



ED Decision N.35 of 29/09/2011

**Amendments Guide for Clean Sky Grant Agreements for Partners**

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## 1. WHAT IS AN AMENDMENT?

An amendment to a grant agreement (GA) is a legal act modifying the commitments initially accepted by the parties and which may create new rights or impose new obligations on them, or modifying significant parts of the GA. It allows the parties to modify the GA during its lifetime.

An amendment has the following characteristics:

- It can only be done in writing – an oral agreement is not binding on the parties.
- It enters into force after the signature by the coordinator and the CSJU through an exchange of letters.
- It takes effect on the date agreed by the parties; if no date specified, on the date of the CSJU' s approval (it has no retroactive effect unless agreed by the parties).
- It can only be implemented after the entry into force of the GA and before the final payment is made.
- It has to be signed by persons having the same capacity to represent the legal entity as those who signed the initial GA.
- All the other provisions of the GA not affected by the amendment remain unchanged and continue to have full effect.
- The amendment forms an integral part of the GA.
- It has to be compatible with the rules applicable to the GA (Clean Sky Regulation and Statutes, Financial Rules ...) and with the articles of the GA. For instance, the consortium cannot propose an amendment to allow the coordinator to subcontract its tasks.
- It cannot have the purpose or the effect of making changes to the GA which might call into question the decision awarding the grant or result in unequal treatment of the beneficiaries.

The amendment is effected through an exchange of letters:

- a letter-request from the CSJU or the coordinator on behalf of the consortium,
- a letter of acceptance of the amendment (the CSJU or the coordinator on behalf of the consortium). With an exception in the case of tacit approval of the amendment of Article II.37.2.

As there is no single amendment document, the content of both letters must clearly demonstrate the agreement of the parties. Both letters together form the amendment.

The request for amendment must be complete and must enclose the supporting documents justifying the modifications proposed if necessary.

**The GA may be affected by other types of changes which do not constitute an amendment, but which must be communicated to the consortium or to the CSJU through an information procedure.**

During the information procedure the parties inform each other about circumstances which do not depend on the agreement of the parties and therefore do not require an amendment but change the GA in which a given beneficiary participates.

Examples:

Universal transfer of rights and obligations- Change of legal name, address, etc.

The cases when they must be used and the procedure to follow are detailed in **point 6** of this guide.

## 2. WHEN DOES THE GA NEED TO BE AMENDED?

As a general rule, an amendment is necessary whenever the GA has to be modified. This is typically the case for any change of the data included in the core part of the GA and for changes of Annex I. Requests for changes to any of the standard annexes which were the subject of a CSJU Governing Board Decision cannot be accepted.

In some rare cases the GA gives the parties the possibility to carry out certain modifications without changing the GA. A typical case is the budget transfers described in Article 5.2:

*(...) "Beneficiaries are allowed to transfer budget between different activities and between themselves in so far as the work is carried out as foreseen in Annex I".*

In some other cases, the GA explicitly states that a written amendment is needed, like in Article II.8.5 on the lifting of the suspension of the whole or a part of the project:

*"The suspension of the whole or a 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".*

Finally, there are cases where the need for an amendment must be assessed carefully. For example, an amendment is not needed in the case of a change of name or legal details of a beneficiary that does not imply a change of legal entity. This is not considered an amendment to the agreement. In this case the beneficiary (not the coordinator) will notify the changes to the validation service of the Commission (REA A.1), via the Unique Registration Facility (URF) including any relevant supporting documents. The Commission will enter the information in its IT system(s) and send an acknowledgement to the coordinator and to the beneficiary concerned to inform that it has taken note of the change and that the Commission database has been updated accordingly. For more information on this, see point 6 of this guide.

In some cases the change may be presented as a change of name or details but may in fact go beyond this and may require an amendment. In case of doubt about the nature of the change affecting them, before introducing a request, beneficiaries are encouraged to contact informally for advice, the CSJU officer (s) in charge of the project.

*Example:*

*Company A is a beneficiary in Project X, sells its mobile phone business to company B; even if the same people, research units, etc. continue working in the project: this is not a change of name and requires an amendment to the GA.*

### 3. INTRODUCTION OF AN AMENDMENT REQUEST

#### 3.1. Who (Article II.36.1 and 2 of GA)

*Article II.36 - 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 8. 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 JU.*

*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.*

The parties to the GA are, on the one hand, the CSJU and on the other hand, the beneficiaries.

The initiative to amend the GA is normally taken by the consortium.

However, the CSJU can also propose an amendment e.g. in case of errors to be rectified or modifications of Annex I following a project review. This is also possible when the CSJU submits a "counter-proposal" to a request by the consortium in case it does not completely agree with it. For more information on this see point 4.1.

The coordinator is given a prominent role in the GA, being the intermediary between the consortium and the CSJU. The coordinator is in charge of submitting any request of amendment by the consortium as a whole or at the initiative of one or several beneficiary(ies) and is deemed to act on behalf of all beneficiaries when signing a request, or an acceptance or rejection letter concerning an amendment. Any amendment request or acceptance or rejection letter signed by the coordinator commits the consortium. The CSJU will not usually verify the agreement of all beneficiaries.

However, according to Article II.36.1, the coordinator has to ensure that adequate proof of the consortium's agreement to such an amendment exists and is made available in the event of an audit or upon the request of the CSJU. This means that the proof of the agreement of the beneficiaries must exist even if its submission is not required when the amendment is made. Evidence of agreement does not need to be a formal letter; e-mails or minutes of a project meeting would suffice.

In addition to the consortium's agreement, the coordinator needs to provide the JU with the proof of the prior written agreement by the topic manager, on the issues listed in the Annex, in order to preserve the coherency in the development of whole Clean Sky programme.

The written request should clearly indicate that the modifications are requested in accordance with Article II.36 of the GA or should explicitly state that they are made

on behalf of the consortium. However, should the coordinator not include this reference, the CSJU cannot reject the request on this ground.

Only in the specific case of a change of coordinator without its agreement can beneficiaries submit an amendment request (all of them or one representing the rest of them, in accordance with Article II.36.2).

*Who signs?*

The legally authorised representative of the parties will sign the amendment (either the request or the acceptance letter).

- For the CSJU, the Authorising Officer.
- For the beneficiaries, the legal representative of the coordinator (as mentioned in the first page of the GA), on behalf of the consortium. Should the legally authorised representative of the coordinator have changed, it should notify the CSJU of this change (Article II.3.f).

If the coordinator is to be changed without its agreement, the rest of beneficiaries or one representing the rest of the consortium have to sign the amendment.

### **3.2. How (Articles 8 and II.36)**

#### **Formal procedure:**

The request must be submitted in accordance with Article 8.1 of the GA:

*"1. Any communication or request concerning the grant agreement shall identify the grant agreement number, the nature and details of the request or communication and be submitted to the following addresses:*

*For the Clean Sky Joint Undertaking  
Building TO56 – 4<sup>th</sup> floor B-1049 Brussels Belgium*

*For the coordinator: [name of contact person]  
[contact address]  
(...)*

## **Valid request - conditions**

- The request must be submitted in writing and sent to the address indicated in Article 8.1 of the GA. Requests sent via e-mail or fax are not valid. It has to be signed by the legal representative of the coordinator on behalf of the consortium.
- The model letters enclosed in point 8 of this guide should be used.
- It is not compulsory to send the amendment request by registered letter with acknowledgement of receipt (a request by normal mail may not be rejected by the CSJU only for that reason). However, it is important to use means that can prove the date of receipt of the request. In most of the cases, and in particular concerning the prior written agreement of the topic manager, the coordinator has to send supporting documents for its request; in this case, it must include those documents in the amendment request. All the relevant documents for the amendment have to be registered in the appropriate CSJU databases.
- It has to be introduced in due time.
- It must be unambiguous and refer to the GA which is to be amended (correct GA number).

