

RFCS Grant Agreement – Annex II

RFCS Grant Agreement - Annex II General Conditions

II.1. Definitions.....	3
Part A IMPLEMENTATION OF THE <i>PROJECT</i>	5
SECTION 1 – GENERAL PRINCIPLES.....	5
II.2. Organisation of the <i>consortium</i> and role of <i>coordinator</i>	5
II.3. Specific performance obligations of each <i>beneficiary</i>	6
SECTION 2 – REPORTING AND PAYMENTS.....	9
II.4. Reports and deliverables	9
II.5. Approval of reports and deliverables, time-limit for approval.....	12
II.6. Payment modalities, time-limit for payments	13
SECTION 3 – IMPLEMENTATION.....	17
II.7. Subcontracting.....	17
II.8. Suspension of the <i>project</i>	19
II.9. Confidentiality	19
II.10. Communication of data for evaluation, impact assessment and standardisation purposes	21
II.11. Information to be provided to Member States or Associated Countries.....	21
II.12. Information and communication.....	21
II.13. Processing of personal data.....	23
Part B FINANCIAL PROVISIONS	24
SECTION 1 – GENERAL FINANCIAL PROVISIONS.....	24
II.14. Eligible costs of the <i>project</i>	24
II.15. Identification of direct and indirect costs.....	25
II.16. Upper funding limits	29
II.17. Receipts of the <i>project</i>	29
II.18. <i>Community financial contribution</i>	29
II.19. Interest yielded by pre-financing provided by the <i>Commission</i>	30
SECTION 2 – FINANCIAL GUARANTEES AND RECOVERIES.....	32
II.20. Financial Guarantees.....	32
II.21. Reimbursement and recoveries	32
SECTION 3 – CONTROLS AND SANCTIONS	33
II.22. Financial audits and controls	33
II.23. Technical audits and reviews	34
II.24. Liquidated damages	35
II.25. Financial penalties	36
Part C INTELLECTUAL PROPERTY RIGHTS, <i>USE AND DISSEMINATION</i>	37
SECTION 1 – FOREGROUND	37
II.26. Ownership.....	37
II.27. Transfer.....	37
II.28. Protection	38
II.29. <i>Use</i>	39
II.30. <i>Dissemination</i>	39
SECTION 2 – ACCESS RIGHTS	41
II.31. <i>Background</i> covered	41

II.32. Principles.....	41
II.33. <i>Access rights</i> for implementation.....	42
II.34. <i>Access rights</i> for use	42
FINAL PROVISIONS	43
II.35. Requests for amendments and termination at the initiative of the <i>consortium</i>	43
II.36. Approval of amendments and termination requested by the <i>consortium</i>	44
II.37. Termination of the <i>grant agreement</i> or of the participation of one or more <i>beneficiaries</i> at the <i>Commission</i> 's initiative	44
II.38. Financial contribution after termination and other termination consequences.....	46
II.39. Force majeure.....	47
II.40. Assignment	48
II.41. Liability.....	48

II.1. Definitions

1. "*access rights*" means licences and user rights to *foreground* or *background*;
2. "*affiliated entity*" means any legal entity that is under the direct or indirect control of a *beneficiary*, or under the same direct or indirect control as the *beneficiary*, control taking any of the following forms:
 - (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
 - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
3. "*background*" means information which is held by *beneficiaries* prior to their accession to this agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to this agreement, and which is needed for carrying out the *project* or for using *foreground*;
4. "*closing date of the project*": means the date calculated by adding the duration of the *project* to the *start date* referred to in Article 3.
5. "*Coal and Steel Technical Groups*" ("*Technical Groups*") are Groups designated and described under Article 24 of the Council Decision of 29 April 2008 laying down the multiannual technical guidelines for the research programme of the Research Fund for Coal and Steel.¹ Their role consists of assisting the *Commission* in the monitoring of research and pilot/demonstration *projects*. Members shall be appointed by the *Commission* and shall come from the sectors related to the coal or steel industry, research organisations or user industries where they should have responsibility for research strategy, management or production. *Technical Groups* meetings will be held yearly in principle from April to June. The *coordinators* will be requested to present their mid-term technical implementation and final technical reports, and where appropriate their annual reports,² to the corresponding *Technical Group*. Following its advice, the *Commission* will approve or refuse technical reports.
6. "*dissemination*" means the disclosure of *foreground* by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of *foreground* in any medium;
7. "*fair and reasonable conditions*" means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the *foreground* or *background* to which access is requested and/or the scope, duration or other characteristics of the *use* envisaged;

¹ Council Decision 2008/376/EC (OJ L 130/7, 20.5.2008).

² The presentation of the first annual report shall include information for the experts to judge on the objective and the working plan at the beginning of the *project*.

8. "*foreground*" means the results, including information, whether or not they can be protected, which are generated under the *project*. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;
9. "*use*" means the direct or indirect utilisation of *foreground* in further research activities other than those covered by the *project*, or for developing, creating and marketing a product or process, or for creating and providing a service;
10. "*third country*" means a State that is not a Member State;
11. "*irregularity*" means any infringement of a provision of *Community* law or any breach of obligation resulting from an act or omission by a *beneficiary* which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them through unjustified expenditure;
12. "*public body*" means any legal entity established as such by national law, and international organisations;

Part A IMPLEMENTATION OF THE *PROJECT*
SECTION 1 – GENERAL PRINCIPLES

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

1. All the *beneficiaries* together form the *consortium*, whether or not they enter into a separate written *consortium agreement*. *Beneficiaries* are represented towards the *Commission* by the *coordinator*, who shall be the intermediary for any communication between the *Commission* and any *beneficiary*, with the exceptions foreseen in this *grant agreement*.
2. The *coordinator* shall:
 - 1) review the reports to verify consistency with the *project* tasks before transmitting them to the *Commission*;
 - 2) monitor the compliance by *beneficiaries* with their obligations under this *grant agreement*.
 - 3) bundle and transmit any technical reports, financial statements and other deliverables to the *Commission* on behalf of the *beneficiaries*;
 - 4) be responsible for the management of the project and, more particularly, ensure the organisation of one project coordination meeting for each half-year period of the project;
 - 5) inform the other *beneficiaries* of any event of which it is aware that is liable to affect the implementation of the *project*.

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

The *coordinator* shall provide any details reasonably required by the *Commission* for its management of the *grant agreement*.

3. *Beneficiaries* shall fulfil the following obligations as a *consortium*:
 - a) provide all detailed data requested by the *Commission* for the purposes of the proper administration of this *project*;
 - b) carry out the *project* jointly and severally vis-à-vis the *Community*, taking all necessary and reasonable measures to ensure that the *project* is carried out in accordance with the terms and conditions of this *grant agreement*.
 - c) make appropriate internal arrangements consistent with the provisions of this *grant agreement* to ensure the efficient implementation of the *project*. When provided for in Article 1.4 these internal arrangements shall take the form of a written *consortium agreement* (the "*consortium agreement*"). The *consortium agreement* governs *inter alia* the following:
 - i. the internal organisation of the *consortium* including the decision making procedures;

- ii. rules on dissemination and use, and access rights;
 - iii. the settlement of internal disputes, including cases of abuse of power;
 - iv. liability, indemnification and confidentiality arrangements between the *beneficiaries*.
- d) engage, whenever appropriate, with actors beyond the research community and with the public in order to foster dialogue and debate on the research agenda, on research results and on related scientific issues with policy makers and civil society; create synergies with education at all levels and conduct activities promoting the socioeconomic impact of the research.
- e) allow the *Commission* to take part in meetings concerning the *project*.

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

Each *beneficiary* shall:

- a) carry out the work to be performed, as identified in Annex I. However, where it is necessary for the implementation of the *project* it may call upon third parties to carry out certain elements, according to the conditions established in Article II.7 or any special clause in Article 6. The *beneficiary* may use resources that are made available by third parties in order to carry out its part of the work;
- b) ensure that any agreement or contract related to the project, entered into between the *beneficiary* and any third party contain provisions that this third party, including the auditor providing the certificate on the financial statements, shall have no rights vis-à-vis the *Commission* under this *grant agreement*;
- c) ensure that the rights of the *Commission* and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any third party whose costs are reimbursed in full or in part by the *Community financial contribution*, on the same terms and conditions as those indicated in this *grant agreement*;
- d) ensure that the conditions applicable to it under Articles II.4.4, II.10, II.11, II.12, II.13, II.14 and II.22 are also applicable to any third party whose costs are claimed under the *project* according to the provisions of this *grant agreement*;
- e) ensure that the tasks assigned to it are correctly and timely performed;
- f) inform the other *beneficiaries* and the *Commission* through the *coordinator* in due time of:
 - the names of the person(s) who shall manage and monitor its work, and its contact details as well as any changes to that information;
 - any event which might affect the implementation of the *project* and the rights of the *Community*;

- any change in its legal name, address and of its legal representatives, and any change with regard to its legal, financial, organisational or technical situation including change of control;
 - any circumstance affecting the conditions of participation referred to in the multiannual technical guidelines for the research programme of the Research Fund for Coal and Steel³, the *Financial Regulation* and its *Implementing Rules* or of any requirements of the *grant agreement*, especially if and when any eligibility criteria cease(s) to be met during the duration of the *project*.
- g) provide the *Commission* including the European Anti-Fraud Office (OLAF) and Court of Auditors directly with all information requested in the framework of controls and audits;
- h) take part in meetings concerning the coordination, supervision, monitoring and evaluation of the *project* which are relevant to it;
- i) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this *grant agreement* and inform the other *beneficiaries* and the *Commission* of any unavoidable obligations which may arise during the duration of the *grant agreement* which may have implications for any of its obligations under the *grant agreement*;
- j) ensure that it complies with the provisions of the state aid framework;
- k) carry out the *project* in accordance with fundamental ethical principles;
- l) endeavour to promote equal opportunities between men and women in the implementation of the *project*;
- m) have regard to the general principles of the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers recruited for the *project*;
- n) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the *project*.
- o) forward to the *coordinator* the data needed to draw up the reports provided for in Article II.4.1.a and the corresponding financial statements,
- p) notify the *Commission* through the *coordinator* in due time if the total actual staff costs are expected to exceed by 20% or more the staff cost amount initially agreed during the grant agreement preparation forms. The Commission shall seek the advice of the corresponding *Technical Group* on the notification. In absence of any notification before the *closing date of the project*, the staff cost amount agreed during the grant agreement negotiations will be retained and used as an upper ceiling.

