Horizon 2020
Annotated Model Grant Agreements

General Model Grant Agreement
and specific Model Grant Agreements (ERC, SME Instrument, ERA-NET Cofund, PCP-PPI Cofund, EJP Cofund, Framework Partnerships and Specific Agreements)

Version 1.6.1
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Disclaimer:
The purpose of this document is to provide explanations on the main financial provisions of the MGA. Please note that the final version of this document is still under discussion and may still change. The final version will be available in the first half of 2014. For any questions about any aspects of European research in general and the EU Research Framework Programmes in particular, please send them to Horizon 2020 Helpdesk.

Research and Innovation

History of changes

Version	Date	Change
1.1	20.12.2013	▪ Article 6 added
1.2	17.02.2014	▪ Articles 7 to 14, 17 to 19, 23a to 25, 35, 52 to 54, 56 and 58 added
1.3	26.03.2014	▪ Articles 16, 32 to 34 and 41 to 44 added
1.4	16.04.2014	▪ Articles 4 to 6, 9 to 16, 20, 21, 23, 24, 39, 40, 45 to 52 and 57 added or revised
1.5	25.04.2014	▪ Articles 22, 26 to 31, 36 to 38, and 55 added
1.6	02.05.2014	▪ New annotations regarding the following derived model grant agreements: ERC, SME Instrument, ERA-NET COFUND, PCP-PPI COFUND, EJP COFUND, Framework Partnerships and specific agreements
1.6.1	16.06.2014	▪ Clickable table of contents added

Foreword

The **Horizon 2020 Annotated Model Grant Agreements** ('AGA') is a user guide that aims to explain the General Model Grant Agreement ('General MGA') and the different specific Model Grant Agreements ('Specific MGAs') for the Horizon 2020 Framework Programme for 2014-2020[1].

The purpose of this document is to help users understand and interpret the GAs, by avoiding technical vocabulary, legal references and jargon, and seeking to help readers find answers to any practical questions they may have about particular parts of the GAs.

In the same spirit, the document's structure mirrors that of the GAs. It explains each GA Article and includes examples where appropriate.

Since the Specific MGAs have a similar set-up and provisions as the General MGA (i.e. they are all derived from the General MGA), the annotations will focus mainly on the General MGA (and the annotations of the other MGAs will be limited to major differences from that MGA). The key provisions on the amount, cost forms and conditions for eligibility of your grant are however explained for all MGAs *(see Articles 4-6 of each MGA)*.

The annotations are — with some exceptions — done on the multi-beneficiary versions. The multi- and mono-beneficiary versions are largely identical.

Our approach

1. The **text** of the relevant **article** appears shaded in grey, to differentiate it from the annotations.

   The **concepts** that are annotated are in bold and blue.

   The annotations to the article are immediately underneath.

   Long articles are split into different parts, so the annotations can be placed below the relevant parts.

   Examples, **best practices**, **lists** and **procedures** are in bold and turquoise.

   Specific cases and **exceptions** are in bold and orange.

2. As the AGA intends to be comprehensive, it will cover all possible **options** envisaged in the different GA articles.

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[1] **H2020 Framework Programme** — Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020) (OJ 347, 20.12.2013, p. 104).
Euratom Research and Training Programme (2014-2018) — Council Regulation (Euratom) No 1314/2013 of 16 December 2013 on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 – The Framework Programme for Research and Innovation (OJ L 347, 20.12.2013, p. 948).
H2020 Specific Programme — Council Decision 2013/743/EU of 3 December 2013 establishing the Specific Programme Implementing Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020) (OJ L 347, 20.12.2013, p. 965).
Rules for Participation (RfP) — Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 of December 2013 laying down the rules for the participation and dissemination in Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) (OJ L 347, 20.12.2013, p.81).

Many of these options may not be relevant to your grant (and will not appear in the grant agreement you sign, or will be marked 'not applicable').

The chosen options will appear in italics (without brackets and without the option title), to allow you to easily spot that a specific rule applies.

Updates

Over the next months, this text will be transformed into an on-line version.

It will be periodically updated with new examples and explanations, based on practical experience and on-going developments.

Other information

The AGA is limited to annotations to the provisions of the Horizon 2020 MGAs. For a more general overview of how Horizon 2020 grants work, see the Horizon 2020 Online Manual.

A comprehensive list of all Horizon 2020 reference documents (including legislation, work programme and templates) can be found in the 'Reference documents' section of the Participant Portal.

Horizon 2020 terms are explained in the Glossary of the Participant Portal.

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I. General Model Grant Agreement

I.1 Background information

The General MGA is used for grants for all types of research and innovation actions (RIA), innovation actions (IA) and coordination and support actions (CSA).

> ***Examples:*** *Energy Challenge actions (see the Smart Cities and Communities calls); actions under the Research Infrastructures Part (see a Research Infrastructure call); Health Challenge actions, etc*
>
> ⓘ *For more information on research and innovation actions, innovation actions and coordination and support actions, see Article 2.*

⚠ The General MGA is not used for actions that fall under one of the Specific MGAs (i.e. ERC, MSC, SME Instrument, ERA-NET Cofund, Pre-commercial procurement or Public procurement of innovative solutions (PCP-PPI) Cofund, European Joint Programme (EJP) Cofund, Framework Partnerships).