## **Time limit to initiate the amendment request**

Amendment requests can only be introduced during the lifetime of the GA, i.e. after its entry into force and before the final payment.

Even if there is no time limit for amendment requests mentioned in the GA, amendment requests of the consortium should be introduced before the end of the project, in particular when the extension of the duration of the project or changes to Annex I are requested. However, for final payment obligations the request could be done after the end of the project (e.g. changes in bank account, merger of the coordinator...).

As a general rule requests for amendment should be submitted sufficiently in advance in order to allow a well-timed analysis of the request.

#### **4. APPROVAL AND REJECTION OF A REQUEST (Article II.37)**

##### *II.37. 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 JU 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 JU.*

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

*(...)*

*3. The JU'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 JU shall send a copy to the beneficiary concerned.*

It is highly recommended that before the amendment is formally requested, the coordinator on behalf of the beneficiaries and the CSJU discuss the points that they would like to modify and the conditions for the modification. This can save precious time and resources, as it will ensure that the formal amendment request already includes all required documents.

#### **4.1. What happens when the CSJU receives the request?**

- a) The CSJU can either accept the request by sending an acceptance letter or reject it by means of a letter of rejection.
- b) If the CSJU does not reply within 45 days the absence of a reply is considered a rejection (except in the case of Article II.37.2); therefore, if there is no reply, coordinators are advised to re-contact the CSJU (see point 4.2 and 4.3 below).
- c) If the CSJU agrees in principle to the proposed changes but cannot agree with the request as proposed by the consortium, the CSJU will reject this request and:
  - Suggest that the consortium submits a new request.
  - Or, it may, depending on the circumstances, propose in turn another amendment to the coordinator by means of another (amendment) letter. This proposal will be conditional on the reception by the CSJU of the coordinator's acceptance of it within 60 days of reception, after which date the CSJU offer will expire.

In this case the amendment would enter into force only after the signature of the legal representative of the coordinator (and not of the CSJU, as in the cases where the consortium submits a request).

In this particular case, two conditions are necessary for the amendment to enter into force:

1. The coordinator must explicitly agree with the CSJU proposal within 45 days of its reception (otherwise, there will be tacit rejection).
2. **The CSJU receives the letter from the coordinator accepting the terms proposed within 60 days** (proved by post or any other means) of the reception by the coordinator of the CSJU letter proposing the amendment.

The consortium should accept the content of the CSJU offer in full; in case of disagreement with part of the content, the offer will expire. The consortium may in any case submit a new request.

The date on which the amendment will take effect will be fixed in the letter by the CSJU, in order to avoid uncertainty; if the offer is accepted by the consortium that date will have been mutually agreed, in accordance with Article II.37.4 (see below, point 4.5).

*Example: Consortium sends an amendment request asking for the accession of a new partner and a 10-month extension of the duration of the project; The CSJU sends a letter rejecting the request and proposing the accession of the new partner and a 2-month extension. Another example of a CSJU counter-proposal can be found in point 4.5.2 of this guide.*

The procedure described above also applies when the CSJU initiates an amendment.

#### **4.2. When is the amendment to be approved or rejected?**

The GA states that the parties will undertake to approve or reject the amendment request within 45 (calendar) days of its receipt. Thus, the rule and good practice is that both sides have to explicitly reply to the request. If for any reason the parties do not reply, the principle is tacit rejection – in the absence of a response within 45 days of receipt of the amendment request, it is rejected.

However, the CSJU, on a case per case basis and upon verification that the request is still valid, may accept the original request even after the 45 days limit. In this case the CSJU will obtain confirmation, from the contact person of the coordinator, that the request is still required.

If the CSJU receives the request, the time limit starts on the date of receipt as indicated by the CSJU postal service's signature on the acknowledgement form, if any.

Even though the 45-day period begins only when the CSJU has received a valid request (see point 3.2 above), if a document is missing or not signed or the request is deficient in any way, the CSJU may bear the burden of proving that the request was invalid. For this very reason, if the request cannot be fully dealt with immediately, it is strongly recommended that upon receipt of the request the competent service checks at least that it is valid in accordance with Article II.36.

**This is essential in the case of tacit amendment, where the only reason to reject a request after the 45 days would be its absence of validity.**

If a request is invalid, the CSJU has to indicate it in writing to the coordinator stating that the request does not fulfil the conditions of the GA and give the reasons for this. (This applies to documents sent by coordinators with a clear indication that they constitute a request to amend the GA. The communication from the CSJU should be in writing.)

**4.3. Tacit approval**

Article II.37.2 is an exception to the "negative silence" rule. When the consortium requests the addition or the termination of the participation of a beneficiary, and the request is valid (see above point 3.2), the "silence" of the CSJU within the 45-day period is positive and constitutes tacit approval (with the exceptions mentioned in this article).

If the request is not valid, there is no tacit approval, but the CSJU will have to prove the non-validity of the request.

If the CSJU does not object during the 45-day period, it is deemed to have approved the request on the last day of the time-limit. Then, the CSJU must send a letter for information purposes to the coordinator (with a copy to the beneficiary concerned) according to the model provided in point 8 of this guide. This letter should be sent as soon as possible and contain a brief reference to the acceptance of the request.

Nevertheless, in three cases of changes in the consortium (addition & termination), the GA states that explicit approval by the CSJU is always necessary:

- When the beneficiary concerned by the termination of participation does not agree with the request;
- In cases of appointment of a new coordinator;
- When the request for addition or removal is associated with requests for other modifications to the GA which are not directly related to the addition or removal of a beneficiary.

These cases require the written approval by the CSJU (explicit approval).

**4.4. Approval of request including more than one modification to the GA**

*Article II.36*

*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.*

*Article II.37.2 last paragraph*

*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 JU.*

It happens in practice that the coordinator combines in one amendment request various modifications of the GA (e.g. extension of project duration, modification of responsibilities for work packages etc). The general principle is that when the request includes more than one modification to the GA it must be considered as a package that cannot be separated into several requests. Therefore, the CSJU cannot accept some of the modifications proposed and reject others. The whole package has to be explicitly approved or rejected.

Nevertheless, when the amendment request explicitly states that it contains separate requests that can be approved independently; each request can be treated separately.

If an amendment request combines modifications subject to an explicit approval with modifications relating to the consortium composition, which are normally the subject of tacit approval, the whole request needs the explicit approval of the CSJU.

The tacit approval procedure only applies for requests related to the addition or termination of beneficiaries associated with requests for other modifications to the GA which are directly related to the addition or termination (e.g. request combined with the related changes to Annex I). Here tacit approval applies if changes to Annex I are limited to the transfer of tasks from one partner to another and not changes in the tasks themselves).

#### **4.5. Entry into force and effect**

##### **4.5.1. "Entry into force"**

**"Entry into force" refers to the date upon which the amendment has legal force and effect.**

The amendment request will only enter into force upon signature by the parties (the CSJU and the coordinator on behalf of the consortium).

*Article 11: Entry into force of the Grant Agreement*

*This Grant Agreement shall enter into force after its signature by the coordinator and the JU, on the day of the last signature.*

When the consortium sends the request, the amendment enters into force on the date of the CSJU's signature. The amendment being a modification to the GA, its entry into force follows Article 11 of the GA.

When the CSJU sends the request, it will enter into force on the date of the signature by the coordinator, and is subject to the conditions set out in the letter sent by the CSJU.

When the approval is tacit, the amendment enters into force on the 45<sup>th</sup> day after the reception of the request.

#### 4.5.2 "Taking effect"

**"Taking effect" means the date from which the action/effects described in the amendment apply.** The GA stipulates:

*Article II.37.4*

*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 JU's approval.*

This date may be the same as the one of entry into force (i.e. if there is no specific date agreed and the CSJU signs last). However, if the amendment request specifies a date(s) on which the whole amendment or one of each of the individual modifications requested takes effect, and the amendment is accepted by the other party, it will take effect on that date(s). If no date is fixed, the amendment takes effect on the date of the approval letter of the CSJU.