³ Council Decision 2008/376/EC (OJ L 130/7, 20.5.2008).

SECTION 2 – REPORTING AND PAYMENTS

II.4. Reports and deliverables

1. The *consortium* shall submit a **periodic report** to the *Commission* which shall comprise:

a) **A technical report**

The *beneficiaries* shall submit to the *coordinator* all the necessary scientific documents or technical information concerning their work, which the *coordinator* needs to provide the *Commission* with the technical reports that it requires. As part of the *project* carried out by the *beneficiaries* under this *grant agreement*, the *coordinator* shall produce and forward the following documents to the *Commission* and its appointed experts, as set out below. The *beneficiaries* agree to participate in a reasonable number of meetings to present and discuss the technical reports with the *Commission* and its appointed experts.

i. Annual reports

Annual reports cover the results obtained during each calendar year⁴. They shall give a concise description of the work carried out and the results obtained and shall include all necessary managerial information and the planning of future research activities. A detailed annual report including an overview of all the results obtained in the *project* may be requested by the *Commission*, where appropriate, for presentation to the relevant *Technical Group*.

Annual reports shall be submitted through the *coordinator* in two copies within 90 days of the corresponding calendar year elapsing.

An annual report is not due for the calendar years in which the mid-term technical implementation report and the final technical report are due respectively.

ii. Mid-term technical implementation report

The mid-term technical implementation report shall present full details of the work carried out and the results obtained during the first reporting period as referred to in Article 4, as well as a discussion of the results and conclusions. It shall contain all necessary managerial information and the planning of the activities for the next years, and shall also include results already presented in all previous annual reports.

However, the results obtained during this period shall also be incorporated in the final technical report as referred to in point iii) of Article II.4.1.a hereafter.

The mid-term technical implementation report shall be submitted through the coordinator in two copies not later than 90 days from the end of the first reporting period as referred to in Article 4.

⁴ For a project starting for instance on a 1st of July, it is understood that the first annual report covers only the period from 1/7 until 31/12.

The mid-term technical implementation report shall be presented by the *coordinator* to the relevant *Technical Group* as referred to in Article II.1. Upon prior request in exceptional and duly justified cases, the Commission may accept the presentation by another *beneficiary*.

iii. Final technical report

The final technical report, including a summary, shall give a detailed description of the work carried out and of the results obtained during the entire duration of the *project*. It shall draw particular attention to any new *foreground* gained through the *project* and comprise a *Plan for using and disseminating the foreground*.

The final technical report shall be submitted through the coordinator in two copies not later than 90 days from the beginning of the calendar year following the *closing date of the project*

The final technical report shall be presented by the *coordinator* to the relevant *Technical Group* as referred to in Article II.1. Upon prior request in exceptional and duly justified cases, the Commission may accept the presentation by another *beneficiary*.

Where the work is completed before the *closing date of the project*, the related technical reports shall cover the period up to that date.

iv. Publishable report

Not later than three months after the approval of the final technical report, the *coordinator* shall forward to the *Commission* a publishable version of the final technical report including the modifications requested by the *Commission*, if any, for publication via any suitable media.

For pilot and demonstration *projects* the publishable version of the report can be a synthesis of the final technical report approved.

The publishable report shall be submitted in a suitable electronic format conforming to the rules of publishing communicated by the *Commission*.

- b) A **financial statement**, from each *beneficiary* together with a summary financial statement consolidating the claimed *Community* contribution of all the *beneficiaries* in an aggregate form, based on the information provided in Form C (Annex VI) by each *beneficiary*.

Financial statements shall be submitted through the *coordinator* in one signed copy in accordance with the following schedule:

- a mid-term financial statement not later than 90 days from the end of the first reporting period;

- a final financial statement not later than 90 days from the beginning of the calendar year following the *closing date of the project*.

In case that a final financial statement has not been received until the 31/12 of the calendar year following the *closing date of the project*, the Commission is entitled to proceed to the closure of the project account on the basis of the assumption that the *beneficiary(ies)* concerned do not claim any costs for the entire project.

c) **A certificate on the financial statements**, in the following cases:

- i. on each final financial statement, covering the costs of the entire *project*
- ii. when requested by the Commission, on justified grounds, in respect of any payment, depending on the assessment of the management risk;

Certificates on the financial statements shall certify that the costs claimed and the *receipts* declared during the period for which they are provided, as well as the declaration of the interest yielded by the pre-financing meet the conditions required by this *grant agreement*.

Where third parties' costs are claimed under the *grant agreement*, such costs shall be certified in accordance with the provisions of this Article.

The auditor shall include in its certificate that no conflict of interest in establishing this certificate exists between itself and the *beneficiary* or the third parties which costs are claimed.

Certificates on the financial statements shall be prepared and certified by an external auditor and shall be established in accordance with the terms of reference attached as Annex VII (Form D) to this *grant agreement*. Each *beneficiary* is free to choose any qualified external auditor, including its usual external auditor, provided that the cumulative following requirements are met:

- i. the auditor must be independent from the *beneficiary*;
- ii. the auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8th Council Directive on statutory audits of annual accounts and consolidated accounts⁵ or any *Community* legislation replacing this Directive. *Beneficiaries* established in *third countries* shall comply with national regulations in the same field and the certificate on the financial statement provided shall consist of an independent report of factual findings based on procedures specified by the *Community*.

Public bodies and secondary and higher education establishments may opt for a competent public officer to provide their certificate on the financial statements,

⁵ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that entity and that the independence of that officer, in particular regarding the preparation of the financial statements, can be ensured.

Certificates by external auditors according to this Article do not affect the liability of *beneficiaries* nor the rights of the *Community* arising from this *grant agreement*.

2. The *consortium* shall transmit the technical reports and other deliverables through the *coordinator* to the *Commission* by electronic means, in accordance with Article 7, save the financial statements (Annex VI - Form C) and the certificates on the financial statements (Annex VII – Form D) which shall be sent through the *coordinator* to the *Commission* as originals: Form C must be signed by the authorised person(s) within the *beneficiary's* organisation, Form D must be signed by an authorised person of the auditing entity. In addition, two paper copies of the Technical Reports shall be sent to the *Commission*.
3. The layout and content of the technical reports and financial statements shall conform to the instructions and guidance notes established by the *Commission*.
4. The technical reports submitted to the *Commission* for publication should be of a suitable quality to enable direct publication and their submission to the *Commission* in publishable form indicates that no confidential material is included therein.
5. Deliverables identified in Annex I shall be submitted as foreseen therein.
6. The *Commission* is assisted by the relevant *Technical Group* in the analysis and evaluation of the technical reports and deliverables.

II.5. Approval of reports and deliverables, time limits for approval

1. At the end of each reporting period, the *Commission* shall evaluate the periodic reports and deliverables required by the provisions of Annex I.
2. The *Commission* shall have 45 days from the actual date of receipt of the mid-term financial statement referred to in Article II.4.1.b or from the date of presentation by the *coordinator* of the mid-term technical implementation report as referred to in Article II.4.1.a to the relevant *Technical Group*, whichever is the latest, to approve or reject the documents submitted by the *coordinator* or to request additional supporting documents or information under the procedure laid down in Article II.5.5. In that case, the *coordinator* shall have 45 days to submit the additional information or documents requested.
3. The *Commission* shall have 45 days from the actual date of receipt of the final financial statement referred to in Article II.4.1.b, or from the date of presentation by the *coordinator* of the final technical report as referred to in Article II.4.1.a to the relevant *Technical Group*, or from the date of submission of the publishable report as referred to in Article II.4.1.a, whatever is the latest, to approve or reject the documents submitted by the *coordinator* or to request additional supporting documents or information under the

procedure laid down in Article II.5.5. In that case, the *coordinator* shall have 45 days to submit the additional information or new documents requested.

4. The absence of a response from the *Commission* within this time-limit shall not imply its approval. However, the *Commission* should send a written reply to the *consortium* in accordance with paragraph 5. The *Commission* may reject periodic reports and deliverables even after the time-limit for payment. Approval of the periodic reports shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and do not imply exemption from any audit or review.
5. After receipt of the reports and after the relevant *Technical Group* has met, the *Commission* may:
 - a) approve the reports and deliverables, in whole or in part or make the approval subject to certain conditions;
 - b) ask the *coordinator* or the relevant *beneficiary* for supporting documents or any additional information it deems necessary to allow the approval of the documents.

Requests for additional information or new documents shall be notified to the *coordinator* or to the relevant *beneficiary* in writing or by electronic mail. The *coordinator* shall have the period laid down in Article II.5.3 to submit the information or new documents requested.

If additional documents are requested, the time limit for scrutiny shall be extended by the time it takes to obtain the documents concerned.

- c) reject the reports and deliverables by giving an appropriate justification, ask for the submission of new documents or, if appropriate, start the procedure for termination of the *grant agreement* in whole or in part.

Where documents are rejected and new documents requested, the approval procedure described in this Article shall apply. In the event of renewed rejection, the *Commission* reserves the right to terminate the *grant agreement* by invoking Article II.37.