I.2 Annotations

MULTI-BENEFICIARY GENERAL MODEL GRANT AGREEMENT

GRANT AGREEMENT

NUMBER [insert number] — [insert acronym]

This **Agreement** ('the Agreement') is **between** the following parties:

on the one part,

***[OPTION 1**: the **European Union** ('the EU', represented by the European Commission ('the Commission'),]*

***[OPTION 2:** the **European Atomic Energy Community** ('Euratom'), represented by the European Commission ('the Commission'),]*

***[OPTION 3:** the [**Research Executive Agency (REA)**] [**European Research Council Executive Agency (ERCEA)**] [**Innovation and Networks Executive Agency (INEA)**] [**Executive Agency for Small and Medium-sized Enterprises (EASME)**] ('the Agency'), under the powers delegated by the European Commission ('the Commission'),]*

represented for the purposes of signature of this Agreement by [[function, [Directorate-General, Directorate, Unit] [Department]], [forename and surname],[2]

and

on the other part,

1. 'the **coordinator**':

[**full official name (short name)**][legal form], [official registration No], established in [official address in full], [VAT number], represented for the purposes of signing the Agreement by [function, forename and surname]

and the following other **beneficiaries**, if they sign their 'Accession Form' (see Annex 3 and Article 56):

2. [**full official name (short name)**][**legal form**], [official registration No], established in [official **address** in full] [VAT number],

***[OPTION for beneficiaries not receiving EU funding:** X. [**full official name (short name)**] [legal form], [official registration No], established in [official address in full] [VAT number], as 'beneficiary not receiving EU funding' (see Article 9),]*

[same for each beneficiary]

***[OPTION if the JRC is a beneficiary:** and X. the **Joint Research Centre (JRC)** established in [official address in full], if it signs the administrative arrangement (see Annex 3b)]*.

Unless otherwise specified, references to 'beneficiary' or 'beneficiaries' include the coordinator ***[OPTION if the JRC participates:** and the Joint Research Centre (JRC)]*.

The parties referred to above have agreed to enter into the Agreement under the terms and conditions below.

By signing the Agreement or the Accession Form ***[OPTION if the JRC is a beneficiary:** or the administrative arrangement]*, the beneficiaries accept the grant and agree to implement the action under their own responsibility and in accordance with the Agreement, with all the obligations and conditions it sets out.

The Agreement is composed of:

Terms and Conditions

Annex 1	Description of the action
Annex 2	Estimated budget for the action
Annex 3	Accession Forms
	[OPTION to be used if Article 14 applies if joint and several liability has been requested by the [Commission][Agency]: *3a Declaration on joint and several liability of linked third parties**]***
	[OPTION if the JRC participates: *3b Administrative arrangement**]***
Annex 4	Model financial statements
Annex 5	Model for the certificate on the financial statements
Annex 6	Model for the certificate on the methodology

[2] Text in italics shows the options of the Model Grant Agreement that are applicable to this Agreement.
The person representing the *[Commission][Agency]* must be an authorising officer (by delegation or sub-delegation) designated in accordance with document 60008 of 22.2.2001 'Mise en place de la Charte des ordonnateurs'.

1. Coordinator — Beneficiaries

'**Beneficiaries**' means the legal entities who have signed the Grant Agreement (GA) with the Commission/Agency (i.e. a '**participant**'[2] in an action supported by a grant).

The '**coordinator'** is the beneficiary which is the central contact point for the Commission/Agency and represents the consortium (vis-à-vis the Commission/Agency).

⚠ Both beneficiaries and coordinators must have a **sufficient financial capacity** to be able to implement the action (i.e. achieve its expected objectives and results).

The Commission/Agency will systematically verify the financial capacity of the coordinator, if the requested EU contribution for the action is equal or superior to EUR 500 000. Exceptionally, it will also verify the financial capacity (of the coordinator or other beneficiaries), if there are grounds to doubt their financial capacity.[3]

ⓘ *For more information on the rules regarding the financial viability and financial capacity checks, see the Horizon 2020 Online Manual.*

The **division of roles and responsibilities within the consortium** is explained in Article 41.2.

Generally speaking:

- the coordinator must coordinate and manage the grant and is the central contact point for the Commission/Agency

[2] *For the definition, see Article 2.1(15) of the Rules for Participation:* '**participant**' means any legal entity carrying out an action or part of an action under Regulation (EU) No 1291/2013 having rights and obligations with regard to the Union or another funding body under the terms of this Regulation.

[3] *See Article 15(9) of the Rules for Participation.*

– the beneficiaries must all together contribute to a smooth and successful implementation of the grant (i.e. contribute to the proper implementation of the action, comply with their own obligations under the GA and support the coordinator in his obligations).

The **signature arrangements** are the following:

– the coordinator directly signs the GA

– the other beneficiaries sign the GA by signing the Accession Form *(see Article 56)*.