In the cases where the CSJU initiates the amendment, the letter must include a date from which the amendment takes effect. The acceptance of the CSJU's offer by the consortium will imply the acceptance of this date. It could also include an indication that the parties have agreed that it will take effect on the date of the signature by the coordinator's legal representative.

*Examples:*

1. *The CSJU accepts on 12/09/2008 an amendment requested on 01/08/2008 to add a new beneficiary in the GA. The consortium requests that this addition takes effect from 01/07/2008.*

*This amendment enters into force on 12/09/2008 (date of signature by the CSJU) but following the CSJU acceptance, the addition will take effect as from 01/07/2008, and costs incurred by that new beneficiary will be eligible as from that date. This is possible because this request has been included in the amendment. If the consortium request had not included a fixed date, the amendment would take effect from the date of the CSJU's signature (12/09/2008), in other words, the same date as the entry into force.*

2. *Alternatively, the CSJU may not agree with the date proposed by the consortium and on 10/09/2008 (i.e. before the 45 calendar days limit) sends a counter-proposal fixing the date of incorporation on 01/09/2008. The proposal of the CSJU indicates that it will expire if it has not received an acceptance letter from the coordinator within 60 days of the reception of the letter. Following this, the CSJU receives the acceptance letter on 15/10/2008, signed by the coordinator's legal representative on 07/10/2008.*

*In this last case, the amendment will enter into force on the date of the signature by the coordinator's legal representative (07/10/2008), but it will take effect from the 01/09/2008.*

3. *Tacit approval: The CSJU receives on 01/08/2008 a request for amendment to add a new beneficiary in the GA. The consortium requests that this addition takes effect from 01/07/2008. The request is valid but the CSJU does not reply; the amendment will be tacitly approved and will enter into force 45 days after its reception by the CSJU, (i.e. on 15/09/2008). It will take effect from 01/07/2008, as requested by the consortium.*

## **5. AMENDMENT CASES AND SUPPORTING DOCUMENTS:**

### **5.1. REMOVAL OF ONE OR MORE LEGAL ENTITIES FROM THE LIST OF BENEFICIARIES IN ARTICLE 1.1 DUE TO THEIR NON-ACCESSION TO THE GA**

In this case, since the legal entity has never become a beneficiary the termination of its participation is not needed.

Nevertheless, in these cases, Article 1.1 of the GA and Annex I must be modified to reallocate the tasks and its corresponding budget initially foreseen to be performed by this entity and possibly to include a new beneficiary to take over those tasks. A request for amendment must be submitted by the coordinator, on behalf of the consortium, following the procedures described below (addition of a beneficiary and/or modification of Annex I).

### **5.2. ADDITION OF ONE OR MORE BENEFICIARIES**

#### **Procedure:**

#### **Written request**

To add a new beneficiary to the consortium, the coordinator must send to the CSJU a written request for an amendment to the GA on behalf of the consortium, in accordance with the procedure detailed in point 3.2 above.

#### **Requested documents:**

- Modified Annex I to the GA describing the work to be performed by the new beneficiary (including a revised budget breakdown);
- Grant Preparation Forms (GPFs) duly completed and signed by the new beneficiary (as well as their electronic version prepared in NEF, the Negotiation Facility);
- The Participant Identification Code (PIC) of the new beneficiary. If the new beneficiary is not yet registered in the Unique Registration Facility (URF), the beneficiary must self-register at the Participant Portal <http://ec.europa.eu/research/participants/portal> (first creates/signs in to his/her ECAS account then chooses the 'Register' tab under the 'Organisations' tab). The legal documents and financial reports of the new beneficiary if required<sup>1</sup> Form B (duly signed by the coordinator and the proposed new beneficiary).

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<sup>1</sup> For more information: [ftp://ftp.cordis.europa.eu/pub/fp7/docs/rules-verif\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/rules-verif_en.pdf)

If a competitive call to select this beneficiary has been carried out as foreseen in Annex I, the documents required by the GA shall be provided. If a competitive call has not been carried out, justification for the selection of this beneficiary must also be submitted together with the requested documents (see Form B); and, where necessary, justification for not having used a competitive call. Normally, although it is not mandatory, the coordinator will also send an accompanying letter explaining the context and nature of the proposed change.

### **Additional requirements in case of a new beneficiary following a competitive call (Article II.35A)**

When a competitive call is foreseen and required by the terms of Annex I to the GA, the procedure of Article II.35A should be followed before the submission of the amendment request to the CSJU.

Afterwards, the procedure is the same as that of Article II.36, with the additional obligation (as requested in the accession form, (Form B) to enclose the documents proving the means by which the competitive call was published and the names and affiliation of the experts involved in the evaluation).

### **Combination of addition and termination of the participation of a beneficiary(ies)**

A request for addition and termination of participation of a beneficiary(ies) should include the documents requested here for addition as well as those requested in point 7 for termination.

It is important to bear in mind that this type of request may be approved tacitly (if complying with the requirements of points 3.2 and 4.3).

## **5.3. CHANGE OF COORDINATOR**

When the project coordinator changes in an ongoing project, it is necessary to amend the GA to modify in particular the name of the coordinator in the first page of the GA, Articles 5.3, 8, and Annex I. In some situations, the members of the consortium remain the same, but in other cases the change of coordinator results in the termination of its participation or in the incorporation of a new beneficiary to the consortium. The following cases could be foreseen:

### **5.3.1. The coordinator remains in the consortium**

#### *Requested documents for the new coordinator:*

If the new coordinator is already a beneficiary:

- Written request from former coordinator and new coordinator to the CSJU on behalf of the consortium. This letter should be signed by both

the former coordinator and the new one. It could also take the form of two separate requests and letters.

- Modification of the Description of Work (Annex I), including revised budget breakdown and proposal for the reallocation of tasks.
- GPF banking details of the new coordinator duly signed together with the new coordinator's mail and e-mail addresses for communication purposes as per Article 8 of the GA.
- Financial documents (if required according to FP7 rules).

In addition, if the new coordinator is not yet a beneficiary;

- Form B of the new beneficiary.
- GPFs, paper copies from new coordinator duly filled and signed as described in point 5.2, as well as their electronic version.
- Legal and financial documents (if required according to the rules).

### **5.3.2. The participation of the coordinator is terminated (at the request of the consortium)**

In this case, the procedure followed is the one mentioned above under 5.3.1, but in addition the steps foreseen for the termination of the participation of a beneficiary should be followed. They are described in point 7 of this Guide.

The request should be accompanied by the documents listed under Article II.36.6 of the GA. It should be a written request from the former coordinator to terminate its participation.

In the case of termination of the coordinator's participation requested by the consortium without the agreement of the coordinator (Article II.36.2), the request should be signed by all the other beneficiaries forming the consortium or by one of them representing the others (with the agreement of the rest of the consortium that the CSJU could verify). The request should include an "*opinion letter*" from the coordinator who has been requested to leave the consortium or adequate proof that it has been requested in writing to express its opinion, in conformity with the requirements of Article II.36.6. If the old coordinator is bankrupt and cannot sign, a letter from the liquidator would be sufficient.

## **5.4. PARTIAL TRANSFER OF RIGHTS AND OBLIGATIONS**

Termination/addition of a beneficiary ("in-out" clause) refers to the cases where the tasks of a beneficiary which leaves the project are assumed by another legal entity. The term "transfer of rights and obligations" has a different legal meaning, it is used in cases such as: 1) merger and acquisition which go beyond the change of ownership, or 2) when specifically requested by the beneficiaries concerned, in accordance with Article II.41 of the GA.

In fact in the first case, the rights and obligations of the old entity are transferred to the new one, regardless of any amendment. It is the legal act relating to the transfer of rights and obligations and not the amendment which changes the fact that the old entity has been replaced by the new one and this is universally recognised.

However, and unlike the practice in FP6, not all cases of transfer of rights and obligations may require an amendment to the GA.