- d) suspend the **time limit** if one or more of the reports or appropriate deliverables have not been supplied, or are not complete or if some clarification or additional information is needed or there are doubts concerning the eligibility of costs claimed in the financial statement and/or additional checks are being conducted. The suspension will be lifted from the date when the last report, deliverable or the additional information requested is received by the *Commission*.

II.6. Payment modalities, time limits for payments

1. The *Commission* shall make the following payments:

- a) a **first pre-financing payment** of the amounts indicated in Annex III⁶ shall be made to each *beneficiary* within 45 days of the latest of the following dates:
- the actual *start date* of the project,
 - the date of entry into force of this *grant agreement*,
 - the date when the last signed Form A of the *beneficiaries* acceding to the *grant agreement* is officially received,
 - where applicable in accordance with Article 6, the date of receipt of the first financial guarantee(s) produced by the *beneficiaries* for the amounts set out in Annex III
- b) for *projects* with two reporting periods, the *Commission* shall make a **second pre-financing payment** corresponding to the amount indicated in Annex III for the second reporting period within 45 days of the latest of the following dates:
- the date of approval by the *Commission* of the corresponding reports and deliverables , as set out in Article II.5
 - where applicable in accordance with Article 6, the date of receipt of the second financial guarantee(s) produced by the *beneficiaries* for the amounts set out in Annex III

Where a *beneficiary* has used less than 70% of its *first pre-financing payment* according to the mid-term financial statement, and notwithstanding the approval by the *Commission* of the mid-term technical implementation report, its subsequent *second pre-financing payment* shall be reduced by the unused amounts of the *first pre-financing payment*.

- c) the *Commission* shall make a **payment of the balance** of the *Community financial contribution* corresponding to the balance of the contribution determined in accordance with Article II.18.

The *final payment* shall be made to the beneficiaries within 45 days following approval by the *Commission* of the corresponding reports and deliverables, as set out in Article II.5.

Where the amount of the corresponding *Community financial contribution* is less than any amount already paid to the *beneficiaries*, the *Commission* shall recover the difference.

Where the amount of the corresponding *Community financial contribution* is more than any amount already paid to the *beneficiaries*, the *Commission* shall pay the difference as the payment of the balance within the limit of Articles 5.1 and II.20.

⁶ Usually 40% for projects with two reporting periods, up to max 80% for projects with one reporting period or in any other duly justified cases

2. The total amount of the first pre-financing payment and second pre-financing payment shall not exceed 80% of the maximum *Community financial contribution* defined in Article 5.
3. Payments by the *Commission* shall be made in Euro.
4. *Beneficiaries* with accounts in Euro shall report costs in Euro and convert costs incurred in other currencies according to their usual accounting practice. *Beneficiaries* with accounts in currencies other than the Euro shall report costs in their local currency. In these cases, the Commission shall make the conversion to Euro by using the conversion rate published by the European Central Bank applicable on the first day of the month following the end of the reporting period.
5. The bank accounts mentioned in Article 5 and Annexes IV (Forms A) respectively shall allow that the *Community financial contribution* and related interest are identified. Otherwise, the accounting methods of the *beneficiaries* or intermediaries must make it possible to identify the *Community financial contribution* and the interest or other benefits yielded.
6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.
7. Payments by the *Commission* shall be deemed to be effected on the date when they are debited to the *Commission's* account.
8. After approval of the reports and deliverables referred to in Article II.5, the *Commission* may suspend **the payment** at any time, in whole or in part for the amount intended for the *beneficiary(ies)* concerned:
 - if the work carried out does not comply with the provisions of the *grant agreement*;
 - if a *beneficiary* has to reimburse to its national state an amount unduly received as state aid;
 - if the provisions of the *grant agreement* have been infringed or if there is a suspicion or presumption thereof, in particular in the wake of any audits and checks provided for in Articles II.22 and II.23.;
 - if there is a suspicion of *irregularity* committed by one or more *beneficiary(ies)* in the performance of the *grant agreement*;
 - if there is a suspected or established *irregularity* committed by one or more *beneficiary(ies)* in the performance of another *grant agreement* funded by the general budget of the European Communities or by budgets managed by them. In such cases, suspension of the payments will occur where the *irregularity* (or suspected *irregularity*) is of a serious and systematic nature which is likely to affect the performance of the current *grant agreement*.

When the *Commission* suspends the payment the *beneficiaries* concerned shall be duly informed of the reasons why payment in whole or in part will not be made. Suspension shall take effect on the date when notice is sent by the *Commission*

9. The reports and deliverables due for one reporting period which are submitted late will be evaluated together with the reports and deliverables of the next reporting period.
10. On expiry of the period for payment specified in this Article, the *coordinator* or any *beneficiary*, shall be entitled to interest in accordance with the following provisions :
 - a) the interest rates shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, increased by three and a half percentage points;
 - b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment as defined in II.6.6, up to the day of payment.

This provision shall not apply to *beneficiaries* that are *public bodies* of the Member States of the European Union.

By way of exception, when the interest calculated in accordance with the provisions of the first subparagraph is lower than or equal to EUR 200, it shall be paid to the *coordinator* or any *beneficiary* only upon a demand submitted within two months of receiving late payment.

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

11. The suspension of the time-limit, of payment or of the project by the *Commission* may not be considered as late payment.
12. At the *closing date of the project*, the *Commission* may decide not to make the payment of the corresponding *Community financial contribution* subject to one month's written notice of non-receipt of a report, of a certificate on the financial statements or of any other *project* deliverable.
13. The *Commission* shall inform the *beneficiaries* of the amount of the payment of the balance of the *Community financial contribution* and shall justify this amount. The *beneficiaries* shall have two months from the date of receipt to give reasons for any disagreement. After the end of this period such requests will no longer be considered and the *consortium* is deemed to have accepted the *Commission's* decision. The *Commission* undertakes to reply in writing within two months following the date of receipt, giving reasons for its reply. This procedure is without prejudice to the *beneficiary's* right to appeal against the *Commission's* decision.

SECTION 3 – IMPLEMENTATION

II.7. Subcontracting

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

Where the *beneficiary* enters into a subcontract it remains bound by its obligations to the *Commission* and the other *beneficiaries* under the *grant agreement* and retains sole responsibility for carrying out the *project* and for compliance with the provisions of the *grant agreement*.

Provisions of this *grant agreement* applying to *subcontractors* shall also apply to external auditors who certify financial statements.

3. Subcontracts related to support services for assistance with tasks that do not represent core tasks of the *project* as identified in Annex I, the costs of which are to be claimed as an eligible cost, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment. Subcontracts concluded on the basis of framework contracts entered into between a *beneficiary* and a *subcontractor*, prior to the beginning of the *project* in accordance with the *beneficiary's* usual management principles may also be accepted. Recourse to the award of subcontracts by a *beneficiary* may not affect the rights and obligations of the *beneficiaries* regarding *background* and *foreground*
4. A *subcontract for research assistance* is a specific type of subcontract meaning a contractual arrangement between a *beneficiary* and a third party for the performance of part of the work on the *project* which cannot be carried out by the *beneficiary* itself.

Where it is necessary for the *beneficiaries* to conclude a *subcontract for research assistance* for certain elements of the work to be carried out, the following conditions must be fulfilled:

- The *subcontract* may only cover the execution of a limited part of the *project*; The cumulative amount of *subcontracts for research assistance* for each *beneficiary* cannot exceed 40% of its total estimated *eligible costs*;
- The *subcontract* may not affect the rights and obligations of the *beneficiaries* regarding *background* and *foreground*; the *beneficiary* is the owner of any results generated by the work carried out under them;
- *Subcontracts* concluded on the basis of framework contracts prior to the beginning of the *project* in accordance with the *beneficiary's* usual management principles may also be accepted.
- Any recourse to *subcontracts for research assistance* while the *project* is under way shall be subject to prior written authorisation by the *Commission*

- An estimation of the costs for the tasks carried out by the third party shall be provided on the specific forms provided by the *Commission*;
- Each *beneficiary* must undertake to ensure that *subcontractors for research assistance* do not enter into further *subcontracts for research assistance*;
- No *subcontract for research assistance* shall be concluded with a *beneficiary* in the *project*;
- The final draft of the *subcontract for research assistance* must be submitted to the *Commission* for approval before its signature. The absence of a response by the *Commission* within 45 days of receipt of the final draft shall be considered as an approval. Not later than four weeks after the last signature, a copy of the agreed *subcontract for research assistance* shall be sent to the *Commission*. The *subcontract for research assistance* shall conform to the rules contained in the model *subcontract for research assistance* provided by the *Commission*.
- No profit margin will be eligible for funding. The *beneficiary* may only charge costs incurred by the *subcontractors for research assistance* in carrying out tasks of the *project*.
- The cost incurred by *subcontractors for research assistance* shall be identified mutatis mutandis in accordance with the provisions of part B of Annex II of the *grant agreement*. The costs of each *subcontractor for research assistance* shall be charged by the *beneficiary* having concluded the subcontract in accordance with the principles established in Articles II.14 and II.15. The *beneficiary* shall provide the *Commission* with:
 - an individual financial statement from each *subcontractor* in the format specified in Form C 4. These costs shall not be included in the *beneficiary's* Form C;
 - a summary financial report consolidating the sum of the eligible costs borne by the *beneficiary* itself and the *subcontractors for research assistance* with which it has concluded contracts for the execution of tasks of the *project*, shall be appended to the *beneficiary's* Form C;
 - certificates on the financial statements which shall cover the costs incurred by *subcontractors for research assistance* .
- When submitting reports referred to in Article II.4, the *consortium* shall identify work performed and resources deployed by each *subcontractor for research assistance* linking it to the corresponding *beneficiary*.
- The eligibility of the costs incurred by *subcontractors for research assistance* charged by the *beneficiary* is subject to controls and audits of the third parties, in accordance with Articles II.22 and 23.
- Costs incurred by *subcontractors for research assistance* from candidate countries are not eligible under the *grant agreement*, unless otherwise provided under the relevant

European Agreements and their additional Protocols, and in the decisions of the various Association Councils.