Amendments to the GA, if any, will be signed by the coordinator on their behalf.

Applicants who accept the grant (by signing the GA) becomes a beneficiary of the grant and is **bound by the entirety of** its **terms and conditions**.

This means that the beneficiaries must:

– carry out the project (and especially the research work) as detailed in Annex 1 ('technical implementation') and

– comply with all the other provisions of the GA and all the applicable provisions of EU, international and national law.

⚠ Other entities which participate in the action but do not sign the GA (including entities linked to the beneficiaries) are considered as '**third parties involved in the action**' *(see Article 8)*.

They are not bound by the terms and conditions of the GA; conversely, the Commission/Agency has no obligation vis-à-vis third parties.

2. Name, legal form, address — Legal entity data

The legal entity data (legal name, address, legal form, legal representatives, etc.) of the beneficiaries comes from the 'Beneficiary Register' of the Participant Portal.

These data will be automatically used for all communications concerning this grant *(see Article 52)* and other Horizon 2020 grants.

⚠ The beneficiaries must therefore keep this data up-to-date at all times, including after the end of this grant *(see also Article 17)*.

In case of changes to these data, the **Legal Entity Appointed Representative** (LEAR) of the concerned beneficiary must introduce a change request via the electronic exchange system (*see Articles 17 and 52)*.

ⓘ *For more information on beneficiary registration, validation and data updates, see the Horizon 2020 Online Manual.*

CHAPTER 1 GENERAL

ARTICLE 1 — SUBJECT OF THE AGREEMENT

This Agreement sets out the rights and obligations and the terms and conditions applicable to the grant awarded to the beneficiaries for implementing the action set out in Chapter 2.

CHAPTER 2 ACTION

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** ('**action**'), as described in Annex 1.

***[OPTION for complementary grants if foreseen in the work programme:** The grant is a '**complementary grant**' to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].]*

***[OPTION for joint actions (joint call with a third country or an international organisation)**: The action is a '**jointly funded action**' which must be coordinated with the 'joint action' called [insert the name of the third country or international organisation action], as described in Annex 1.]*

1. RIA, IA and CSA actions

The term '**action**' is used in the Financial Regulation[4] and **means** '**project**', which is the term traditionally, used in EU Research Framework Programmes.

The RIA, IA and CSA actions of the General MGA are mono- or multi-beneficiary actions with the following activities:

- for **research and innovation actions** (**RIA)**: activities aiming to establish new knowledge or explore the feasibility of a new technology, product, process, service or solution. For this purpose they may include basic and applied research, technology development and integration, testing and validation on a small-scale prototype in a laboratory or simulated environment)
- for **innovation actions** (**IA)**: activities directly aiming at producing plans and arrangements or designs for new, altered or improved products, processes or services. For this purpose they may include prototyping, testing, demonstrating, piloting, large-scale product validation and market replication)[5]
- for **coordination and support actions** (**CSA)**: accompanying measures such as standardization, dissemination, awareness-raising and communication, networking,

[4] **Financial Regulation (FR)** — Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the European Union (OJ L 298, 26.10.2012, p.1).
Rules of Application (RAP) — Commission Regulation (EC, Euratom) No 1268/2012 of 29 October 2012 on the rules of application of l Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 298, 26.10.2012, p.1).

[5] *For the definition, see Article 2.1(6) of the Rules for Participation:* '**innovation action**' means an action primarily consisting of activities directly aiming at producing plans and arrangements or designs for new, altered or improved products, processes or services. For this purpose they may include prototyping, testing, demonstrating, piloting, large-scale product validation and market replication.

coordination or support services, policy dialogues and mutual learning exercises and studies)[6].

2. Complementary grants

'Complementary grants' are other EU grants funded under the specified topics or calls supporting actions which are identified as complementary actions in the work programme.

They must share results and access rights to each other.

⚠ The beneficiaries must conclude a written 'collaboration agreement' with complementary beneficiaries regarding the coordination of the complementary grants and the work of the action *(see Article 41.4)*. It covers the case included under Special Clause 41 in FP7.

3. Jointly funded actions

'Joint actions' (called 'coordinated calls' in FP7) are the results of joint calls for proposals with third countries or their scientific and technological organisations and agencies or with an international organisation, launched in priority areas of common interest and expected mutual benefit where there is a clear added value for the EU.

The joint calls for proposals are issued by the EU and by the third country/international organisation together, in order to jointly fund the actions. The proposals are evaluated and selected through joint procedures.

The participants of the EU action sign a GA with the EU and the participants of the third country or international organisation action sign one with their funding agency. The description of work *(Annex 1)* contains the research carried out under the European-funded action, including detailed explanations about the research to be carried out under the coordinated action.

To ensure coordination, the beneficiaries must conclude a 'coordination agreement' with the partners of the third country or international organisation action *(see Article 41.5)*, which links the two action and ensures the necessary synergies.