### **Universal transfer of rights and obligations:**

In this case a legal entity takes over all rights and obligations of another legal entity, which disappears. This is usually the case of takeovers, mergers, etc. The main point here is that the change in the GA is due to the disappearance of the previous beneficiary, and it affects universally all its rights and obligations, not only those related to the GA.

**Universal transfer of rights and obligations do not usually require an amendment of the GA concerned; the procedure to follow will be that of an information procedure detailed in point 6.2 of this guide.**

### **Partial transfer of rights and obligations from one entity to another(s):**

- When the original entity continues to exist: the new legal entity (through the purchase of departments, laboratories, business units of the other entity) absorbs or takes over part of the rights and obligations of another legal entity; accordingly, some of the rights, obligations and "contracts" of the previous beneficiary will be transferred ("novated"), in favour of the new entity which became the beneficiary. However, the previous beneficiary continues to exist as a legal entity; accordingly, some GAs may be affected, and some not, because only part of its rights and obligations are transferred to the new one.

*Example: Company X sells its mobile phone division to company Z; all GAs where the mobile phone division of X was involved will be affected by a transfer of rights and obligations; other GAs where other divisions of company X work will not be affected.*

- When the original entity disappears: contrary to the first case, even if the original beneficiary disappears, in this case there is not a universal transfer to a new single entity, but partial transfers to different ones.

*Example: Company X is bought by two other companies (Y & Z), one of which will absorb the mobile phone division and the other the remaining divisions. Here for some GAs there will be a transfer of rights and obligations from X to Y, for some others from X to Z.*

**In these cases of partial transfer, for reasons of legal certainty and attribution of liabilities, a formal amendment of each GA concerned is required.**

### **Procedure in case of partial transfer of rights and obligations:**

**The beneficiary will request via the coordinator the amendment for those GAs affected by the change. The coordinator must send to the CSJU a written request for an amendment to the GA on behalf of the consortium, in accordance with the procedure detailed in point 3.2 above.**

**In parallel, the LEARs of the legal entity(ies)concerned by the changes must indicate these changes through the Participant Portal (URF) (after logging in to the ECAS account) under 'My Organisation' tab: <http://ec.europa.eu/research/participants/portal> and must upload the supporting documents.**

For the newly created entity, supporting documents must be uploaded and the validation process initiated.

For the original entity, two scenarios can occur:

(i) The original entity continues to exist as a beneficiary and the FP7 status remains unchanged - in this case no action is required from the LEAR and the entity continues to exist in PDM/URF.

(ii) The original entity disappears - the LEAR must inform the CSJU and the CVT, which will record this information in PDM and inform DG BUDG of the fact that the entity is no longer active.

In case of questions, the validation service could be contacted:  
e-mail:: [REA-URF-validation@ec.europa.eu](mailto:REA-URF-validation@ec.europa.eu)

**To request the amendment**, the clause "Partial transfer of rights and obligations" for these amendments as detailed in the model provided in point 8 (8.1.1) of this guide should be used .

*Requested documents:*

- GPFs duly completed and signed by the new beneficiary, as well as the electronic version via NEF
- Legal documents justifying the transfer of rights & obligations and its financial reports, if required.
- The Participant Identification Code (PIC) of any new legal entity. If the new beneficiary is not yet registered in the Unique Registration Facility (URF), the beneficiary must self-register at the Participant Portal <http://ec.europa.eu/research/participants/portal> (first obtain an ECAS account then under 'Organisations' tab choose the 'Register' tab).
- The legal documents and financial reports of the new beneficiary, if required;
- Form B of the new beneficiary.
- Although it is not mandatory, the coordinator will also send an accompanying letter explaining the context and nature of the proposed change.
- In this case, it is important to take into account that the transfer of rights and obligations, without any other change, does not require a modification of the Description of Work (Annex I).

Neither does this clause require necessarily the submission of reports at the moment of the transfer (as in the case of termination), because the new entity takes over the rights and obligations of the old beneficiary in the GA. Accordingly, at the end of the reporting period, either:

- The new beneficiary submits reports for the whole period, including the period before the date of the transfer (single Form C etc.).
- Or the old beneficiary submits reports up to the date of the transfer, and the new beneficiary from that moment up to the end of the reporting period (two Forms C etc.).

The clause for partial transfer of rights and obligations states that any reference to the old entity in the GA applies to the new one, and therefore there is no need for an update of the breakdown of costs, unless the split of costs is required by the beneficiaries or by the Commission in a particular case

## **5.5. MODIFICATION OF PROJECT TITLE AND/OR ACRONYM (Article 2 of GA)**

Since the project title and acronym are mentioned in the first page of the GA and in Article 2, once the GA has been signed, it is only possible to modify them through an amendment. A change of the project title or acronym should only be requested if this is necessary for legal reasons, e.g. if the consortium becomes aware that the acronym is a protected trademark.

### Requested documents:

Written request from the coordinator to the CSJU on behalf of the consortium.

## **5.6. MODIFICATION OF DURATION AND/OR OF START DATE (Article 3 of GA)**

The modification of the duration of the project, number of months, and/or of its start date which are mentioned in Article 3 of the GA, have to be done through an amendment. In principle, the modification of the duration of the project should be requested before the end of the project. Requests for the modification of the duration may imply the modification of the reporting periods.

The consortium has to be aware that even if the duration of the project is extended it will have to finalise the work with the same JU contribution.

The date proposed in the request for modification of the start date of the project cannot be prior to the submission of the proposal.

### Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request.
- If applicable, updated GPFs (paper copy and electronic version via NEF), and updated version of Annex I (including revised budget breakdown).

## **5.7. MODIFICATION OF REPORTING PERIODS (Article 4 of GA)**

The project is divided into reporting periods of a specific duration, which are determined in Article 4 of the GA. Their modification has to be done by way of an amendment to the GA.

### Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request.
- Updated version of Annex I.

## **5.8. CHANGE OF THE FINANCIAL CONTRIBUTION OF THE JU (Article 5.1 of GA)**

The modification of the maximum financial contribution to the project indicated in Article 5.1 of the GA has to be made through an amendment to the GA.

Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request.
- Updated version of Annex I (including revised budget breakdown).
- Updated GPFs (paper copy and electronic version via NEF) if required.

When the modification refers to an increase of the JU contribution, a new JU Governing Board Decision will be necessary before doing the amendment. This can be envisaged only in very exceptional cases.

The modification of the maximum financial contribution may lead to a change in the pre-financing mentioned in Article 6 of the GA and to a change of Annex I.

### **5.9. CHANGE OF BANKING DETAILS (Article 5.3 of GA)**

The modification of the Coordinator's banking details which are mentioned in Article 5.3 of the GA has to be done by means of an amendment.

Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request;
- Updated GPFs, banking details form duly signed, as well as its electronic version via NEF.

### **5.10. CHANGE OF THE AMOUNT OF THE PRE-FINANCING (Article 6 of GA)**

If there is a modification of the maximum JU contribution for the project (see point 4.8 above), it may be necessary to update the amounts Article 6 of the GA refers to, via an amendment to the GA.

Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request;
- Updated GPFs (paper and electronic versions via NEF), budget breakdown;
- Updated version of Annex I.

### **5.11. ADDITION, REMOVAL OR MODIFICATION OF SPECIAL CLAUSES (Article 7 of GA)**

The CSJU has adopted some standard special clauses which establish special conditions to adapt the GAs to the specific programmes, activities and needs and which take precedence over any other provisions of the GA (including its Annexes).

Any addition, deletion or modification of a clause in Article 7 has to be done through an amendment to the GA.

The text of these special clauses has been approved by the CSJU and cannot be modified. However, in particular cases it may be necessary to complete certain fields or in some others there are different options available (e.g. special clause no. 5, name of a third party).

Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request, and
- depending on the type of clause, it will be necessary to provide other information, legal documents, GPFs, budget breakdown, modified Annex I, etc.
- When a new member is included in Special Clause 5 to the GA, the documents and legal validation procedure set for beneficiaries under FP7 are also required.