- Costs incurred by *subcontractors for research assistance* from *third countries* are not eligible.

II.8. Suspension of the *project*

1. The *coordinator* shall immediately inform the *Commission* of any event affecting or delaying the implementation of the *project*.
2. Acting on behalf of the *beneficiaries*, the *coordinator* may request the *Commission* to suspend the whole or part of the *project* if *force majeure* or exceptional circumstances render its execution excessively difficult. The *coordinator* must inform the *Commission* without delay of such circumstances, including full justification and information related to the event, as well as an estimation of the date when the work on the *project* will begin again. The *Commission* must give its written approval within 60 days.
3. The *Commission* may suspend the whole or part of the *project* where it considers that the *consortium* is not fulfilling its obligations according to this *grant agreement*. The *coordinator* shall be informed without delay of the justification for such an event and the conditions necessary to reinstate the work again. The *coordinator* shall inform the other *beneficiaries*. This suspension takes effect 10 days after the receipt of the notification by the *coordinator*.
4. During the period of suspension, no costs may be charged to the *project* for carrying out any part of the project that has been suspended.
5. If the *Commission* does not terminate the *grant agreement* under Article II.37, the suspension of the whole or part of the *project* may be lifted once the parties to the *grant agreement* have agreed on the continuation of the project and, as appropriate, any necessary modification., including extension of the duration of the *project*, has been identified by means of a written amendment.

II.9. Confidentiality

1. During the *project* and for a period of five years after its completion or any other period thereafter as established in the *consortium agreement*, the *beneficiaries* undertake to preserve the confidentiality of any data, documents or other material that is identified as confidential in relation to the execution of the *project* ("*confidential information*"). The *Commission* undertakes to preserve the confidentiality of "*confidential information*" until five years after the completion of the *project*. Upon a duly substantiated request by a *beneficiary*, the *Commission* may agree to extend this period regarding specific confidential information.

Where *confidential information* was communicated orally, its confidential character must be confirmed by the disclosing party in writing within 15 days after disclosure.

2. Paragraph 1 no longer applies where:

- the *confidential information* becomes publicly available by means other than a breach of confidentiality obligations;
- the disclosing party subsequently informs the recipient that the *confidential information* is no longer confidential;
- the *confidential information* is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;
- the disclosure or communication of the *confidential information* is foreseen by other provisions of this *grant agreement* or the *consortium agreement*;
- the disclosure or communication of *confidential information* is required by the national law of one of the *beneficiaries* and this exception to the confidentiality requirement is foreseen in the *consortium agreement*⁷.

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

4. Notwithstanding the preceding paragraphs, the treatment of data, documents or other material which are classified ("*classified information*") or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and *Community* legislation for such information, including the *Commission's* internal rules for handling *classified information*⁸. Where a *beneficiary* is established in a *third country*, any security agreements between that *third country* and the *Community* shall also apply.

5. The *Commission* shall take reasonable steps to ensure that experts of the *Coal and Steel Technical Groups*, and any other experts appointed where appropriate, providing assistance to it in the management of this *grant agreement* do not disclose or use confidential information provided to them. Details of any such experts intended to exercise functions under Article II.5 (*technical verification*), or under Part C (*IPR*), shall be given to the *beneficiaries* in advance and the *Commission* shall take reasonable account of any objections by the *beneficiaries* for *legitimate interest*.

⁷ As certain national laws (for example regarding freedom of information) may provide that proprietary information made available under a confidentiality requirement must nevertheless be made public in case access is requested, the *beneficiaries* should inform each other of the existence of such national laws and make appropriate arrangements in the *consortium agreement*.

⁸ Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 OJ L 317, 3.12.2001, p. 1 (as last amended by Decision 2006/548/EC, Euratom, OJ L 215, 5.8.2006, p. 38).

II.10. Communication of data for evaluation, impact assessment and standardisation purposes

1. *Beneficiaries* shall provide, at the request of the *Commission*, the data necessary for:
 - the continuous and systematic review of the programme of the Research Fund for Coal and Steel
 - the evaluation and impact assessment of *Community* activities, including the *use* and *dissemination of foreground*.

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

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

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

II.11. Information to be provided to Member States

1. The *Commission* shall, upon request, make available to any Member State any useful information in its possession on *foreground*, provided that the following cumulative conditions are met:
 - the information concerned is relevant to public policy;
 - the *beneficiaries* have not provided sound and sufficient reasons for withholding the information concerned;
 - the applicable *Community* law on *classified information* does not prohibit such action.
2. The provision of information pursuant to paragraph 1 shall not transfer to the recipient any rights or obligations and the recipient shall be required to treat any such information as confidential unless it becomes duly public, or it was communicated to the *Commission* without restrictions on its confidentiality.

II.12. Information and communication

1. The *beneficiaries* shall, throughout the duration of the *project*, take appropriate measures to engage with the public and the media about the *project* and to highlight the *Community* financial support. Unless the *Commission* requests otherwise, any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), must specify that the *project* has received *Community*

research funding and display the European emblem. When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of *projects* to which the European Community contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, *beneficiaries* are exempted from the obligation to obtain prior permission from the *Commission* to use the emblem. Further detailed information on the EU emblem can be found on the Europa web page.

Any publicity made by the *beneficiaries* in respect of the *project*, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the *Community* is not liable for any use that may be made of the information contained therein.

2. The *Commission* shall be authorised to publish, in whatever form and on or by whatever medium, the following information:

- the name of the *beneficiaries*;
- contact addresses of *beneficiaries*;
- the general purpose of the *project* in the form of the summary provided by the *consortium*;
- the amount and rate of the *Community financial contribution* granted to the *project*; after the payment of the balance, the amount and rate of the *Community financial contribution* accepted by the *Commission*;
- the estimated amount and rate of the *Community financial contribution* foreseen for each *beneficiary* in the table of the estimated breakdown of budget in Annex III; after the payment of the balance, the amount and rate of the *Community financial contribution* accepted by the *Commission* for each *beneficiary*;
- the geographic location of the activities carried out;
- the list of *dissemination* activities and/or of patent (applications) relating to *foreground*;
- the details/references and the abstracts of scientific publications relating to *foreground* and, where provided pursuant to Article II.30.4, the published version or the final manuscript accepted for publication;
- the publishable reports submitted to it;
- any picture or any audiovisual or web material provided to the *Commission* in the framework of the *project*.

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

Upon a duly substantiated request by a *beneficiary*, the *Commission* may agree to forego such publicity if disclosure of the information indicated above would risk compromising the *beneficiary's* security, academic or commercial interests.

II.13. Processing of personal data

1. All personal data contained in the *grant agreement* 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 by the Controller solely in connection with the implementation and follow-up of the *grant agreement* and the evaluation and impact assessment of *Community* activities, including the *use* and *dissemination* of *foreground*, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with *Community* legislation and this *grant agreement*.
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 Controller. *Beneficiaries* may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.
3. For the purposes of this *grant agreement*, the Controller identified in Article 7.4 shall be the contact for the *Commission*.

Part B FINANCIAL PROVISIONS

SECTION 1 – GENERAL FINANCIAL PROVISIONS

II.14. Eligible costs of the *project*

1. Costs incurred for the implementation of the *project* shall meet the following conditions in order to be considered eligible:
 - a) they must be actual (net of profit, discounts or refunds);
 - b) they must be incurred by the *beneficiary*;
 - c) they must be incurred during the duration of the *project* as specified in Article 3, with the exception of costs incurred in relation to certificates on the financial statements when requested at the last period and final reviews if applicable, which may be incurred until the due date for the final financial statement specified in Article II.4.1.b;
 - d) they must be determined in accordance with the usual accounting and management principles and practices of the *beneficiary*. The accounting procedures used in the recording of costs and *receipts* shall respect the accounting rules of the State in which the *beneficiary* is established. The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and receipts declared in respect of the *project* with the corresponding financial statements and supporting documents;
 - e) they must be used for the sole purpose of achieving the objectives of the *project* and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;
 - f) they must be recorded in the accounts of the *beneficiary*; in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;
 - g) they must be identifiable and verifiable;
 - h) they must correspond to cost categories defined in Article II.15.
2. Contributions in kind shall not constitute *eligible costs*.
3. The following costs shall be considered as non-eligible and may not be charged to the *project*:
 - a) identifiable indirect taxes including value added tax,
 - b) duties,
 - c) interest owed,

- d) provisions for possible future losses or charges,
- e) exchange losses, cost related to return on capital,
- f) costs declared or incurred, or reimbursed in respect of another *Community project*,
- g) debt and debt service charges, excessive or reckless expenditure,
- h) doubtful debts.

4. *Eligible costs* shall be broken down into the following four categories:

- equipment,
- staff,
- operating costs,
- indirect costs (overheads)

5. No cost may be eligible if not claimed in the mid-term and final financial statements as referred to in Article II.4.1.b.

II.15. Identification of direct and indirect costs

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

1.1. Equipment

The costs of purchasing or hiring equipment which are directly related to the execution of the *project* shall be chargeable as direct costs. The eligible costs for leasing of equipment shall not exceed any eligible costs for its purchase.

By way of an exception to Article II.14, and subject to prior written authorisation of the *Commission*, *eligible costs* include equipment purchased specifically for the *project* within the six months preceding the *start date* or equipment which is the property of a *beneficiary* and has not been fully depreciated when the research begins.

