declared to be in grave breach of his

obligations may be subject to financial penalties of between 2% and 10% of the value of the financial aid in question, with due regard for the principle of proportionality.

2. This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the establishment of the first. The Beneficiary shall be notified in writing of any decision by the Commission to apply such financial penalties.

## **Article III.4: Suspension, Reduction and Cancellation and Discontinuance of Community Financial Aid**

### **III.4.1 Suspension**

1. The Beneficiary may suspend the implementation of the Action, if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*<sup>10</sup>. He shall inform the Commission without delay, giving all the necessary reasons and details and the foreseeable date of resumption.
2. If the Commission does not terminate the grant under **Article III.4.2.2**, the Beneficiary shall resume implementation once circumstances allow and shall inform the Commission accordingly. The duration of the Action shall be extended by a period equivalent to the length of the suspension.
3. An amending decision granting financial aid shall be taken to extend the duration of the Action and to make any amendments that may be necessary to adapt the Action to the new implementing conditions.
4. The Commission may decide to suspend or reduce the amount of the financial aid in line with the provisions of **Article III.4.2.2** paragraph 2).

### **III.4.2 Termination of the financial aid**

#### **III.4.2.1 By the Beneficiary**

1. In duly justified cases, the Beneficiary may renounce the financial aid or part thereof at any time, by giving to the Commission 60 calendar days' written notice and stating the reasons of the impossibility to pursue the Action for which the financial aid has been awarded, without being required to furnish any indemnity on this account.
2. If no reasons are given or if the Commission does not accept the reasons, the Commission may require the partial or total repayment of sums already paid under the Decision granting financial aid on the basis of technical implementation reports

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<sup>10</sup> *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the Commission's and/or the beneficiary's control which prevents either of them from fulfilling any of their obligations under this decision granting financial aid, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* by the defaulting party.

and financial statements approved by the Commission, in proportion to the gravity of the failings in question and after allowing the Beneficiary to submit his observations.

#### **III.4.2.2 By the Commission**

1. The conditions under which the Commission may cancel, terminate or discontinue the financial aid are stipulated hereafter.
2. In particular, after appropriate examination and after having informed the beneficiaries and Member States concerned in order that they may present their observations within a given time, the Commission :
  - (a) shall cancel, except in duly justified cases, financial aid granted for actions which have not been started in the two years following the start date of the Action established in the conditions governing the granting of financial aid;
  - (b) may suspend, reduce or discontinue the financial aid:
    - (i) in the event of an irregularity committed in the implementation of the Action with regard to the provisions of Community law; and
    - (ii) in the event of failure to comply with the conditions governing the financial aid, in particular if a major change affecting the nature of an action or procedures for implementation has been made without the approval of the Commission;
  - (c) may, taking account of all relevant factors, request the reimbursement of the financial aid granted if, within four years of the finishing date established in the conditions governing the granting of financial aid, the implementation of the Action receiving the financial aid has not been completed.
3. The Commission may recover all or part of the sums already paid:
  - (a) where this is necessary, notably following cancellation, discontinuation or reduction of the financial aid or a request for reimbursement of financial aid; or
  - (b) in the event of cumulation of Community aid for an action.
4. The Commission may, besides the abovementioned grounds decide to cancel, discontinue or terminate the financial aid or part thereof, without any liability to the payment of an indemnity on its part, also in the following circumstances:
  - (a) in the event of a change to the Beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the Decision granting financial aid substantially or to call into question the Decision to award the financial aid;
  - (b) if the Beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the Decision granting financial aid, including its annexes;
  - (c) if the Action has been suspended as a result of exceptional circumstances, notably in the event of force majeure;

- (d) if the Beneficiary is declared bankrupt, is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) if the Beneficiary has been convicted of an offence concerning his professional conduct by a judgment having the force of *res judicata*;
- (f) if the Beneficiary has been guilty of grave professional misconduct proven by any means;
- (g) if the Beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- (h) if the Beneficiary is the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (i) if the Beneficiary has made false declarations or submits reports inconsistent with reality to obtain the financial aid provided for in the Decision granting financial aid.

#### **III.4.2.3 Termination procedure**

1. The procedure is initiated by registered letter with acknowledgement of receipt or equivalent.
2. In the cases referred to in paragraphs 2 (a), (b), (c) and 4 (a), (b), (d) above, the Beneficiary shall have 30 calendar days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the Decision granting financial aid. If the Commission fails to confirm acceptance of these observations by giving written approval within 30 calendar days of receiving them, the procedure shall continue to run.
3. Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Commission's Decision to terminate the financial aid is received.
4. If notice is not given in the cases referred to in paragraphs (c), (e), (f), (g), (h) and (i) above, termination shall take effect from the day following the date on which notification of the Commission's Decision to terminate the financial aid is received.

#### **III.4.2.4 Effects of termination**

1. In the event of termination, payments by the Commission shall be limited to the eligible costs actually incurred by the Beneficiary up to the date when termination takes effect, in accordance with the Decision granting financial aid. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

2. The Beneficiary shall have 60 calendar days from the date when termination takes effect, as notified by the Commission, to produce a request for final payment in accordance with the Decision granting financial aid. If no request for final payment is received within this time limit, the Commission shall not reimburse the expenditure incurred by the Beneficiary up to the date of termination and it shall recover any amount whose use is not substantiated by the technical implementation reports and financial statements approved by the Commission.
3. By way of exception, at the end of the period of notice referred to above, where the Commission is terminating the financial aid on the grounds that the Beneficiary has failed to produce the final technical implementation report and financial statement within the deadline stipulated in the Decision granting financial aid, and the Beneficiary has still not complied with this obligation within two months (following the written reminder sent by the Commission by registered letter with acknowledgment of receipt or equivalent), the Commission shall not reimburse the expenditure incurred by the Beneficiary up to the date on which the Action ended. The Commission shall also recover any amount whose use is not substantiated by the technical implementation reports and financial statements approved by it.