6 *For the definition, see Article 2.1(7) of the Rules for Participation:* '**coordination and support action**' means an action consisting primarily of accompanying measures such as standardisation, dissemination, awareness-raising, and communication, networking, coordination or support services, policy dialogues and mutual learning exercises and studies, including design studies for new infrastructure, and may also include complementary activities of networking and coordination between programmes in different countries.

ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION

The duration of the action will be ***[insert number]*** **months** as of *[**OPTION by default:** the first day of the month following the date the Agreement enters into force (see Article 58)] [**OPTION if needed for the action:** insert date]*[3] ('**starting date of the action**').

[3] This date must always be the first day of a month and it must be later than the date of entry into force of the agreement unless authorised otherwise by the authorising officer, if the applicant can demonstrate the need to start the action before the entry into force of the grant agreement. In any case, the starting date should not be earlier than the date of the submission of the grant application (Article 130 FR).

1. Starting date of the action

The starting date of the action is fixed by the Commission/Agency in the GA.

It is usually the first day of the month following the date when the GA enters into force. The GA enters into force when the last party signs it *(see Article 58).*

A fixed starting date may also be agreed between the Commission/Agency and the consortium.

Exceptionally, the Commission/Agency may agree that the action starts **before the entry into force** of the GA (i.e. before the grant agreement is signed by both parties), provided that the consortium requests it (usually in its proposal) and can show that there is a need to start the action earlier *(e.g. an action that is dependent on environmental conditions).*

Example:

Grant agreement signed by the coordinator on 30.12.2014. Commission signs on 5.1.2015. The starting date of the action would normally be the 1.2.2015, but the consortium has requested a fixed start date of 1.9.2014 in its proposal (submitted by the consortium on 15.5.2014), as the action funded is the continuation of a previous FP7 project. Upon consideration of the reasons, this fixed start date is approved.

⚠ If the coordinator, for the whole consortium, requests a fixed starting date prior to the expected entry into force of the GA, it (the consortium) assumes the risks implied by starting the project before the GA is signed, in particular not being reimbursed for the costs incurred (*e.g. the eventuality that the proposal is not successful or that the GA is not signed)*

⚠ In any case, the starting date cannot be earlier than the date of the submission of the proposal.

A starting date fixed **later** in time *(e.g. 2-3 months after the signature of the GA)* will have an impact on the timing of the pre-financing payment and will delay it.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary *[(and linked third party)]* and **budget category** (see Articles 5, 6, *[and 14]*). ***[OPTION to be used if Article 9 applies:** It also contains the estimated costs of the beneficiaries not receiving EU funding (see Article 9).]*

4.2 Budget transfers

The estimated budget breakdown indicated in Annex 2 may be adjusted by transfers of amounts between beneficiaries or between budget categories (or both). This does not require an amendment according to Article 55, if the action is implemented as described in Annex 1.

The beneficiaries may not however:

- ***[OPTION if lump sum foreseen in Article 5.2**: adjust amounts set out as lump sums in Annex 2;**]***
- add costs relating to subcontracts not provided for in Annex 1, unless such additional subcontracts are approved in accordance with Article 13.

1. Estimated Budget

The estimated budget of the action is calculated on the basis of the estimated eligible costs submitted by the consortium and is annexed to the GA *(Annex 2)*.

These estimated eligible costs are used to determine the 'maximum grant amount' of the action (called 'EU/Euratom financial contribution' in FP7 projects; *see Article 5.2)*.

Costs of beneficiaries not receiving EU funding will be indicated in Annex 2, but will not be included in the total eligible costs and will not count for the maximum amount of the grant *(see Article 9)*.

2. Budget categories

The budget categories are listed in Article 6.2 and reflected in the table in Annex 2.

Budget categories of the General MGA:

- direct personnel costs
- subcontracting costs
- costs of providing financial support to third parties (if option applies)
- other direct costs
- indirect costs
- specific categories of costs (if option applies)

  ⚠ The budget category 'specific categories of costs' only applies where specific activities are reimbursed by unit costs or lump sum costs. For the General MGA, this is currently the case for 'access costs for providing trans-national access to research infrastructure', 'costs of energy efficiency measures in buildings' and 'costs for clinical studies'.

3. Budget transfers

The budget in Annex 2 is an estimation.

Therefore at the time of reporting, beneficiaries may declare costs that are different from the estimated eligible costs in the budget.

In particular, beneficiaries may transfer budget among themselves or between budget categories without the need of a notification to the Commission/Agency or an amendment *(see Article 55)* if the action is implemented as described in Annex 1.

⚠ The maximum grant amount *(see Article 5)* can however never be increased.

What can be transferred?

If the incurred eligible costs are lower than the estimated eligible costs, the difference can be allocated to another beneficiary or another budget category. The amount reimbursed for the other beneficiary (by application of its reimbursement rate) or for the other budget category (to which the budget transfer is intended) may thus be higher than planned.