Notwithstanding Article II.14.1 (d), *eligible costs* shall be calculated according to the following formula:

$$\frac{A}{B} \times C \times D$$

- A = the period in months during which the equipment has been used for the *project* after its delivery;
- B = 60 months or, if applicable, time period as specified in Article 6;
- C = purchase cost of equipment;
- D = percentage usage of equipment on the *project*.

1.2. Staff

1.2.1. With regard to personnel costs, only the costs of the actual hours worked by the persons directly carrying out work under *the project* may be charged. Such persons must:

- be directly hired by the *beneficiary* in accordance with its national legislation,
- work under the sole technical supervision and responsibility of the latter, and
- be remunerated in accordance with the normal practices of the *beneficiary*.

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

1.2.2. The costs of actual hours devoted exclusively to the *project* by scientific, post-graduate or technical staff and the staff costs of manual workers directly employed by the *beneficiary* shall be chargeable. Any additional staff costs, such as scholarships, shall require the *Commission's* prior written approval. All working hours charged must be recorded and certified. No administrative staff can be accounted as *eligible costs*.

1.2.3. All working hours charged must be recorded for each individual carrying out the work throughout the duration of the *project*. This requirement will be satisfied by, at the minimum, the maintenance of time records, certified at least monthly by the designated *project* manager, or an authorised senior employee of the *beneficiary*.

1.2.4. Staff costs shall comprise actual staff costs and shall be calculated according to the following formula:

$$\text{WH} = \frac{\text{S}}{\text{PT}} \times \text{WH}$$

WH = Working Hours

Working hours to be charged as referred to in Article II.15.1.2.2. Estimates of hours worked are not allowable.

S = Salary costs [€/annum]

Salary costs charged should be taken from the payroll account and should be the total yearly gross remuneration plus the employer's portion of social charges (e.g. holiday pay, pension contributions, health insurance and social security payments). Salary costs must be calculated individually for each staff member.

In the case of consultants, their costs will be considered as personnel costs provided the consultant works under the direct instructions and supervision of the beneficiary, the work of the consultant is performed in the premises of the beneficiary, the remuneration is based on working hours (rather than on the delivery of an specific output) and the costs of employing a consultant are not significantly different from the personnel costs of employees of the same category working under a labour law contract for the beneficiary. In these cases, the costs excluding VAT should be taken from the invoice received for the work performed. Invoices should indicate the *project* on which the persons have worked, the tasks carried out and the hours spent.

PT = Productive time [hours/annum]

- Total productive hours should represent the total workable hours based on the contract of employment less, if applicable, a provision for non-chargeable time (maximum 15 days/year, e.g. for sickness, training, detachments) according to the actual situation of the *contractor*.

No overtime should be charged to *Commission projects*, and the time charged for each researcher shall not exceed the productive time.

- As an indication, productive time to be typically taken into consideration per full time employee is 1600 hours/annum.

1.2.5. Only actual staff costs are eligible under this Grant Agreement; however, in the mid-term financial statements, beneficiaries may opt to declare provisionally staff costs in a non-individual manner on the basis of estimated employment costs per staff category referred to in II.15.1.2.2 which shall be calculated according to the following formula:

WH x AHR

WH = Working Hours

Working hours to be charged as referred to in Article II.15.1.2.2.
Estimates of hours worked are not allowable.

AHR = Average hourly rate per category

Average hourly rates per category may be calculated by dividing the total salary costs for all staff belonging to the category by the total number of working hours.

The possible categories are: scientific and post-graduate staff, technical staff, manual labour staff. If needed, these categories can be further detailed, provided that any sub-division can be clearly and unambiguously identified and allocated to the category under which it is presented.

Total salary costs should be taken from the payroll account and should be the total yearly gross remuneration plus the employer's portion of social charges

(e.g. holiday pay, pension contribution, health insurance and social security payments).

At the end of the project the *beneficiaries* shall report in the final financial statement the total actual staff costs of the *project*. Whenever a certificate on the financial statements as referred to in Article II.4.1.c) is required, these certificates shall certify the total actual staff costs of the *project*. If the actual staff costs differ from the estimated staff costs in the mid-term report, an adjustment to the previously declared costs will be made.

1.3. Operating costs

Operating costs directly related to the implementation of the *project* shall be limited solely to the cost of:

- a) raw materials;
- b) consumables;
- c) energy;
- d) transportation of raw materials, consumables, equipment, products, feedstock or fuel;
- e) the maintenance, repair, alteration and transformation of existing equipment;
- f) IT and other specific services;
- g) the rental of equipment;
- h) analysis and tests;
- i) dedicated workshop organisation;
- j) certificate on financial statements and bank guarantee;
- k) protection of knowledge;
- l) assistance from third parties:

Operating costs other than those under a) b) c) g) and k) claimed as eligible cost must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment.

Notwithstanding the above paragraph, provisions of Article II.7 shall apply to costs related to *subcontracts for research assistance*.

2. All indirect costs, such as overhead costs or overheads, which may arise in connection with the project and which are not specifically identified in the preceding categories including travel and subsistence costs, shall be covered by a flat rate amounting to 35 % of the eligible staff costs as referred to in Article II.15.1.2.

II.16. Upper funding limits

1. For **research projects**, the *Community financial contribution* may reach a maximum of 60% of the total eligible costs.
2. For **pilot and demonstration projects**, the *Community financial contribution* may reach a maximum of 50% of the total eligible costs.
3. For **accompanying measures, support and preparatory actions**, the *Community financial contribution* may reach a maximum of 100% of the total eligible costs.

II.17. Receipts of the *project*

Receipts of the project may arise from:

1. Resources made available by third parties to the *beneficiary* by means of financial transfers:
 - i. shall be considered a *receipt* of the *project* if they have been contributed by the third party specifically to be used on the *project*;
 - ii. shall not be considered a *receipt* of the *project* if their use is at the discretion of the *beneficiary's* management.
2. Income generated by the *project*:
 - i. shall be considered a *receipt* for the *beneficiary* when generated by actions undertaken in carrying out the *project* and from the sale of assets purchased under the *grant agreement* up to the value of the cost initially charged to the *project* by the *beneficiary*;
 - ii. shall not be considered a *receipt* for the *beneficiary* when generated from the *use of foreground* resulting from the *project*.

II.18. Community financial contribution

1. The "*Community financial contribution*" to the *project* shall be determined by applying the upper funding limits as set out in Annex III by *beneficiary* to the actual eligible costs accepted by the *Commission*.
2. The *Community financial contribution* shall be calculated by reference to the cost of the project as a whole and its reimbursement shall be based on the accepted costs of each *beneficiary*.
3. The Community financial contribution cannot give rise to any profit for any *beneficiary*. For this purpose, at the time of the submission of the last financial statement, the final

amount of the *Community financial contribution* will take into account any *receipts* of the *project* received by each *beneficiary*. For each *beneficiary*, the *Community financial contribution* cannot exceed the eligible costs minus the *receipts* for the *project*

4. The total amounts of payments by the *Community* to each *beneficiary* shall not exceed in any circumstances the maximum amount of the *Community financial contribution* per *beneficiary* set in Annex III.
5. Without prejudice to the right to terminate the *grant agreement* under Article II.37, and without prejudice to the right of the *Commission* to apply the penalties referred to in Articles II.24 and II.25 if the *project* is not implemented or is implemented poorly, partially or late, the *Commission* may reduce the grant initially provided for in line with the actual implementation of the *project* on the terms laid down in this *grant agreement*.

Any reduction in the amount of the grant to be paid by the *Commission* shall be effected by:

- reducing the balance of the grant payable when the *project* ends;
 - requesting the *beneficiary* concerned to repay any amounts overpaid, if the total amount already paid by the *Commission* exceeds the final amount which it actually owes.
6. Without prejudice to Article II.22 and II.23, the *Commission* shall adopt the amount of the payment of the balance to be made to the *beneficiaries* on the basis of the documents referred to in Articles II.4 and II.5, which it has approved.
 7. The *beneficiaries* have a period of two months, starting from the date of notification by the *Commission* of the final amount of the grant constituting either the payment of the balance or a recovery order in accordance with Article II.21, or, by default, the date of receipt of the payment of the balance, to request in writing any additional information regarding the determination of the final grant or contesting this determination. After this period, any such requests will not be considered. The *Commission* undertakes to reply in writing within two months starting from the date of receipt of the request for information. This procedure is without prejudice to the right of the *beneficiaries* to appeal against the decision of the *Commission* pursuant to the provisions of Article 8. In line with the provisions of *Community* legislation in this respect, such appeals must be lodged within two months following the notification of the decision to the requester or, by default, the day on which he becomes aware of it.

II.19. Interest yielded by pre-financing provided by the *Commission*

1. *Pre-financing* remains the property of the *Community* until the payment of the balance.
2. Interest generated by pre-financing payments shall only be due to the *Community* if the amount of pre-financing payments exceeds EUR 50 000 per agreement. Interests generated by pre-financing payments up to €750 000 per agreement at the end of each financial year shall be deducted from the payment of the balance of the amounts due to

the beneficiary. Interests generated by pre-financing payments exceeding €750 000 per agreement at the end of each financial year shall be recovered by the *Commission* from each *beneficiary* for each reporting period following the implementation of the agreement.

SECTION 2 – FINANCIAL GUARANTEES AND RECOVERIES

II.20. Financial Guarantees

1. The financial responsibility of each *beneficiary* shall be limited to its own debt.
2. Where required by the provisions of Article 6, the referenced *beneficiaries* shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.⁹ The guarantor shall stand as first call guarantor and shall not require the *Commission* to have recourse against the principle debtor (the *beneficiary*). The financial guarantee shall remain in force until the pre-financing (first and second payments) is cleared against payment of the balance to the concerned *beneficiary*. The *Commission* undertakes to release the guarantee within 30 days following the payment of the balance.