#### **III.4.3 Time allowed before cancellation**

Except in duly justified cases, accepted as such by the Commission, Community financial aid granted to an action which has not started within two years of the starting date specified in **Article II.2.1**, will be cancelled by the Commission. It shall be repaid to the Commission within the period referred to in **Article III.3.10**.

#### **III.4.4 Reimbursement of Community financial aid**

If, within four years after the completion date of the Action as referred to in **Article II.2.1**, the Action in question has not been completed, the Commission may demand reimbursement of the Community financial aid paid, with due regard for the principle of proportionality, taking into account all relevant factors.

#### **III.4.5 Right to be heard**

1. Before suspending, reducing or cancelling a Decision to award Community financial aid, the Commission will ask the Beneficiary for its comments.
2. If the Beneficiary is not a Member State, a Joint Undertaking or an international organisation, the Commission will also ask the Member State concerned referred to in **Article 4** of this Decision for its comments.

### **Article III.5: Assignment**

1. Claims against the Commission may not be transferred.
2. In special circumstances, where the situation warrants it, the Commission may authorise the assignment to a third party of the responsibility of carrying out the Action and the direct payments flowing from it, following a written request to that effect, giving reasons, from the Beneficiary. If the Commission agrees, it must make its Decision known in writing before the proposed assignment takes place. In the

absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Commission.

3. In no circumstances shall such assignment release the Beneficiary from his obligations under the terms of the Decision.
4. An assignment shall be valid only if the third party fulfils all the eligibility criteria applicable at the time of the selection of the Action for receiving financial aid.
5. Payments not made to the Beneficiary, but directly to implementing bodies according to the financial identification form submitted by the Beneficiary, are not considered to be an assignment.
6. If a Member State or an international organisation is a Beneficiary, and it designates, on its responsibility, a public or private undertaking or body to implement the Action, and it designates a bank account in the name of the same undertaking or body for the payment of Community financial aid, the eligible costs of the public or private undertaking or body implementing the Action shall be deemed to be the eligible costs of the Beneficiary referred to in **Article III.2.7**.

## **Article III.6: Checks and Audits**

### **III.6.1 Access to site**

1. The Beneficiary shall grant unlimited access to the Commission staff, or to any other outside body authorised to do so on its behalf, to the place of performance of the Action respecting the applicable safety and emergency provisions.
2. The Beneficiary shall offer also his full collaboration in order to facilitate the supervisory task of the Commission staff and shall make all reasonable effort to fulfil requests of access to documents, information, works and alike.

### **III.6.2 Obligations of the Beneficiary**

1. In conformity with Article 11 of Regulation (EC) N° **XXX/2009**, the Member States shall undertake the technical monitoring and financial control of actions in close cooperation with the Commission and shall certify the reality and the conformity of the expenditure incurred in respect of actions. The Member States may request the participation of the Commission during on-the-spot checks.
2. The Beneficiary undertakes to provide any detailed information, including information in electronic format, requested by the Commission or by any other outside body authorised by the Commission to check that the Action is being properly implemented.
3. The Beneficiary shall keep at the Commission's disposal all original documents, especially accounting and tax records or, in exceptional and duly justified cases, certified copies of original documents relating to the granted Action for a period of five years from the date of payment of the balance.

4. The Beneficiary agrees that the Commission may have an audit of the use made of the financial aid carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the Action until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
5. The Beneficiary undertakes to allow the Commission staff and outside personnel authorised by the Commission the appropriate right of access to sites and premises where the Action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.

### **III.6.3 OLAF**

By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, and in conformity with Article 25 of Regulation (EC) No. XXX/2009, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot controls and checks in accordance with the procedures laid down by Community law for the protection of the financial interests of the European Communities against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Commission.

### **III.6.4 Court of Auditors**

The conditions governing the granting of Community financial aid may, in particular, provide for monitoring and financial checks to be undertaken by the Commission or any representative authorised by it, and for audits to be undertaken by the Court of Auditors, which shall have the same rights as the Commission, notably right of access, as regards checks and audits.

### **III.6.5 Exchange of Information**

The Member State concerned and the Commission shall immediately exchange all relevant information concerning the results of the checks undertaken.

## **Article III.7: Data Protection**

1. All personal data contained in the Decision granting financial aid and its annexes shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely in connection with the implementation and follow-up of the Decision granting financial aid by the Directorate General for Energy and Transport of the European Commission, without prejudice to the possibility of passing the data to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community.
2. Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions

regarding the processing of their personal data to the Directorate General for Energy and Transport of the European Commission. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

### **Article III.8: Settlement of Disputes – Competent Court**

1. Under Article 230 of the EC Treaty, this Decision granting financial aid will be governed by the Community law.
2. In case of legal proceedings regarding Decisions taken by the Commission concerning the application of the Decision granting financial aid, the Court of First Instance of the European Communities and, in the event of appeal, the Court of Justice of the European Communities, will be the competent jurisdiction.