**5.12. CHANGES TO CSJU'S OR COORDINATOR'S CONTACT DETAILS (Article 8 of GA)**

The details included in Article 8 are those required for the communication between the CSJU and the coordinator. Should the coordinator or the CSJU change its contact name and/or the address mentioned in that article, the GA has to be updated accordingly by means of an amendment.

This Article will always have to be modified in case of change of coordinator.

Also when the name of the beneficiary changes, the "name of the bank account holder" mentioned in the grant agreement, Article 4.3, probably changes as well, and has to be updated accordingly by means of an amendment.

Requested documents:

- Written request from coordinator, on behalf of the consortium, to the project officer justifying the request;
- In case of change of legal details, in parallel, the changes have to be introduced by the LEAR of the coordinator via the Participant Portal <http://ec.europa.eu/research/participants/portal> - after signing in to the ECAS account - under 'My Organisations' tab, and the related supporting documents have to be uploaded.
- If the bank account holder information needs to be updated the coordinator has to submit a new banking information form, with the updated bank account details.

**5.13. MODIFICATION OF ANNEX I (Description of Work)**

The modification of the Description of Work may be required for the following aspects:

- Changes in the work to be performed: an amendment is required for removal/addition of tasks in the GA, or for substantial changes in the distribution of the work between beneficiaries.
- Changes in the estimative budget breakdown: an amendment is only required for the cases of addition and termination of participants and also for substantial changes linked to the above-mentioned changes in the work.
- The introduction of subcontractors and third parties (those foreseen in special clause 5 and other third parties making resources available) For the introduction of third parties under special clause 5, the Participant Identification Code of the

entity has to be provided. If the new beneficiary is not yet registered in the Unique Registration Facility (URF), the beneficiary must self-register at the Participant Portal <http://ec.europa.eu/research/participants/portal> (first obtain an ECAS account then under 'Organisations' tab choose the 'Register' tab), and provide legal documents, following the instructions provided during self-registration.

#### **5.14. AMENDMENT REQUESTED FOR REINSTATEMENT OF THE WORK AFTER SUSPENSION OF THE PROJECT**

According to Article II.8 of the GA, the project or part of it may be suspended by the CSJU (unsatisfactory performance) or on request of the consortium (*force majeure*, exceptional circumstances).

##### *Article II.8*

*2. The coordinator can propose to suspend the whole or part of the project if force majeure or exceptional circumstances render its execution excessively difficult or uneconomic. The coordinator must inform the JU 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.*

*3. The JU 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. 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.*

##### **5.14.1. Request from the coordinator for suspension**

The request is not accepted until the CSJU agrees explicitly to it through a formal letter specifying the terms of the suspension and the conditions needed to re-instate the work.

##### **5.14.2. Suspension by the CSJU**

The CSJU will inform the coordinator of the terms of the suspension, the part of the work or the beneficiary suspended (if applicable) and the conditions for reinstatement. If the continuation of the project is decided at the end of the suspension period, it is then necessary to make an amendment to the GA (extension of the duration, modification of Annex I, etc.). The date of entry into force of the amendment needs to be concomitant with the date of the lifting of the suspension from which date costs may be charged again to the project.

### **5.14.3. Amendment reinstating the continuation of the GA**

In cases where the consortium asks the CSJU for the lifting of the suspension, it could do so in a separate letter from the one requesting the amendment. This letter requesting the amendment would indicate the changes needed or combine the request for the lifting with a request for amendment in the same letter, following the model letter provided under point 8 of this guide, and including the reference to the lifting of the suspension as proposed as an option in the last paragraph of this model.

## **6. CHANGES WHICH DO NOT REQUIRE AN AMENDMENT: INFORMATION PROCEDURE**

The GA may be affected by other types of changes, which do not depend on the agreement of the parties and which do not require an amendment signed by the authorised legal representatives of the parties. However, beneficiaries must inform the CSJU and the other beneficiaries about them, following an **information procedure** lighter than that required for an amendment. The GA sets out, under Article II.3(f), a general obligation to beneficiaries to inform the other beneficiaries of the consortium and the CSJU through the coordinator in due time and in writing about these changes.

Beyond this obligation to inform the coordinator of the project where it is involved, the beneficiary has to inform the CSJU about the changes mentioned here, as they will affect the ongoing GA.

**The main differences between the amendment letter and the information procedure are the following:**

- The LEAR (Legal Entity Appointed Representative) of the beneficiary concerned makes the request for change via the Participant Portal and accesses the Unique Registration Facility (URF) under 'My Organisations' tab after the ECAS registration/login. The beneficiary informs directly the Commission (no need to ask the coordinator of each affected GA to prepare an amendment request).
- The supporting documents are uploaded by the LEAR on behalf of the beneficiary in the URF and not per GA (no need to send multiple amendment requests and supporting documents for each GA where the beneficiary participates).
- Once the changes are validated by the validation service of the Commission, the updated data will be visible for the LEAR in the Participant Portal under 'My Organisations' tab. Beneficiaries should inform the coordinators of the project(s) where they participate of the changes, in conformity with Art. II.3.f of the GA.

- Even if there is no legal obligation for the CSJU to inform the coordinators of the projects about the changes subject to the information procedure, the CSJU may decide to do so (see model 8.8).

**The main cases where the LEARs of the beneficiaries should request changes via the Participant Portal (URF) are the following , and the procedure to be followed in these cases is described in point 6.4 below.**

### **6.1. Change of name and legal details of a beneficiary.**

When a beneficiary undergoes a "**change of name**" or "**legal details**", the LEAR of the beneficiary requests the update of its new details in the Commission database via the Participant Portal (URF), and uploads all legal documents related to that change (copy of the documents related to the change of name and/or legal details in the Registry or Chamber of Commerce, etc.), in order to be sure of the nature of the changes.

In certain cases, what may appear to be a "change of name", may in fact refer to different cases, some of which will require an amendment (e.g. change of legal entity), the procedure to follow then is that established in point 5 of this guide.

When the legal details of a beneficiary are changed, such as its address, no formal amendment is needed.

Examples:

- *X ltd moves its headquarters from Paris to Lille*
- *Nemo s.a. changes its name to Nemorino s.a.*

If however a new entity has been created, an amendment to the GA is required (point 5 of this guide), unless it is a case of a universal transfer of rights and obligations, and the new entity has to be registered in the Unique Registration Facility starting with self-registration at: the Participant Portal <http://ec.europa.eu/research/participants/portal> (first obtain an ECAS account then under 'Organisations' tab choose the 'Register' tab) following the instructions given thereby.

### **6.2. Universal transfer of rights and obligations (UTRO)**

In this case, the "new" entity assumes universally all rights and obligations of the old one, and the "old" beneficiary disappears. This is usually the case of takeovers, mergers, etc. The main point here is that the change in the GA is due to the disappearance of the previous beneficiary, and it affects universally all its rights and obligations, and not only those related to the GA.

Examples:

- *Company X Ltd disappears and becomes X plc*
- *Company X merges with company Z*

**While a UTRO "per se" does not require an amendment, in some cases the changes within the beneficiary may also involve the need for an amendment to the GA. For example, an amendment will be necessary for cases where the beneficiary concerned is the coordinator of the project; in those cases the CSJU will have to amend the GA and the coordinator's banking and communication details**

will have to be updated as well. An amendment could also be required if the transfer implies the necessity to include a special clause in the GA. or another modification which implies an amendment as described in point 5 supra.

*Example: in the case of a merger, the introduction of special clause 30 due to the different indirect cost calculations between the merged entities could be necessary.*

A merger or takeover which may have an impact on the eligibility criteria may lead to the termination of the GA or the participation of this beneficiary at the initiative of the CSJU.