II.21. Reimbursement and recoveries

1. If any amount is unduly paid to a *beneficiary* or if recovery is justified under the terms of the *grant agreement*, the *beneficiary* concerned undertakes to repay the *Commission* the sum in question on whatever terms and by whatever date it may specify.
2. If the obligation to pay the amount due is not honoured by the date set by the *Commission*, the sum due shall bear interest at the rate indicated in Article II.6. Interest on late payment shall cover the period between the date set for payment, exclusive and the date on which the *Commission* receives full payment of the amount owed is reimbursed in full, inclusive.

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

3. Sums owed to the *Community* may be recovered by offsetting them against any sums owed to the *beneficiary*, after informing it accordingly, or by calling in the financial guarantee provided in accordance with Article II.20. The *beneficiary's* prior consent shall not be required.
4. Bank charges occasioned by the recovery of the sums owed to the *Community* shall be borne solely by the *beneficiaries*.
5. *Beneficiaries* understand that under Article 256 of the Treaty establishing the European Community, Articles 164 and 192 of the Treaty establishing the European Atomic Energy Community and as provided by the *Financial Regulation*, the *Commission* may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.

⁹ In exceptional cases, the guarantee may be replaced by a personal joint security provided by a third party (where appropriate, provision for this should be included in Article 6 (Special Clauses)).

SECTION 3 – CONTROLS AND SANCTIONS

II.22. Financial audits and controls

1. The *Commission* may, at any time during the implementation of the *project* and up to five years after the *closing date of the project*, arrange for financial audits to be carried out, by external auditors, or by the *Commission* services themselves including OLAF. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the *Commission*. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the *grant agreement*. They shall be carried out on a confidential basis.
2. The *beneficiaries* shall make available directly to the *Commission* all detailed information and data that may be requested by the *Commission* or any representative authorised by it, with a view to verifying that the *grant agreement* is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete and effective.
3. The *beneficiaries* shall keep the originals - including electronic originals where accepted by the relevant national authorities - or, in exceptional cases, duly authenticated copies – including electronic copies - of all documents relating to the *grant agreement* for up to five years from the *closing date of the project*. These shall be made available to the *Commission* where requested during any audit under the *grant agreement*.
4. In order to carry out these audits, the *beneficiaries* shall ensure that the *Commission's* services and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the *beneficiary's* offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the *project*. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.
5. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the *Commission* or its authorised representative to the *beneficiary* concerned, which may make observations thereon within one month of receiving it. The *Commission* may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the *beneficiary* concerned within two months of expiry of the aforesaid deadline. However, the *Commission* may suspend this time limit in the case that the observations made by the beneficiaries significantly change the content of the audit report.
6. On the basis of the conclusions of the audit, the *Commission* shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made by it and the application of any applicable sanction.
7. The European Court of Auditors shall have the same rights as the *Commission*, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.
8. In addition, the *Commission* may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996

concerning on-the-spot checks and inspections carried out by the *Commission* in order to protect the European Communities' financial interests against fraud and other irregularities¹⁰ and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹¹ Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹².

II.23. Technical audits and reviews

1. The *Commission* may initiate a technical audit or review at any time during the implementation of the *project* and up to up to five years after the *closing date of the project*. The aim of a technical audit or review shall be to assess the work carried out under the *project* over a certain period, *inter alia* by evaluating the *project* reports and deliverables relevant to the period in question. Such audits and reviews may cover scientific, technological and other aspects relating to the proper execution of the *project* and the *grant agreement*.
2. With respect to the Technical Annex (Annex I), the audit or review shall objectively assess the following:
 - the degree of fulfilment of the *project* work plan for the relevant period and of the related deliverables;
 - the continued relevance of the objectives and breakthrough potential with respect to the scientific and industrial state of the art;
 - the resources planned and utilised in relation to the achieved progress, in a manner consistent with the principles of economy, efficiency and effectiveness;
 - the management procedures and methods of the *project*;
 - the *beneficiaries*' contributions and integration within the *project*;
 - the expected potential impact in economic, competition and social terms, and the *beneficiaries*' plan for the *use and dissemination of foreground*.
3. Audits and reviews shall be deemed to be initiated on the date of receipt by the *beneficiary(ies)* of the relevant letter sent by the *Commission*.
4. Any such audit or review shall be carried out on a confidential basis.
5. The *Commission* may be assisted in technical audits and reviews by external scientific or technological experts. Prior to the carrying out of the evaluation task, the *Commission* shall communicate to the *beneficiaries* the identity of the appointed experts. The *beneficiary(ies)* shall have the right to refuse the participation of a particular external scientific or technological expert on grounds of commercial confidentiality.
6. Audits and reviews may be carried out remotely at the expert's home or place of work or involve sessions with *project* representatives either at the *Commission* premises or at the premises of *beneficiaries*. The *Commission* or the external scientific or technological

¹⁰ OJ L 292, 15.11.1996, p. 2.

¹¹ OJ L 136, 31.5.1999

¹² OJ L 136, 31.5.1999

expert may have access to the locations and premises where the work is being carried out, and to any document concerning the work.

7. The *beneficiaries* shall make available directly to the *Commission* all detailed information and data that may be requested by it or the external scientific or technological expert with a view to verifying that the *project* is being/has been properly implemented and performed in accordance with the provisions of this *grant agreement*.
8. A report on the outcome of the audits and reviews shall be drawn up. It shall be sent by the *Commission* to the *beneficiary* concerned, who may make observations thereon within one month of receiving it. The *Commission* may decide not to take into account the observations conveyed after that deadline.
9. On the basis of the experts' formal recommendations the *Commission* will inform the *coordinator* of its decision:
 - to accept or reject the deliverables;
 - to allow the *project* to continue without modification of Annex I or with minor modifications;
 - to consider that the *project* can only continue with major modifications;
 - to initiate the termination of the *grant agreement* or of the participation of any *beneficiary* according to Article II. 38;
 - to issue a recovery order regarding all or part of the payments made by the *Commission* and to apply any applicable sanction.
10. An ethics audit may be undertaken at the discretion of the *Commission* services up to five years after the *closing date of the project*. Paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply *mutatis mutandis*.
11. The *Technical Groups* may visit any site where the *project* is being carried out. They shall submit their findings to the *Commission*.

II.24. Liquidated damages

1. A *beneficiary* that is found to have overstated any amount and which has therefore received an unjustified financial contribution from the *Community* shall, without prejudice to any other measures provided for in this *grant agreement*, be liable to pay damages, hereinafter "*liquidated damages*". *Liquidated damages* are due in addition to the recovery of the unjustified *Community financial contribution* from the *beneficiary*. In exceptional cases the *Commission* may refrain from claiming *liquidated damages*.
2. Any amount of *liquidated damages* shall be proportionate to the overstated amount and the unjustified part of the *Community financial contribution*. The following formula shall be used to calculate *liquidated damages*:

Liquidated damages = unjustified Community financial contribution x (overstated amount/total Community financial contribution claimed)

The calculation of any *liquidated damages* shall only take into consideration the reporting period(s) relating to the *beneficiary's* claim for the *Community financial contribution* for that period. It shall not be calculated in relation to the entire *Community financial contribution*.

3. The *Commission* shall inform the *beneficiary* which it considers liable to pay *liquidated damages* in writing of its claim by way of a registered letter with acknowledgement of receipt. The *beneficiary* shall have a period of 30 days to answer the *Community's* claim.
4. The procedure for repayment of unjustified *Community financial contribution* and for payment of *liquidated damages* will be determined in accordance with the provisions of Article II.21. *Liquidated damages* will be deducted from any further payment or will be subject to recovery by the *Commission*.
5. The *Commission* shall be entitled to *liquidated damages* in respect of any overstated amount which comes to light after the *closing date of the project*, in accordance with the provisions of paragraphs 1 to 4.

II.25. Financial penalties

1. The provisions in this Grant Agreement shall be without prejudice to any administrative or financial sanction that may be imposed on any defaulting *beneficiary* in accordance with the *Financial Regulation* or to any other civil remedy to which the *Community* or any other *beneficiary* may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.

Part C INTELLECTUAL PROPERTY RIGHTS, *USE AND DISSEMINATION*

SECTION 1 – FOREGROUND

II.26. Ownership

1. *Foreground* shall be the property of the *beneficiary* carrying out the work generating that *foreground*.
2. Where several *beneficiaries* have jointly carried out work generating *foreground* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *foreground*. They shall establish an agreement¹³ regarding the allocation and terms of exercising that joint ownership.

However, where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence, subject to the following conditions:

- at least 45 days prior notice must be given to the other joint owner(s); and
 - fair and reasonable compensation must be provided to the other joint owner(s).
3. If employees or other personnel working for a *beneficiary* are entitled to claim rights to *foreground*, the *beneficiary* shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this *grant agreement*.

II.27. Transfer

1. Where a *beneficiary* transfers ownership of *foreground*, it shall pass on its obligations regarding that *foreground* to the assignee including the obligation to pass those obligations on to any subsequent assignee.
2. Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a *beneficiary* is required to pass on its obligations to provide *access rights*, it shall give at least 45 days prior notice to the other *beneficiaries* of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the *foreground* to permit the other beneficiaries to exercise their *access rights*.

However, the *beneficiaries* may, by written agreement, agree on a different time-limit or waive their right to prior notice in the case of transfers of ownership from one *beneficiary* to a specifically identified third party.

¹³ The joint owners may of course agree not to continue with joint ownership but decide on an alternative regime (for example, a single owner with access rights for the other *beneficiaries* that transferred their ownership share).

3. Following notification in accordance with paragraph 2, any other *beneficiary* may object within 30 days of the notification or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its *access rights*.