Example:

The estimated budget includes personnel costs of EUR 60 000 for Beneficiary A and EUR 75 000 for Beneficiary B. However, at the end of the action, the actual personnel costs of Beneficiary A are EUR 75 000 due to an increase in salaries or to the need to employ additional personnel to carry out the tasks mentioned in Annex 1 while the actual personnel costs of Beneficiary B are EUR 60 000. This may be acceptable provided the additional costs of Beneficiary A fulfil the eligibility requirements of Article 6 and up to the maximum grant amount (at the level of the action).

If the GA foresees unit costs, transferring amounts declared as unit costs to other categories or other beneficiaries is possible if the actual number of units used (or produced) by the beneficiary is less than the number estimated in Annex 2. The cost per unit cannot be changed.

Example:

Total estimated unit costs for beneficiary A: EUR 10 000 (100 units x 100 EUR/unit)

Total actual unit costs used (or produced) by beneficiary A: EUR 8 000 (80 units x 100 EUR/unit)

Total possible transfer to another budget category: EUR 2 000

What not?

The GA allows transfers of budget, not of **tasks**.

A beneficiary cannot transfer budget to a **form of costs** that has **not** been **foreseen in Annex 2**.

Example:

A beneficiary declares all its direct personnel costs as 'actual costs' in the estimated budget (column A (a) of Annex 2). However, at the end of the first reporting period, the beneficiary declares its direct personnel costs as 'unit costs determined according to its usual cost accounting practices' (average personnel costs, in column A (b) of Annex 2). This is not acceptable without an amendment of the GA to modify the form of direct personnel costs.

If the budget transfer is due to a **significant change in Annex 1**, an amendment to the GA is needed. A significant change is a change that affects the technical work (the 'tasks' of the action) of Annex 1.

⚠ The coordinator can contact the Commission/Agency to ask whether the transfer of budget reflects a significant change in Annex I which requires an amendment.

No transfers of lump sums — If the GA provides for a lump sum, the lump sum set out in Annex 2 cannot be transferred to another category or to another beneficiary.

Furthermore, the amount of the lump sum cannot be increased, decreased or split.

Example: *EUR 30 000 lump sum foreseen for travel in Annex 2 (under 'other direct costs') cannot be turned into a EUR 15 000 lump sum for travel and EUR 15 000 for personnel costs*

No new costs for new subcontracts — The transfer of budget intended to increase the eligible costs for 'subcontracting' is considered to reflect a significant change of Annex 1 normally requires an amendment (unless the beneficiary uses the simplified approval procedure without formal amendment provided for in Article 13).

Example: *Beneficiary A subcontracts an action task during the action implementation, because it decided not to recruit additional personnel as initially foreseen, but to use a subcontractor.*

⚠ If the beneficiary uses the simplified approval procedure it bears the risk of non-approval and rejection by the Commission/Agency *(see Article 13)*.

Example: *A beneficiary wants to subcontract a task that originally it was going to carry out by itself. It wants to transfer EUR 100 000 from personnel costs to subcontracting. In order to make sure that this new subcontracting is possible and its cost is eligible, this will require an amendment to the GA before the subcontracting takes place. However, the beneficiary doesn't request the amendment, but justifies the change only with the next periodic technical report (at its own risk). Since the Commission approves the report, the costs of the additional subcontract are eligible.*

CHAPTER 3 GRANT

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATES AND FORMS OF COSTS

5.1 Maximum grant amount

The '**maximum grant amount**' is **EUR [insert amount** (insert amount in words)**]**.

5.2 Form of grant, reimbursement rates and forms of costs

The grant reimburses *[**OPTION for research actions: 100 %** of the action's eligible costs] [**OPTION for innovation actions**[4] **if all beneficiaries and all linked third parties are non-profit legal entities**[5]**: 100%** of the action's eligible costs][**OPTION for innovation actions if all beneficiaries and all linked third parties are profit legal entities: 70%** of the action's eligible costs][**OPTION for innovation actions if some beneficiaries or linked third parties are non-profit legal entities and some are profit legal entities: 100%** of the eligible costs of [the beneficiaries][and][linked third parties] that are non-profit legal entities and **70%** of the eligible costs of the other beneficiaries [and linked third parties][**OPTION for exceptional cases if foreseen in the work programme:** [**…%**] of the action's eligible costs]* (see Article 6) ('**reimbursement of eligible costs grant**') (see Annex 2).

The estimated eligible costs of the action are EUR **[insert amount** (insert amount in words)**]**.

Eligible costs (see Article 6) must be declared under the following forms ('**forms of costs**'):

(a) for **direct personnel costs** *[(excluding personnel costs for the activities in Point (f))]*[6]:

- as actually incurred costs ('**actual costs**') or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

Personnel **costs for SME owners** or **beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points A.4 and A.5) must be declared on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(b) for **direct costs of subcontracting** *[(excluding subcontracting costs for the activities in Point (f))]*[7]: as actually incurred costs (**actual costs**);

(c) ***[OPTION to be used if Article 15 applies**: for **direct costs of providing financial support to third parties** [(excluding costs of financial support given under the activities in Point (f))]*[8]*: as actually incurred costs (**actual costs**);**][OPTION**: not applicable;**]***