It is also possible that, following this change requiring only an information procedure (i.e. universal transfer of rights), the consortium in a specific GA requests the termination of the participation of the beneficiary, or that one of the beneficiaries in the GA decides to withdraw from the project. In this case, the relevant request for termination should be addressed to the CSJU according to the standard procedure detailed in point 7.

### **6.3. Changes in accounting system of beneficiaries, and mistakes in indirect costs calculation**

Article II.15.3 of the GA refers to the obligation of beneficiaries to use the same method to declare indirect costs for all GAs that it signs in Clean Sky

*"The beneficiary shall apply the option chosen in all grant agreements under CSJU.*

*However, any beneficiary that has opted for the possibilities described in b) and c) for reimbursement of its indirect costs in a previous grant agreement funded under the Clean Sky may opt in this grant agreement for one of the methods described in a). However, it must then use that method in subsequent grant agreements established under the Clean Sky.*

According to this, the following situations may arise:

#### **6.3.1. Changes in the accounting system of beneficiaries**

In conformity with Article II.15.3, any beneficiary can opt to change from a flat rate for overheads to actual indirect costs (including the simplified method). In this case, there is no need for an amendment to existing GAs, as they will continue to apply the system agreed at the moment of the signature. The change will apply only to future GAs signed by the beneficiary. The change request has to be done via the Participant Portal (Unique Registration Facility) by the LEAR. No other action is required.

#### **6.3.2 Mistakes in the indirect costs calculation**

A beneficiary cannot change the option to declare indirect costs in the same GA. However, it is theoretically possible that a change is required due to a mistake during the negotiation; the beneficiary should explain in detail the circumstances of the error.

*Example: Beneficiary having chosen to declare actual indirect costs who later claims to be unable to allocate indirect costs to the projects, and has to correct its option in the GA to the 20% flat rate .*

*What has to be done?*

In this case, the beneficiary is obliged to inform the CSJU of the correction of the indirect cost methodology. This should be accompanied by a statement from a qualified auditor certifying the error in the following cases; 1) in all cases if a certificate of financial statements (CFS) from an auditor has already been submitted by the beneficiary for the project, and 2) in case of doubt at the discretion of the Authorising Officer.

Upon verification, there is usually no need for an amendment to the GA, unless the change implies substantial modifications in the budget.

## **6.4. Procedure**

The procedure to be followed for the cases mentioned above (points 6.1, 6.2 and 6.3) is as follows:

### **6.4.1 Introduction of a request for change by the beneficiary**

#### **(i) If a LEAR (Legal Entity Appointed Representative) has been appointed**

The beneficiary concerned - via its Legal Entity Appointed Representative (LEAR) - introduces the request for change (including the supporting documents) online on the Web interface of the Unique Registration Facility (URF)<sup>2</sup> of the CSJU, which is accessible via the Participant Portal (<http://ec.europa.eu/research/participants/portal>).

The **LEAR** has to:

1. Go to the Participant Portal <http://ec.europa.eu/research/participants/portal> and sign in with his/her ECAS password.
2. Go to 'My Organisations' tab and introduce the requested changes in the given field together with the date from when the change is effective, on the basis of the legal document provided, if applicable. The types of change that can be introduced via this method include:
  - Organisation data;
  - Legal address;
  - FP7 data (including indirect cost model);
  - Status of the organisation;
  - Enterprise data (in particular the SME status)
  - Mergers, acquisitions, etc. resulting in the transfer of rights and obligations from a legal entity.
3. Upload the supporting documents in the 'Document management' section.
4. Finalise his/her request for change by pushing the 'Submit' button on the portal.

Once this procedure is accomplished, in principle, no further communication between the LEAR and the Commission is necessary.

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<sup>2</sup> Before signing grant agreements in FP7, the existence and legal status of participants have to be validated by the Commission. This validation will only be done once in FP7 for each legal entity. Once an entity carries the label "FP7 validated", it can participate in subsequent grants without repeated validation. To implement this principle, a facility called URF (Unique Registration Facility) hosted on the Participant Portal (accessible after ECAS login) has been set up.

However, in case of problems, such as for example missing supporting documents, the validation service of the Commission (REA.A.1) will contact the LEAR by e-mail to request the additional information.

#### **(ii) If no LEAR has been appointed**

Before being able to introduce any change, the beneficiary has to appoint a LEAR for its organisation, who has to be validated first, by the validation service of the Commission .

For further information on the appointment of LEAR's, please follow the steps described on:

- the Cordis portal: [http://cordis.europa.eu/fp7/pp-lear\\_en.html](http://cordis.europa.eu/fp7/pp-lear_en.html); or
- on the Participant Portal FAQ (frequently asked questions) section: <http://ec.europa.eu/research/participants/portal>.

#### **Contact:**

Should you experience any problems, please contact the validation services of the Commission :

e-mail: REA-LEAR-VALIDATION@ec.europa.eu

Research Executive Agency  
FP7 Support (A1)  
COVE 3/48  
1049 Brussels  
Belgium

#### **6.4.2. Commission's action:**

Following the verification and acceptance of the request for change, the Commission updates the information in its IT system(s). The validated changes will then be visible to the LEARs via the Web interface of the URF.

In case of missing information or partial or full refusal of requests for changes, the validation service of the Commission (REA. A.1). will contact the LEAR of the beneficiary by e-mail, requesting additional supporting documents to justify the requested change or inform them of the Commission's decision.

In some circumstances, the CSJU may take the initiative to inform the consortium of any changes (e.g. discovered during an audit of a beneficiary or in the frame of another GA).

#### **6.5. Other cases where the CSJU should be informed**

Apart from the cases mentioned above, the GA foresees under Article II.3 (f) of the GA other cases where there is a general obligation for a beneficiary to inform the CSJU and other beneficiaries through the coordinator of:

- The names of the persons(s) who shall manage and monitor its work, and its contact details as well as any change to that information.
- Any event which may affect the implementation of the project and the rights of the CSJU.
- Any circumstance affecting the conditions of participation referred to Clean Sky Regulation and Statutes, the Financial Rules and its implementing rules or of any requirements of the GA, especially if and when any eligibility criteria cease(s) to be met during the duration of the project.

For these cases not specifically covered in points 6.1-6.3, in accordance with Article 8 of the GA., the only requirement for the beneficiary is to inform the CSJU through the Project Officer.

## **6.6. The specific case of change of authorised representative of a beneficiary**

The case of change of authorised representative as indicated in the GA is of particular significance. In this case, there is no need for an amendment to the GA but the information for the GA concerned should be updated. It is important that when the signature of the authorised representative is required (e.g. amendment) there is no doubt about the validity of the change of the authorised representative.

The change must be treated at the level of each individual GA, by the project officer in charge within the CSJU, as authorising representatives from one legal entity may be different from one GA to another.

Two situations usually arise:

**6.6.1.** It may happen that the change/appointment of an authorised representative is raised within the frame of an amendment request (requested for other reasons) and the signature of the authorised representative (usually the coordinator's authorised representative) does not correspond to the CSJU records. In this particular case, (where there has not been a letter addressed by a beneficiary to the CSJU to inform about the change, but the change is requested within the framework of an amendment request), the amendment procedure described in point 5 of this guide should be used, and the change of authorised representative has to be mentioned in the letter accompanying the amendment request from the coordinator.

In this case, the request should be addressed by the coordinator to the CSJU to the address indicated in Article 8.

**6.6.2.** The beneficiary writes directly to the CSJU to inform about general changes in its authorised representative for the signature of a general individual GA or a series of GA. The beneficiary should send this information to the operational unit and clearly define the extent of the changes proposed, as well as the GA concerned by them.

In both cases the CSJU should receive clear proof of the change of authorised representative; it could be provided by means of a letter in which the previously authorised representative (as appears in the GA) appoints or confirms the appointment of the new person. It could also be proved by means of documents certifying the change.

*Example: Official journal appointing new Rector for a University.*

Other kinds of documents could also be used, including private ones (e.g. appointment by the Board of Directors, etc.) it is preferable to have a letter from the previously authorised representative.