Where any of the other *beneficiaries* demonstrate that their *access rights* would be adversely affected, the intended transfer shall not take place until agreement has been reached between the *beneficiaries* concerned.

4. Where a *beneficiary* intends to transfer ownership of *foreground* to a third party established in a *third country*, the *Commission* may object to such transfer of ownership of *foreground*, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

In such cases, the transfer of ownership shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the transfer in writing.

II.28. Protection

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

Where a *beneficiary* which is not the owner of the *foreground* invokes its legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.

2. Patent applications relating to *foreground*, filed by or on behalf of a *beneficiary* must include the following statement to indicate that said *foreground* was generated with the assistance of financial support from the *Community*:

The work leading to this invention has received funding from the European Community's Research Fund for Coal and Steel (RFCS) under grant agreement n° [xxxxxx].¹⁴

Furthermore, all patent applications relating to *foreground* filed shall be reported in the plan for the *use and dissemination* of *foreground*, including sufficient details/references to enable the *Commission* to trace the patent (application). Any such filing arising after the final technical report must be notified to the *Commission* including the same details/references.

3. Where the *foreground* is capable of industrial or commercial application and its owner does not protect it and does not transfer it to another *beneficiary*, an *affiliated entity* established in a Member State or any other third party established in a Member State

¹⁴ This statement will have to be translated into the language of the patent filing. Translations in all *Community* languages will be provided.

along with the associated obligations in accordance with Article II.27, no *dissemination* activities relating to that *foreground* may take place before the *Commission* has been informed. The *Commission* must be informed at the latest 45 days prior to the intended *dissemination* activity.

In such cases, the *Community* may, with the consent of the *beneficiary* concerned, assume ownership of that *foreground* and adopt measures for its adequate and effective protection. The *beneficiary* concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.

In the event the *Community* assumes ownership, it shall take on the obligations regarding the granting of *access rights*.

II.29. Use

1. The *beneficiaries* shall *use* the *foreground* which they own or ensure that it is used.
2. The *beneficiaries* shall report on the expected *use* to be made of *foreground* in the plan for the *use* and *dissemination* of *foreground*. The information must be sufficiently detailed to permit the *Commission* to carry out any related audit.

II.30. Dissemination

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

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

The *beneficiaries* may agree in writing on different time-limits to those set out in this paragraph, which may include a deadline for determining the appropriate steps to be taken.

4. All publications or any other *dissemination* relating to *foreground* shall include the following statement to indicate that said *foreground* was generated with the assistance of financial support from the *Community*:

The research leading to these results has received funding from the European Community's Research Fund for Coal and Steel (RFCS) under grant agreement n° [xxxxxx].¹⁵

Any *dissemination* activity shall be reported in the plan for the *use and dissemination of foreground*, including sufficient details/references to enable the *Commission* to trace the activity. With regard to scientific publications relating to *foreground* published before the publication of the publishable report as referred to in Article II.4.1.a), such details/references and an abstract of the publication must be provided to the *Commission* at the latest two months following publication. Furthermore, an electronic copy of the published version or the final manuscript accepted for publication shall also be provided to the *Commission* at the same time for the purpose set out in Article II.12.2 if this does not infringe any rights of third parties.

5. With due regard to provisions under this section, the *Commission* shall ensure that the results, either upon the *closing date* of or during the *project*, are presented or published via any suitable media in order to make them available to interested parties in the European Union.

Beneficiaries are required to provide all reasonable assistance regarding the scientific and technical aspects of any such presentation or publication and, in particular, shall make available the specialists and research officers concerned to act as presenters and/or rapporteurs. *Beneficiaries* shall keep all relevant documents produced during the research work at the disposal of interested parties in the European Union for five years, having due regard where necessary to any rights regarding patents and know-how.

¹⁵ This statement will have to be translated into the language of the dissemination activity. Translations in all *Community* languages will be provided.

SECTION 2 – ACCESS RIGHTS

II.31. Background covered

Beneficiaries may define the *background* needed for the purposes of the *project* in a written agreement and, where appropriate, may agree to exclude specific *background*¹⁶.

II.32. Principles

1. All requests for *access rights* shall be made in writing.
2. The granting of *access rights* may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.
3. Without prejudice to their obligations regarding the granting of *access rights*, *beneficiaries* shall inform each other as soon as possible of any limitation to the granting of *access rights* to *background*, or of any other restriction which might substantially affect the granting of *access rights*.
4. The termination of the participation of a *beneficiary* shall in no way affect the obligation of that *beneficiary* to grant *access rights* to the remaining *beneficiaries*.
5. Unless otherwise agreed by the owner of the *foreground* or *background*, *access rights* shall confer no entitlement to grant sub-licences.
6. Without prejudice to paragraph 7, any agreement providing *access rights* to *foreground* or *background* to *beneficiaries* or third parties must ensure that potential *access rights* for other *beneficiaries* are maintained.
7. Exclusive licences for specific *foreground* or *background* may be granted subject to written confirmation by all the other *beneficiaries* that they waive their *access rights* thereto.
8. However, where a *beneficiary* intends to grant an exclusive licence to *foreground* to a third party established in a *third country*, the *Commission* may object to the granting of such an exclusive licence, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

In such cases, the exclusive licence shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the grant in writing.

¹⁶ Such an exclusion may be temporary (e.g. to permit the adequate protection of the *background* prior to providing access) or limited (e.g. to exclude only one or more specific *beneficiaries*). As *background* is by definition considered to be needed for implementation or use, the impact of such an exclusion on the *project*, particularly regarding an exclusion which does not have a temporary character, should be examined by the *beneficiaries*.

II.33. Access rights for implementation

1. *Access rights to foreground* shall be granted to the other *beneficiaries*, if it is needed to enable those *beneficiaries* to carry out their own work under the *project*.

Such *access rights* shall be granted on a royalty-free basis.

2. *Access rights to background* shall be granted to the other *beneficiaries*, if it is needed to enable those *beneficiaries* to carry out their own work under the *project* provided that the *beneficiary* concerned is entitled to grant them.

Such *access rights* shall be granted on a royalty-free basis, unless otherwise agreed by all *beneficiaries* before their accession to this agreement.

II.34. Access rights for use

1. *Beneficiaries* shall enjoy *access rights to foreground*, if it is needed to use their own *foreground*. Subject to agreement, such *access rights* shall be granted either under *fair and reasonable conditions* or be royalty-free.
2. *Beneficiaries* shall enjoy *access rights to background*, if it is needed to use their own *foreground* provided that the *beneficiary* concerned is entitled to grant them. Subject to agreement, such *access rights* shall be granted either under *fair and reasonable conditions* or be royalty-free.
3. An *affiliated entity* established in a Member State shall also enjoy *access rights*, referred to in paragraphs 1 and 2, to *foreground* or *background* under the same conditions as the *beneficiary* to which it is affiliated, unless otherwise provided for in the *consortium agreement*. As the *access rights* referred to in paragraphs 1 and 2 require that access is needed to use own *foreground*, this paragraph only applies to the extent that ownership of *foreground* was transferred to an affiliate entity established in a Member State or *Associated country*. The *beneficiaries* may provide for arrangements regarding *access rights* or any notification requirements for affiliated entities in their *consortium agreement*, if any.
4. A request for *access rights* under paragraphs 1, 2 or 3 may be made up to one year after either of the following events:
 - a) the *closing date of the project*; or
 - b) termination of participation by the owner of the *background* or *foreground* concerned.

However, the *beneficiaries* concerned may agree on a different time-limit¹⁷.

¹⁷ This can be a longer or shorter time-limit.

FINAL PROVISIONS

II.35. Requests for amendments and termination at the initiative of the *consortium*

1. Amendments to this *grant agreement* may be requested by any of the parties. Requests for amendments and termination shall be signed by the legal representative of the parties and submitted in accordance with Article 7. Any request or acceptance by the *consortium* or a *beneficiary(ies)* shall be submitted by the *coordinator*. The *coordinator* is deemed to act on behalf of all *beneficiaries* when signing a request, an acceptance or rejection letter concerning an amendment as well as when requesting a termination. The *coordinator* shall ensure that adequate proof of the *consortium's* agreement to such an amendment or termination exists and is made available in the event of an audit or upon request of the *Commission*.
2. In the case of change of *coordinator* without its agreement, the request shall be submitted by all other *beneficiaries* or by one of them representing the others.
3. A request for amendment including more than one modification to the agreement shall be considered a package that cannot be separated into several requests and shall be approved or rejected by the other party as a whole, except where the request explicitly states that it contains separate requests that can be approved independently.
4. Requests for the addition of a new *beneficiary* shall include a completed Form B (Annex V), duly signed by such new entity. Any addition is subject to the approval by the *Commission* and the conditions required by the *Financial Regulation*. Such additional entity shall assume the rights and obligations of *beneficiaries* as established by the *grant agreement* with effect from the date of its accession specified in the signed Form B.
5. The amendments may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of the *beneficiaries*.
6. Requests for termination of the participation of one or more *beneficiaries* shall include:
 - the *consortium's* proposal for reallocation of the tasks and budget of that *beneficiary*,
 - the reasons for requesting the termination,
 - the proposed date on which the termination shall take effect,
 - a letter containing the opinion of the *beneficiary* whose participation is requested to be terminated and
 - the reports and deliverables referred to in Article II.4, relating to the work carried out by this *beneficiary* up to the date on which the termination takes effect, together with a comment of the *coordinator* on behalf of the *consortium* on these reports and deliverables.

In the absence of receipt of such documents, the request shall not be considered as a valid request.