(d) for **other direct costs** *[(excluding other direct costs for the activities in Point (f))]*[9]: as actually incurred costs (**actual costs**);

(e) for **indirect costs** *[(excluding indirect costs for the activities in Point (f))]*[11]: on the basis of a flat-rate applied as set out in Article 6.2, Point E ('**flat-rate costs**');

*[(f) [**OPTION for specific categories of costs if unit costs foreseen by Commission decision:** for **costs of** [**insert cost category or activity**]:*

- *on the basis of the amount(s) per unit set out in Annex 2 (**unit costs**) [or]*
- *[as actually incurred costs (**actual costs**)]*[12]*[or*
- *as a combination of the two].]*

*[**OPTION for specific categories of costs if lump sum costs foreseen by Commission decision:** for **costs of** [**insert cost category or activity**]: as the lump sum set out in Annex 2 ('**lump sum costs**').]]*

[4] For the definition, see Article 2.1(6) of the Rules for Participation: '**innovation action**' means an action primarily consisting of activities directly aiming at producing plans and arrangements or designs for new, altered or improved products, processes or services. For this purpose they may include prototyping, testing, demonstrating, piloting, large-scale product validation and market replication.

[5] For the definition, see Article 2.1(14) Rules for Participation: '**non-profit legal entity**' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

[6] To be used only if option in Point (f) is used.

[7] To be used only if option in Point (f) is used.

[8] To be used only if option in Point (f) is used.

[9] To be used only if option in Point (f) is used.

[10] To be used only if option in Point (f) is used.

[11] Insert precise name of the costs as in the Commission decision authorising the use of the unit cost or lump-sum. For example: 'access costs for providing trans-national access to research infrastructures'; costs for 'clinical studies'; costs for 'energy efficiency measures in buildings'.

[12] To be used only if the Commission decision authorising the use of the unit cost allows that the beneficiary chooses between actual or unit cost.

1. Maximum grant amount

The maximum grant amount specified in this Article cannot be exceeded or raised by the Commission/Agency.

⚠ No additional funding is possible even if the eligible costs of the action are higher than planned.

The maximum grant amount is not the 'final grant amount' and is not a 'price' due to the beneficiaries.

2. Reimbursement rates

How much? The 'reimbursement rate' for RIA actions is normally 100% of the total *eligible* costs[7]; for IA actions it is normally 70% of the total eligible costs[8].

Exceptions:

In exceptional cases fixed in the work programme, a **lower reimbursement rate** than the two mentioned above may apply.

The eligible costs of **non-profit** beneficiaries/linked third parties participating in innovation actions may be reimbursed at **100%**.[9]

ⓘ *For information on eligibility of costs, see Article 6.*

As a general principle there is only one funding (reimbursement) rate per action, the same for all activities and all beneficiaries of the action (**one project — one funding rate**).

Exception:

If non-profit beneficiaries/linked third parties are in the same innovation action together with profit beneficiaries/linked third parties, their eligible costs will be reimbursed according to the different reimbursement rates.

The reimbursement rates apply to all forms of costs (actual, unit, lump sums and flat-rates costs)[10] and all budget categories.

[7] *See Article 28(4) of the Rules for Participation.*
[8] *See Article 28(5) of the Rules for Participation.*
[9] *See Article 28(5) of the Rules for Participation.*
[10] *See Article 28(6) of the Rules for Participation.*

3. Costs forms

The General MGA foresees options for all four cost forms (i.e. actual, unit, flat-rate and lump-sum costs)[11]. In practice, they are currently all used, except for lump sums (which are only used for SME Instrument actions).

Cost forms of the General MGA:

- **actual costs** (i.e. costs which are real and not estimated or budgeted) for:
  - direct **personnel** costs (unless declared as unit cost)

    Example: *EUR 62 500 actual yearly salary for senior researcher A*
  - **subcontracting** costs

    Example: *The actual price paid for the subcontracting of a clinical study*
  - costs of providing **financial support** to third parties (if option applies)

    Example: *The financial support actually paid to third parties*
  - **other direct costs**

    Example: *EUR 2000 actual price for a computer*
- **unit costs** (i.e. an amount per unit) for:
  - direct personnel costs of **SME owners/natural persons** not receiving a salary[12]
  - direct personnel costs calculated by the beneficiaries in accordance with their usual cost accounting practices ('**average personnel costs**') [13]

    Example: *EUR 60,000 average salary for senior researchers*
  - specific categories of costs for:
    - 'costs for **energy efficiency measures** in buildings'[14]
    - '**access costs** for providing trans-national access to research infrastructures'[15]
    - 'costs for **clinical studies**'[16]

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11 *See Articles 123, 124 of the Financial Regulation.*

12 Commission Decision C(2013) 8197 of 10 December 2013 authorising the use of reimbursement on the basis of unit costs for the personnel costs of the owners of small and medium-sized enterprises and beneficiaries that are natural persons not receiving a salary under the Horizon 2020 Framework Programme for Research and Innovation and under the Research and Training Programme of the European Atomic Energy Community (2014-2018). Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_sme-owners_natural-persons-no-salary_en.pdf.