Every operational directorate concerned will update the information for their GA and should confirm the change to the beneficiary (this is not necessary in cases where the signature is required by an amendment, in which case the signature of the amendment by the CSJU suffices).

## **7. TERMINATION AT THE INITIATIVE OF THE CONSORTIUM**

### **7.1. Termination of the participation of (a) beneficiary(ies)**

The request of termination of the participation of a beneficiary also involves a request for amendment.

#### *Who requests and how?*

Any request shall be submitted by the coordinator in accordance with the procedure established in these guidelines, point 3.

The request for termination of the coordinator's participation without its agreement shall be submitted by all other beneficiaries or by one of them representing the others (see point 5.3 of this guide).

#### *Content of the request*

The information and documents specified in Article II.36.6 have to be submitted with the letter of request and, therefore, before the termination. A termination request not including these supporting documents is not valid and has to be rejected, except in the case of the absence of the opinion letter of the beneficiary whose participation is terminated, which has to be considered as the disagreement of the beneficiary concerned. This letter can be substituted by "*... proof that the beneficiary has been requested in writing to express its opinion on the proposed termination and has been asked 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 JU shall not take into account any further claims of that beneficiary and shall not make any further reimbursement for it*" (Article II.36.6, third indent).

When the termination of the participation of a beneficiary is requested by the consortium with the agreement of the beneficiary concerned and there is an amount to be reimbursed by this beneficiary, it is understood that the beneficiary has already reimbursed to the consortium the said amount or will do it rapidly and that, in any case, no action on the part of the CSJU is required to recover this amount. It should then be stated in the request that this amount is at the disposal of the consortium and under its responsibility.

In any other case, for example, when the beneficiary concerned does not agree, or it is not in a position to reimburse (e.g. bankruptcy), this should be explained in the request.

Requested documents:

- Written request from the coordinator, on behalf of the consortium, requesting and justifying the termination of the participation of the beneficiary concerned, including the proposed date on which the termination shall take effect, and the consortium's proposal for reallocation of the tasks and budget of that beneficiary.
- A letter containing the opinion of the beneficiary whose participation is requested to be terminated (if bankrupt, letter of liquidator),
- *The reports and deliverables referred to in Article II.4 (including Form C and CFS if required), 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 these reports and deliverables and a declaration on distribution of payments to this beneficiary by the coordinator<sup>3</sup>.*
- Modified Annex I - Modification of description of work (including revised breakdown of costs)

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

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 *CSJU* shall not take into account any further cost claims of that *beneficiary* and shall not make any further reimbursement for it.

Approval or rejection of the request

The approval or rejection has to follow the procedure foreseen under point 4 of this guide. The *CSJU*, according to Article II.37 of the model GA, undertakes to approve or reject any valid request for termination within 45 days of its receipt.

a) *Approval or rejection of a termination with the agreement of the beneficiary*

For cases where the consortium requests the termination with the agreement of the beneficiary whose participation is to be terminated, the absence of a response from the *CSJU* within 45 days of receipt of such a request shall be considered as approval (tacit approval) of the termination and of the amendment to the GA.

In the cases where tacit approval is applicable, the approval applies only to the termination and not to the content of the reports attached to the request. For the approval of these reports the provisions of Article II.5 apply. This means, that the termination of the participation of the beneficiary is approved and that the reallocation of the tasks proposed is only provisionally approved. There could be a need for the reallocation of tasks which have been reported as having been done but not accepted by the *CSJU* following analysis of the relevant reports and deliverables.

Tacit approval applies also for combined cases of the addition and termination of beneficiaries which are not coordinators. When the request for the addition or removal of a beneficiary is associated with requests for other modifications to the GA which are not directly related to this addition or termination, the whole request shall be subject to the written approval of the CSJU.

*Example:*

*Addition and termination associated with an extension*

*b) Approval or rejection of a termination without the agreement of the beneficiary*

Special care should be taken when the termination of the participation of a beneficiary is requested by the consortium without the agreement of the beneficiary. The CSJU has to take into consideration both the arguments raised by the consortium and by the beneficiary, and has to arbitrate. The CSJU has to give the reasons for its decision to accept or to reject the request for termination. Where the consortium agreement sets out clear rules on terminating the participation of a beneficiary and where these rules have been applied, the CSJU will not oppose the termination.

In the case where the consortium requests the termination without the agreement of the beneficiary whose participation is to be terminated, the absence of a response from the CSJU within 45 days of receipt of such a request shall be considered as a rejection. In these cases, if during the processing of the file, the CSJU foresees that it will not be possible to finalise the analysis before the end of the time-limit, the CSJU will respond within the 45 days by sending an email to the consortium informing it that the file is being processed and that the consortium will be informed of the decision once the request and the reports attached have been analysed.

## **7. 2. Termination of the GA**

*Who requests and how?*

Any request shall be submitted by the coordinator in accordance with the procedure established in this guide, point 3.

*Content of the request (Article II.36.6)*

- The reasons for requesting the termination.
- The proposed date on which the termination shall take effect.
- The reports and deliverables referred to in Article II.4 of the GA.

*Approval or rejection of the request*

The approval or rejection has to follow the procedure foreseen under point 4 of this guide. The CSJU, according to Article II.37 of the GA, undertakes to approve or reject any valid request for 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. In these cases, if the CSJU considers that it will not be possible to finalise the analysis before the end of the time-limit, the CSJU will respond within the 45 days by sending an e-mail to the consortium informing it that

the file is being processed and that the consortium will be informed of the decision once the request and the reports attached have been analysed.

In order to agree on the termination, the CSJU should approve the reports and deliverables submitted. The termination will not be effective until the reports are approved by the CSJU. After the submission of the reports no further costs will be eligible. If the CSJU requests any modification/missing reports only the costs related to the drafting of these reports may be charged to the project.

### **7.3. Notification of the approval or of the rejection of the termination (of both GA and beneficiaries' participation)**

The CSJU's approval or explicit rejection of the requested **termination of the GA** shall be notified to the coordinator, which receives it on behalf of the consortium. In the cases of **termination of a beneficiary's participation**, the CSJU shall also send a copy to the beneficiary concerned.

In case of tacit approval, the CSJU sends a letter for information purposes to the coordinator (with a copy to the beneficiary concerned).

According to Article 8 of the GA, in case of refusal of the notification or absence of the recipient, the beneficiary or the consortium, as the case may be, is deemed to have been notified on the date of the latest delivery, if notification to the coordinator has been sent to one of the addresses mentioned in paragraphs 1 and 2 of this article and to their legal representative. Other beneficiaries are deemed to have been notified if notification has been sent to the address mentioned in Article 1.1.

### **7.4. Date of effect of the termination**

The termination of the grant agreement shall take effect on the date agreed by the parties; where no date is specified it shall take effect on the date of the CSJU's approval.

When the termination of the participation of a beneficiary is requested by the consortium with its agreement tacit approval applies. In these cases the termination takes effect on the 45<sup>th</sup> day after the reception of the request unless retroactive effect is requested. In this case, **the termination is effective from the date proposed in the request.**

## 8. MODEL LETTERS

### 8.1. REQUEST LETTER

#### 8.1.1. MODEL TO BE USED BY PROJECT COORDINATORS

(**Comment:** The following model has to be used by project coordinators to request the CSJU to modify the GA. Coordinators will use the clauses detailed in this model in accordance to their particular amendment request.)

[Insert place and date]

[Insert the CSJU address indicated in Article 8.1 of the GA]

REGISTERED WITH ACKNOWLEDGEMENT OF RECEIPT or BY COURIER  
SERVICE WITH ACKNOWLEDGMENT OF RECEIPT (See point 2.2 of this guide)

Dear [*insert the name of the legal representative who signed the grant agreement*],

Subject: Request for Amendment No. [insert number] to grant agreement No. [insert number] – Project title "[insert Acronym]"

With reference to the above mentioned grant agreement, and in agreement with the (*name of the ITD*) Topic Manager<sup>3</sup>, I request on behalf of the consortium to modify the grant agreement as follows:

#### ***Change of coordinator***

[*Name of initial coordinator*] will no longer assume the role of *coordinator* of the Project and [*name of new coordinator*] will assume this role from [date].