7. The letter containing the opinion of the *beneficiary* concerned can be substituted by proof that this *beneficiary* has been requested in writing to express its opinion on the proposed termination of its participation and to send the reports and deliverables but failed to do so within the time-limit established by that notification. This time-limit shall not be inferior to one month. In this case, if no reports have been submitted with the request for termination, the *Commission* shall not take into account any further cost claims of that *beneficiary* and shall not make any further reimbursement for it.

Unless otherwise agreed with the *Commission*, all the tasks of the *beneficiary* whose participation is terminated must be reallocated within the *consortium*.

Requests for termination of the *grant agreements* shall provide the justification for termination and the reports and deliverables referred to in Article II.4 relating to the work carried out up to the date on which the termination takes effect.

II.36. Approval of amendments and termination requested by the *consortium*

1. The parties to this *grant agreement* undertake to approve or reject any valid request for an amendment or termination within 45 days of its receipt. The absence of a response within 45 days of receipt of such a request shall be considered as a rejection.
2. By derogation to paragraph 1, when the *consortium* requests the addition or the termination of the participation of a *beneficiary*, the absence of a response from the *Commission* within 45 days of receipt of such a request constitutes approval, except in cases of absence of the agreement of the *beneficiary* concerned and in cases of appointment of a new *coordinator*, which shall require the written approval of the *Commission*.

Where the *Commission* does not object within this period, it is deemed to have approved the request on the last day of the time-limit. The *Commission* undertakes to send a letter for information purposes in case of tacit approval.

Where the request for the addition or removal of a *beneficiary* is associated with requests for other modifications to the *grant agreement* which are not directly related to this addition or removal, the whole request shall be subject to written approval by the *Commission*.

3. The *Commission's* approval of the requested amendment or termination shall be notified to the *coordinator*, which receives it on behalf of the *consortium*. In case of termination of the participation of one or more *beneficiaries*, the *Commission* shall send a copy to the *beneficiary* concerned.
4. Amendments and terminations shall take effect on the date agreed by the parties; where there is no date specified they shall take effect on the date of the *Commission's* approval.

II.37. Termination of the *grant agreement* or of the participation of one or more *beneficiaries* at the *Commission's* initiative

1. The *Commission* may terminate the *grant agreement* or the participation of a *beneficiary* in the following cases:
 - a) where one or more of the legal entities identified in Article 1 does not accede to this *grant agreement*.
 - b) in case of non-performance or poor performance of the work or breach of any substantial obligation imposed by this *grant agreement* that is not remedied following a written request to the *consortium* to rectify the situation within a period of 30 days;
 - c) where the *beneficiary* has deliberately or through negligence committed an *irregularity* in the performance of any *grant agreement* with the *Commission*;
 - d) where the *beneficiary* has contravened fundamental ethical principles;
 - e) where the required reports or deliverables are not submitted or the *Commission* does not approve the reports or deliverables submitted;
 - f) for major technical or economic reasons substantially adversely affecting the completion of the *project*;
 - g) if the potential *use* of the *foreground* diminishes to a considerable extent;
 - h) where a legal, financial, organisational or technical change or *change of control* of a *beneficiary* calls into question the decision of the *Commission* to accept its participation;
 - i) where any such change identified in h) above or termination of the participation of the *beneficiary(ies)* concerned substantially affects the implementation of the *project*, or the interests of the *Community*, or calls into question the decision to grant the *Community* contribution;
 - j) in case of *force majeure* notified in conformity with Article II.39, where any reactivation of the *project* after suspension is impossible;
 - k) where the conditions for participation in the *project* established by Council Decision No 2008/376/EC of 29 April 2008 and the call for proposals to which the *project* was submitted are no longer satisfied, unless the *Commission* considers that the continuation of the *project* is essential to the implementation of research programme of the Research Fund for Coal and Steel;
 - l) where a *beneficiary* is found guilty of an offence involving its professional conduct by a judgment having the force of *res judicata* or if it is guilty of grave professional misconduct proven by any justified means;
 - m) where further to the termination of the participation of one or more *beneficiaries*, the *consortium* does not propose to the *Commission* an amendment to the *grant agreement* with the necessary modifications for the continuation of the *project* including the reallocation of task of the *beneficiary* whose participation is terminated within the

time limit determined by the *Commission*, or where the *Commission* does not accept the proposed modifications.

n) where a *beneficiary* is declared bankrupt or is being wound up.

2. Termination of the participation of one or more *beneficiaries* at the *Commission's* initiative shall be notified to the *beneficiary(ies)* concerned, with a copy to the *coordinator* and shall take effect on the date indicated in the notification and at the latest 30 days after its receipt by the *beneficiary*.

The termination procedure is initiated by registered letter with advice of delivery or equivalent.

The *Commission* shall inform the *consortium* of the effective date of termination.

In the case of termination of the *grant agreement*, the *coordinator* shall be notified, who shall in turn notify all the other *beneficiaries* and the termination shall become effective 45 days after receipt by the *coordinator*.

3. Within 45 days after the effective date of termination, the *beneficiary(ies)* whose participation is terminated shall submit (through the *coordinator*) all required reports and deliverables referred to in Article II.4 relating to the work carried out up to that date. In the absence of receipt of such documents within the above time-limits, the *Commission* may, after providing 30 days notice in writing of the non-receipt of such documents, determine not to take into account any further cost claims and not to make any further reimbursement and, where appropriate, require the reimbursement of any *pre-financing* due by the *beneficiary(ies)*.
4. Based on documents and information referred to in the paragraphs above, the *Commission* shall establish the debt owed by the *beneficiary* whose participation is terminated.
5. Where the participation of one or more *beneficiaries* is terminated, the *beneficiary(ies)* whose participation is terminated shall reimburse the amount due to the *Commission* within 30 days.
6. Where the *grant agreement* is terminated, the *Commission* shall establish the debt owed by the *consortium* and notify it to each *beneficiary*.

II.38. Financial contribution after termination and other termination consequences

1. In the event of termination any financial contribution from the *Community* is limited to those *eligible costs* incurred and accepted up to the effective date of such termination and of any legitimate commitments taken prior to that date, which cannot be cancelled.
2. By derogation to the above paragraph:
 - in the case of Article II.37.1.a), no costs incurred by the *consortium* under the *project* can be approved or accepted as eligible for reimbursement by the

Community. Any *pre-financing* provided to the *consortium* and any interest generated by the *pre-financing* must be returned in full to the *Commission*.

- in the case of Article II.37.1.b), any financial contribution from the *Community* is limited to those eligible costs incurred up to the date of receipt of the written request to rectify the breach.
- 3. In addition, in the cases of Article II.37.1.b), c), d), e), l) and m) the *Commission* may require reimbursement of all or part of the *Community's* financial contribution. In the case of Article II.37.1.b) and m) the *Commission* shall take into account the nature and results of the work carried out and its usefulness to the *Community* in the context of the specific programme concerned.
- 4. Reports and deliverables submitted in the framework of a termination are deemed to be submitted at the end of the corresponding reporting period.
- 5. Where the *Community* makes a payment after the termination of the participation of a *beneficiary* or after termination of the *grant agreement*, this payment shall be considered as a payment of the balance in relation to such *beneficiary(ies)* or the *project*, respectively and in any case shall be done through the *coordinator*.

Notwithstanding the termination of the *grant agreement* or the participation of one or more *beneficiaries*, the provisions identified in Articles II.9, II.10, II.11, II.12, II.21, II.22, II.23, II.24, II.25, II.35, II.37, II.40, II.41 and Part C of Annex II continue to apply after the termination of the *grant agreement* or the termination of the participation of such *beneficiary(ies)*.

II.39. Force majeure

1. *Force majeure* shall mean any unforeseeable and exceptional event affecting the fulfilment of any obligation under this *grant agreement* by the parties, which is beyond their control and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available for the purpose of performing this *grant agreement* and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute *force majeure*.
2. If any of the *beneficiaries* is subject to *force majeure* liable to affect the fulfilment of its obligations under this *grant agreement*, the *coordinator* shall notify the *Commission* without delay, stating the nature, likely duration and foreseeable effects.
3. If the *Community* is subject to *force majeure* liable to affect the fulfilment of its obligations under this *grant agreement*, it shall notify the *coordinator* without delay, stating the nature, likely duration and foreseeable effects.
4. No party shall be considered to be in breach of its obligation to execute the *project* if it has been prevented from complying by *force majeure*. Where *beneficiaries* cannot fulfil their obligations to execute the *project* due to *force majeure*, remuneration for accepted eligible costs incurred may be made only for tasks which have actually been executed up

to the date of the event identified as *force majeure*. All necessary measures shall be taken to limit damage to the minimum.

II.40. Assignment

The *beneficiaries* shall not assign any of the rights and obligations arising from the *grant agreement* except those cases provided for in Article II.27 (transfer of *foreground*), without the prior and written authorisation of the *Commission* and the other *beneficiaries*.

II.41. Liability

1. The *Community* cannot be held liable for any acts or omissions of the *beneficiaries* in relation to this *grant agreement*. It shall not be liable for any defaults of any products, processes or services created on the basis of *foreground*, including, for instance, anomalies in the functioning or performance thereof.
2. Each *beneficiary* fully guarantees the *Community*, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against the *Community* as a result of damage caused, either by any of its acts or omissions in relation to this *grant agreement*, or by any products, processes or services created by it on the basis of *foreground* resulting from the *project*.

In the event of any action brought by a third party against a *beneficiary* in connection with the performance of this *grant agreement*, the *Commission* may assist the latter upon written request. The costs incurred by the *Commission* in this connection shall be borne by the *beneficiary* concerned.

3. Each *beneficiary* shall bear sole responsibility for ensuring that their acts within the framework of this *project* do not infringe third parties rights.
4. The *Community* cannot be held liable for any consequences arising from the proper exercise of the rights of the *Community* under the *Rules for Participation* or this *grant agreement*.