



GUIDE FOR AMENDMENTS

ETEN PROGRAMME

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and Media

TABLE OF CONTENTS

1. FOREWORD.....	3
2. INTRODUCTION.....	3
3. AMENDMENTS INITIATED BY THE CONSORTIUM.....	3
3.1 Overview	3
3.2 Full Grant Agreement Amendment	4
3.3 Amendment Letter.....	5
3.3.1. Procedure.....	5
4. AMENDMENTS INITIATED BY THE COMMISSION	9
5. BUDGET TRANSFERS	10
5.1. Budget transfers that do not require prior approval by the Commission	10
5.2. Budget transfers that require prior approval of the Commission	11

1. FOREWORD

This guide explains the procedure for amendments of eTEN Grant Agreements. It aims in particular at helping eTEN staff and Beneficiaries (especially Project Co-ordinators) to identify clearly the correct documentation for requesting and processing amendments to eTEN Grant Agreements.

2. INTRODUCTION

Article 7 of the eTEN Grant Agreement stipulates the following:

“This Grant Agreement, including the annexes thereto, may be modified only in writing, by way of an amendment between the authorised representatives of the *parties*. No verbal agreement may be binding on the *parties* for this purpose.”

This implies that any modification of the Grant Agreement, including modification of any of its annexes, is subject to a **written agreement**, concluded between **the authorised representatives** of the beneficiaries and the Commission.

Furthermore the grant agreement states in the same article:

“Any request for amendment must be received by the Commission at least two months before the expiry of the *duration of the project*.”

Save in duly justified, exceptional cases, any amendment request received after the deadline in the Grant Agreement will NOT be implemented.

3. AMENDMENTS INITIATED BY THE CONSORTIUM

3.1 Overview

Amendments of Grant Agreements are normally requested by the consortium (exceptionally, an amendment might also be requested by the Commission, see section 4 of this guide). An amendment requested by the consortium can be implemented in two ways:

- An amendment by an exchange of letter (“Amendment Letter”)
- A full Grant Agreement amendment

Contractually, they are equivalent. Both types of amendments are made in response to a written request to the Commission. The written request must be signed by the authorised representative of the Project Co-ordinator.

In the case of an amendment letter, the amendment is implemented by a letter signed by an authorised representative of the Commission which **confirms the modifications** proposed in the amendment request of the Project Co-ordinator.

The procedure for a full Grant Agreement amendment is similar to the signature of a grant agreement, i.e. the amendment is **signed by authorised representatives of all beneficiaries** (or the project Co-ordinator acting for all beneficiaries on the basis of a mandate) and the **Commission**.

In both cases the **request by the Co-ordinator** to amend the Grant Agreement must clearly indicate all the modifications that are requested and should explicitly state that the request is made in agreement and on behalf of all the beneficiaries. The Co-ordinator should keep adequate proof on file of the agreement by all beneficiaries to the amendment request, but supporting documents must only be made available to the Commission on explicit request, as foreseen in this document or e.g. in the event of an audit. In case the Project Officer considers it necessary to receive this proof, he can ask the Co-ordinator to submit documentary evidence demonstrating the agreement of all beneficiaries to the amendment.

3.2. Full Grant Agreement Amendment

A full Grant Agreement amendment consists in a preamble stating the modifications being made and a revised Grant Agreement incorporating these modifications.

Full Grant Agreement amendments are used in the case of **replacement of the Co-ordinator**.

Documents to be provided by the Project Co-ordinator to the Commission in order to request the full Grant Agreement amendment:

- a) **A request letter** for an amendment signed by the legal authorised representative of the Co-ordinator and acting expressly on behalf of all beneficiaries. The agreement of all beneficiaries to the replacement of the Co-ordinator should be demonstrated by documents attached to the request letter (written statements of the beneficiaries, minutes of meetings or similar).
- b) In addition in case a new partner becomes the Co-ordinator (arising from either an addition to the Grant Agreement or a takeover of rights and responsibilities), the documents requested for addition of a beneficiary or merger/acquisition (see section 3.3 on Amendment Letter) and the *new banking information* (Form A4) must be provided.

Signature of the Grant Agreement amendment :

On the basis of the amendment request received, the Commission will prepare a **draft proposal** for the amended Grant Agreement and forward it by electronic mail to the Project Coordinator with an offer letter. In parallel, a hard copy of the offer letter from the Commission signed by the Director will be sent by courier. In case all beneficiaries agree with the proposal, the Grant Agreement amendment is then signed by the **authorised legal representatives of each beneficiary** or of the Co-ordinator on behalf on the beneficiaries (if he has received **mandate**). Note that the mandates given for the signature of the Grant Agreement are not valid for the signature of the amendment, unless this is explicitly specified in the mandates themselves. The beneficiaries can provide specific mandates for the amendment.