13 *See Article 33(2) of the Rules for Participation.*

14 Commission Decision C(2013) 8196 of 10 December 2013 authorising the use of reimbursement on the basis of unit costs for energy efficiency measures in buildings under the Energy Challenge actions of the Horizon 2020 Framework Programme. Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_energy_en.pdf.

15 Commission Decision C(2013) 8199 of 10 December 2013 authorising the use of reimbursement on the basis of unit costs for actions involving trans-national access under the Research Infrastructures Part of the Horizon 2020 Framework Programme. Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_tna-infra_en.pdf.

- **flat-rate costs** (i.e. costs calculated by applying a percentage fixed in advance to other types of eligible costs) for:
  - indirect costs (25% flat-rate for indirect costs ⚠ new in Horizon 2020)[17]

Within a grant, different forms of costs can be used.

Example: *a budget category (e.g. personnel) covered by unit costs and another (e.g. equipment) by actual costs.*

The table below summarises the different budget categories and forms of costs that may be used in Horizon 2020 actions under the General MGA:

Forms of costs	**Budget categories**					
	Direct personnel costs	**Direct costs of subcontracting**	**Direct costs of financial support to third parties (if option used if Article 15 applies)**	**Other direct costs**	**Indirect costs**	**Specific categories of costs (option used if Article 6.2 (F) applies)**
Actual costs	YES	YES	YES	YES	NO	YES
Unit costs	YES, only for: -costs established according to the usual cost accounting practices of the beneficiary -costs of SME owners and natural persons not receiving a salary	NO	NO	NO	NO	YES, only if foreseen by Commission Decision
Flat-rate costs	NO	NO	NO	NO	YES	NO
Lump sum costs	NO	NO	NO	NO	NO	YES, only if foreseen by Commission Decision

[16] Commission Decision C(2014) 1393 of 7 March 2014 authorising the use of reimbursement on the basis of unit costs for actions requiring the conduct of clinical studies under 'Societal Challenge 1: Health, Demographic Change and Wellbeing' of the Horizon 2020 Framework Programme.

[17] *See Article 29(1) of the Rules for Participation.*

5.3 Final grant amount — Calculation

The '**final grant amount**' depends on the actual extent to which the action is implemented in accordance with the Agreement's terms and conditions.

This amount is calculated by the *[Commission][Agency]* — when the payment of the balance is made (see Article 21.4) — in the following steps:

Step 1 – Application of the reimbursement rates to the eligible costs

Step 2 – Limit to the maximum grant amount

Step 3 – Reduction due to the no-profit rule

Step 4 – Reduction due to improper implementation or breach of other obligations

5.3.1 Step 1 — Application of the reimbursement rates to the eligible costs

The reimbursement rate(s) (see Article 5.2) are applied to the eligible costs (actual costs, unit costs and flat-rate costs *[and lump sum costs]*; see Article 6) declared by the beneficiaries *[and linked third parties]* (see Article 20) and approved by the *[Commission][Agency]* (see Article 21).

5.3.2 Step 2 — Limit to the maximum grant amount

If the amount obtained following Step 1 is higher than the maximum grant amount set out in Article 5.1, it will be limited to the latter.

5.3.3 Step 3 — Reduction due to the no-profit rule

The grant must not produce a profit.

'**Profit**' means the surplus of the amount obtained following Steps 1 and 2 plus the action's total receipts, over the action's total eligible costs.

The '**action's total eligible costs**' are the consolidated total eligible costs approved by the *[Commission][Agency]*.

The '**action's total receipts**' are the consolidated total receipts generated during its duration (see Article 3).

The following are considered **receipts**:

(a) income generated by the action; if the income is generated from selling equipment or other assets purchased under the Agreement, the receipt is up to the amount declared as eligible under the Agreement;

(b) financial contributions given by third parties to the beneficiary *[or to a linked third party]* specifically to be used for the action, and

(c) in-kind contributions provided by third parties free of charge and specifically to be used for the action, if they have been declared as eligible costs.

The following are however not considered receipts:

(a) income generated by exploiting the action's results (see Article 28);

(b) financial contributions by third parties, if they may be used to cover costs other than the eligible costs (see Article 6);

(c) financial contributions by third parties with no obligation to repay any amount unused at the end of the period set out in Article 3.

If there is a profit, it will be deducted from the amount obtained following Steps 1 and 2.

5.3.4 Step 4 — Reduction due to improper implementation or breach of other obligations — Reduced grant amount — Calculation

If the grant is reduced (see Article 43), the *[Commission][Agency]* will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the action or to the seriousness of the breach of obligations in accordance with Article 43.2) from the maximum grant amount set out in Article 5.1.

The final grant amount will be the lower of the following two:

- the amount obtained following Steps 1 to 3 or
- the reduced grant amount following Step 4.

1. Final grant amount

The final grant amount will be calculated by the Commission/Agency — at the end of the action (or in case of termination of the GA) —, in order to determine the balance to be paid.

The final grant amount will depend on two types of criteria:

– **work implementation criteria**, i.e. was the work carried out as described in Annex I?