[*This amendment request has to also include the request to modify Article 5.3 and 8 of the GA in order to update the coordinator's banking details and its communication data*].

[*Only in the specific case of a change of coordinator, without its agreement, shall the request be submitted by all beneficiaries or by one representing the others. If all sign, each beneficiary must print clearly below the signature:*

- *the name of the legal entity*
- *the name of legal representative*
- *the corporate seal, if necessary.*

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<sup>3</sup> A matrix listing all the issues which should be object of prior approval by the ITD Topic Manager is attached to this document

**Removal of one or more legal entities from the list in Article 1.1 due to their non-accession to the GA**

The following entit[y][ies] [is][are] removed from the list in Article 1.1 due to [its] [their] non-accession to the grant agreement:

- [insert full name and legal form of the beneficiary(ies)] (national registration number if any)

**Termination of a beneficiary’s (ies’) participation**

The participation of the following [beneficiary][ies] is terminated [from the date[s] specified in the following table] [from the date of the CSJU’s signature] [the 45th day following the date of receipt of the request]:

Full name and legal form of the <b>beneficiary(ies)</b> (national registration number if any)	End date of participation

[Article 1.1][Page 1] of the *grant agreement* is modified accordingly.

**Termination of the grant agreement**

Grant agreement No. [insert number] – Project title "[insert Acronym]" is terminated. The reason for the termination requested is (are):

(Insert explanation)

Termination will take effect as from (insert date).

Reports and deliverables referred to in Article II.4 and relating to the work carried out are enclosed.

**Addition of one or more beneficiary(ies)**

The following entit[y][ies] [[is][are] added as [beneficiary] [ies] with effect from the date[s] specified in the following table:

Full name and legal form of the <b>beneficiary</b> (national registration number if any) established in (full address city/state/province/country), represented by (name of legal representative), (function), [and/or (name of legal representative), (function)], or her/his/their authorised representative	Start date of participation

[Article 1.1][Page 1] of the grant agreement is modified accordingly.

### ***Partial transfer of rights and obligations***

[Full name and legal form of the *beneficiary which* takes over the rights and obligations] (established in (full address/city/state/province/country), represented by (name of legal representative), (function), [and/or name of legal representative), (function)], or her/his/their authorised representative), for the purposes of this grant agreement has taken over the rights and obligations of [*initial beneficiary's name and legal form*], as of "[*insert date*]".

Any reference in the grant agreement, including Annex I and the table of the estimated breakdown of costs, to [*initial beneficiary's name and legal form*] shall be deemed to be a reference to [*name and legal form of the beneficiary which takes over the rights and obligations*], therefore [*name and legal form of the beneficiary which takes over the rights and obligations*] is a member of the consortium identified in Article 1.1.

Notwithstanding the transfer referred to above, the CSJU and/or the European Court of Auditors and their authorised representatives shall continue to enjoy the rights referred to in Articles 22 and 23 of Annex II to the grant agreement in respect of work undertaken by [*initial beneficiary's name and legal form*] which shall continue to be bound by the provisions of the grant agreement and its Annexes relevant to the effective exercise of these rights.

### ***Modification of project title (Acronym)***

[The Acronym of the project is changed from "[*former Acronym*]" to "[*new acronym*]".

Any reference in the grant agreement and its annexes, including Forms A and B, to "[*former Acronym*]" will be deemed to be a reference to "[*new Acronym*]". ]

[The title of the project is changed from "[*former title*]" to "[*new title*]".

Any reference in the grant agreement and its annexes, including Forms A and B, to "[*former title*]" will be deemed to be a reference to "[*new title*]".]

### ***Modification of duration***

The duration of the project specified in Article 3 of the grant agreement is modified as follows:

New *duration*: [insert new number]

### ***Modification of start date***

The start date of the project specified in Article 3 of the grant agreement is modified as follows:

New starting date of the project: [insert new start date]

### ***Modification of reporting periods***

Article 4 of the grant agreement is modified as follows:

- P1: from month 1 to month X
- P2: from month X+1 to month Y
- P3: from month Y+1 to month Z
- (...)
- [final]: from month [N+1] to the last month of the *project*

***Change of the financial contribution of CSJU***

[The financial contribution of CSJU is [increased][decreased] by **EUR [insert increased/decreased amount] ([insert amount in words] EURO).**]

The maximum financial contribution of CSJU specified in Article 5.1 of the grant agreement is modified as follows:

**EUR [insert new amount] ([insert amount in words] EURO)**

This modification takes effect from [insert date] [date of entry into force of this amendment].

***Change of banking details***

The coordinator's banking details indicated in Article 5.3 of the grant agreement are amended as follows:

Name of account holder:

Name of bank:

Account reference: [IBAN/sort code and number]

***[Increase] [Decrease] of the amount of the pre-financing***

The pre-financing is [increased] [decreased] by **EUR [insert increased or decreased amount] ([insert increased or decreased amount in words] EURO).** This [complementary] pre-financing shall be paid to the coordinator within 45 days following the date of entry into force of this amendment.

Therefore, the total **amount of the** pre-financing specified in Article 6 of the grant agreement is modified as follows:

**EUR [insert total amount] ([insert total amount in words] EURO)**

This modification takes effect from [insert date] [the date of entry into force of this amendment].

***Addition, removal or modification of special clauses***

The special clause(s)

No	Text of the special clause



Yours sincerely,

For the coordinator on behalf of all beneficiaries, done at [insert place]

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

Enclosed: [the requested supporting documents]

**8.2.2. MODEL TO BE USED BY THE COORDINATOR TO ACCEPT THE CSJU REQUEST**

[Insert place and date]

[Insert the CSJU address indicated in Article 8.1 of the grant agreement]

REGISTERED WITH ACKNOWLEDGEMENT OF RECEIPT or BY COURIER SERVICE WITH ACKNOWLEDGMENT OF RECEIPT

Dear *(insert the name of the legal representative who signed the Grant Agreement)*,

Subject: Request for Amendment No. [insert number] to grant agreement No. [insert number] – Project title "[insert Acronym]"

Your letter requesting amendment dated [insert date]  
[Ref. insert reference]

With reference to the above letter, this is to inform you that the consortium agrees to your request to modify the grant agreement as follows:

**(Comment:** Insert the appropriate clauses from the model request (see point 10.1 of this document).

This amendment comes into force on the date of signature of this letter, and with effect from the date mentioned in the CSJU letter.

Yours sincerely,  
.....

For the coordinator on behalf of all beneficiaries,  
Name of the legal entity:  
Name of legal representative:  
Stamp of the organisation (if applicable):

Signature of legal representative:  
Date:

## Annex

### Matrix related to issues subjects to prior approval by Topic Managers

<b><u>ISSUE</u></b>	<b><u>PRIOR APPROVAL NEED</u></b>
<i>Change of coordinator</i>	Y
<i>Removal of one or more legal entities from the list in Article 1.1 due to their non-accession to the GA</i>	Y
<i>Termination of a beneficiary's (ies') participation</i>	Y
<i>Termination of the grant agreement</i>	Y
<i>Addition of one or more beneficiary(ies)</i>	Y
<i>Partial transfer of rights and obligations</i>	Y
<i>Modification of project title (Acronym)</i>	Y
<i>Modification of duration</i>	Y
<i>Modification of start date</i>	Y
<i>Modification of reporting periods</i>	Y
<i>Change of the financial contribution of CSJU</i>	Y
<i>Change of banking details</i>	N
<i>Addition, removal or modification of special clauses</i>	Y
<i>Change of coordinator's [name] [and] [address(es)]</i>	N
<i>Modification of Annex I - Description of Work</i>	Y