Following the receipt and after verification of the beneficiaries' signatures (or mandates, where applicable), the Grant Agreement amendment will be signed by the **authorised representative of the Commission** and returned to the Co-ordinator for onward transmission to the beneficiaries. The amendment enters into force with the signature of the amendment by both parties, i.e. on the date of signature by the authorised representative of the Commission.

3.3 Amendment Letter

3.3.1. Procedure

An amendment can be executed by letter in all cases, except the one case mentioned above for which a full Grant Agreement amendment is required. The amendment is implemented by an **amendment request** of the Co-ordinator on behalf of the consortium (see above section 3.1) and a letter drafted, signed and dated by the Commission to the Co-ordinator **confirming the proposed modifications** to the Grant Agreement. The amendment letter by the Commission does not require the counter-signatures of the project beneficiaries. The Grant Agreement is not attached to the Amendment Letter.

If the Commission **does not agree** with the request proposed but could agree with a new request which includes some modifications, or when the request from the consortium **is not perfectly clear**, the Commission will **reject the initial request** and send the Co-ordinator a proposed model request containing those changes the Commission might be ready to accept if the consortium were to formalise such a request including those changes. The letter accompanying this proposal will explain that the original request is rejected and that the proposed model does not constitute an offer from the Commission to amend the Agreement.

Then either a **new request** is proposed by the consortium based on the Commission model (or a completely new request not based on that proposal), to which the Commission may indicate its acceptance by return mail, or the consortium does not make a new request, so that the initial proposal remains **rejected** and the grant agreement does not change.

Amendment Letters are used in the following cases:

1. Changes to the details concerning any of the beneficiaries, i.e. change of a company's **legal name or status**, change of **acronym**, change of **address** or change of Co-ordinator's and/or beneficiaries' legal **authorised representative**;
2. **Withdrawal, addition, replacement** of one or more beneficiaries;
3. **Merger/acquisitions** of companies concerning beneficiaries;
4. **Transfer of rights and obligations** from one beneficiary to another;
5. Change of **project commencement date (start date)** of the project;
6. **Extension** of the **duration of the project**;
7. Modification of the **period** covered by the **periodic and the final reports and Financial Statements**;
8. All changes relating to **bank details**;
9. Any modifications to the **special clauses** (amendments, deletion or introduction of new special clauses in Article 6 of the Grant Agreement);
10. Changes (withdrawal, addition, replacement) of **subcontractors mentioned in Annex I**;
11. Update of the **list of members**;
12. Modification of the **total estimated eligible costs** of the project;
13. Modification of the **maximum Community contribution** (downwards);
14. Modification of the **"Table of Indicative Breakdown of Estimated Eligible Costs – Budget Table"**;
15. Modification of the **pre-financing payment** of the Commission;
16. Changes to the **Annex I (Description of Work)**.

3.3.2 Documents to be provided by the Project Co-ordinator to the Commission in order to process the Amendment Letter

- a) A **request letter** for an amendment signed by the legal authorised representative of the Co-ordinator acting for all the beneficiaries.
- b) Depending on the nature of the request, the Co-ordinator must include with the letter the appropriate **supporting documentation**, as follows:
 1. For a change of the name or address of the company:
A duly signed ‘Identification Form’
(see http://europa.eu.int/comm/budget/execution/legal_entities_en.htm) and official documents to prove the change of legal name, e.g. a copy of Kbis extract, national company registration or the Board of Administrators’ report.
 2. For a change of the authorised signatory:
The request letter is sufficient.
 3. For the withdrawal of a beneficiary:
 - a) A **letter from the withdrawing partner** with the date of his withdrawal;
 - b) **Prior written agreement** of all beneficiaries in form of a letter signed by the authorised representative of the beneficiary;
 - c) **GPFs** (Grant Agreement Preparation Forms);¹
 - d) A new **Annex I (Description of Work)** and a new “**Table of Indicative Breakdown of Estimated Eligible Costs - Budget table**”;
 - e) If there is a new or an existing beneficiary taking over all rights and obligations, a **letter of acceptance** of those rights and obligations with the date of takeover (see also below point 4 concerning addition of a new beneficiary).
 4. For the addition of a beneficiary:
 - a) A **letter of agreement** from the new beneficiary to enter in the project, clearly stating the date of effect (possibly including confirmation that the new beneficiary is taking over the rights and obligations from another beneficiary in the event that the other beneficiary is leaving the project).
 - b) **Legal and financial documents** : a duly signed ‘Identification Form’ (see http://europa.eu.int/comm/budget/execution/legal_entities_en.htm) and official documents to prove the change of legal name, e.g. a copy of Kbis extract, national company registration or the Board of Administrators’ report and the updated legal documents and the *last two years’ certified accounts* for financial viability²;

¹ The GPFs are the same as those requested for the preparation of the Grant Agreement.

² The documents for legal and financial viability needed depend on the type of organisation. They are the same as those needed at the negotiation phase of the Grant Agreement. Please refer to “Guidelines for Negotiations” for more information.

- c) **GPFs** (Grant Agreement Preparation Forms) with the A2e form signed by an authorised representative;³
 - d) A new **Annex I (Description of Work)** and a new “**Table of Indicative Breakdown of Estimated Eligible Costs - Budget table**”;
5. For mergers/acquisitions:
- a) A **letter from the beneficiary** stating that they take over the rights and obligations of the former partner and the date of the takeover;
 - b) A duly signed ‘Identification Form’ (see http://europa.eu.int/comm/budget/execution/legal_entities_en.htm) and official documents to prove the change of legal name, e.g. a copy of Kbis extract, national company registration or the Board of Administrators’ report;
 - c) **GPFs A-forms with the A2e Form** signed by the legal authorised representative of the new beneficiary.
6. For a change of the start date:
The request letter with appropriate justification is sufficient.
7. For an extension of the duration of the project:
If the “Work Packages” are affected by the amendment, a new **Annex I (Description of Work)** will be required. A full update is strongly preferred, but an addendum or the replacement of specific pages is acceptable if only the dates change.
8. For changes of bank details:
A new “**Banking Information Form**” is required. The stamp of the bank and the signature of the Financial Manager are strictly required for validation by Commission Services.
9. For changes concerning the list of members:
A revised “**Table of Indicative Breakdown of Estimated Eligible Costs – Budget table**” is needed.
10. Changes to Annex I (Description of Work) :
A revised Description of Work.

³ The GPFs are the same as those requested for the preparation of the Grant Agreement.

4. AMENDMENTS INITIATED BY THE COMMISSION

The Commission might, in exceptional cases, initiate an amendment, notably to rectify incorrect contract data.

A **single document amendment** will be prepared and signed by the Commission. The proposed amendment will include the following statement: *“If the Commission fails to receive the signed copies of the amendment within [insert a time-limit], the Commission is no longer bound by its offer to amend the contract.”* The Commission services send two signed copies of the amendment per beneficiary to the Co-ordinator for their signature.

Each contractor must print clearly below the signature :

- Name of the legal entity
- Name of legal representative
- The corporate seal, if available.

The Co-ordinator shall collect one signed copy from each beneficiary and send them back to the Commission. Alternatively, the Co-ordinator countersigns the amendment on behalf of some or all beneficiaries and attaches the corresponding specific mandates for the amendment.

If the Commission fails to receive the signed copies of the amendment within the time-limit specified, the Commission’s offer to amend the Grant Agreement will expire and the Agreement remains unchanged.

5. BUDGET TRANSFERS

Budget transfers are foreseen in the Grant Agreement (see Article 13.7 of Annex II) and relate to transfers between beneficiaries or between cost categories of a given beneficiary. A budget transfer results in a new version of the “Table of Indicative Breakdown of Eligible Costs – Budget Table” (and/or “Milestones Breakdown Table” in the case of Deployment projects) and *does not constitute an amendment per se*.

5.1. Budget transfers that do not require prior approval by the Commission

Budget transfers **between beneficiaries** are authorised

- if the scope of the project is not fundamentally altered and
- the amounts transferred do not exceed 20% (10% in case of **deployment grant agreements**) of the total budget for the project of the participant in the budget table.

The beneficiary(ies) concerned shall inform the Commission of such budget transfers and confirm that the scope of the project is not fundamentally altered. After receipt of the information, the Commission sends an acknowledgement letter signed by the Project Officer.

Budget transfers **between cost categories** of a given beneficiary are authorised provided that

- the transferred amount does not exceed 20% (10% in case of *deployment grant agreements*) of the total eligible budget of this beneficiary for the project,
- the budget for subcontracting is not increased and
- the scope of the project is not fundamentally altered.

The Commission can be informed of such budget transfers expressly or implicitly via cost statements. In the latter case, the Commission does not send any letter. When the Commission is explicitly informed of the budget transfer, the Commission sends an acknowledgement letter signed by the Project Officer.

5.2. Budget transfers that require prior approval of the Commission

All other budget transfers than the ones above (in particular budget transfers that exceed the thresholds) require the prior written approval by the Commission.

Documents to be provided to the Commission for such budget transfers :

- A *request letter* (registered with acknowledgement of receipt) from the Co-ordinator explaining the reasons for the budget transfer;
- *Acceptance letters* from all the beneficiaries concerned agreeing to the budget transfer;
- A revised “*Table of Indicative Breakdown of Estimated costs*” (and “*Milestones Breakdown Table*” for deployment projects, where applicable).

In case of agreement with the proposed budget transfer, the Commission will normally send an **agreement letter** signed by the Project Officer to the Co-ordinator. If the Commission does not react to the request for budget transfer within one month of its receipt, the budget transfer is deemed to be approved.