This is a technical analysis by the Commission/Agency of the work performed during the action, as compared with the activities set out in Annex 1 to the GA.

– **financial criteria**, including:

– the amount of eligible costs

– the reimbursement rates

– the maximum EU contribution.

Procedure for calculating the final grant amount:

Calculation of final grant amount

Step 1 — Application of reimbursement rate(s) to eligible costs

Step 2 — Limit to the maximum grant amount

The grant amount following Steps 1 and 2 is the lower of the two amounts.

Step 3 — Reduction due to the no-profit rule

Step 4 — Reduction due to improper implementation or breach of other obligations under the GA

The final grant amount is the lower of the following two amounts obtained following Steps 1 to 3 or following Step 4.

final grant amount

Step 1 — Rejection of ineligible costs and application of the reimbursement rate(s)

Ineligible costs (i.e. costs that do not comply with one or more cost eligibility criteria; *see Article 6*) will — if found at payment of the balance — be **rejected** (i.e. not approved).

If, for innovation actions, there are different **reimbursement rates** for different beneficiaries, the Commission/Agency will apply the reimbursement rate for each beneficiary to the costs it has approved for that beneficiary.

Step 2 — The contribution is limited to the maximum grant amount

Step 3 — Reduction due to the no-profit rule and receipts

Since the grant amount may not have the purpose or effect of producing a profit for the beneficiaries, the total funding requested + receipts is capped at the total eligible costs; the grant amount following Steps 1 and 2 plus receipts cannot exceed the approved costs.

If grant amount + receipts > total eligible costs ➔ reduction of grant amount

Profit must be assessed at the level of the action and not at the level of the individual beneficiaries (⚠ new in Horizon 2020).

The grant amount, receipts and eligible costs taken into account are the *consolidated* grant amount (following Steps 1 and 2), the consolidated receipts and the consolidated approved costs.

Three kinds of **receipts** must be taken into consideration:

- **income generated by the action** (i.e. any income generated by the action itself, including the sale of assets bought for the action and sold during the duration of the action)

  Examples: *admission fee to a conference organised by the consortium; sale of equipment bought for the action.*

  ⚠ Receipt from the sale of assets are capped to the amount declared as eligible under the GA.

  Example:

  Machine bought for EUR 21 000 in year X, sold in year X + 4 (both within the duration of the action) for EUR 16 000.
  The machine was used at 50% for the action, and fully depreciated in 3 years (7 000 EUR/year, of which 3 500 EUR/year were charged to the action)
  Amount of receipts to be declared: 50% of 16 000 with a limit of 10 500 (3 X 3 500) =EUR 8 000.

- **financial contributions given by third parties specifically to be used for the action** (i.e. money given as a donation by a third party (a donor) to a beneficiary (or linked third party) specifically for the action covered by the GA

- **in-kind contributions provided by third parties free of charge specifically to be used for the action, if they have been declared as eligible costs** (i.e. not money, but an in-kind contribution free of charge given by a third party (a donor) specifically for being used for the action covered by the GA)

  Examples: *the free use of equipment; the secondment of an expert without reimbursement*

⚠ In-kind contributions are considered receipts only if their value (i.e. the costs incurred by the third party for it) has been declared by the beneficiary as an eligible cost for the action.

The following are **not** receipts:

– income generated by exploiting the results of the project (the IPR) is not considered a receipt since using the resulting IPR is one of the main objectives of research actions

– financial contributions given by a third party (a donor) specifically to be used for the action if they may be used according to the donor's rules to cover costs other than the eligible costs

Example: *currency exchange losses*

– financial contributions given by a third party (a donor) specifically to be used for the action if the donor did not set the obligation to repay any unused amount at the end of the action

⚠ The full amount of the financial contribution is not considered as a receipt, not only the unused amount.

Example:

A university professor whose costs are charged by the university in the GA, but whose salary is paid by the Ministry and not reimbursed by the university: This contribution in kind from a third party (the Ministry) is not to be considered a receipt, unless the professor has been specifically seconded by the Ministry to the university to work for the action in question. In other words, if the university is free to decide the allocation of the professor's work, then his/her contribution is assimilated to an 'own resource' of the university and it is not a receipt.

Financial contributions made **by one beneficiary to another** within the same action are not considered receipts either, since receipts are only contributions from *third parties*. (Conversely, such a financial contribution cannot either be declared as cost for the action.)

Example:

Beneficiary A (big company) in an innovation project (i.e. funded at 70%) decides to subsidise a small specialised SME by funding an additional 10% of the SME's costs in order to encourage it to participate in the action.

Receipts will be taken into account by the Commission/Agency **only** at the moment of the **payment of the balance** (called the 'final payment' in FP7).

The beneficiaries must declare all receipts that are **established** (i.e. revenue that has been collected and entered in the accounts), **generated** or **confirmed** (i.e. revenue that has not yet been collected, but which has been generated or for which the beneficiary has a commitment or written confirmation) during the duration of the action.

Beneficiaries are obliged to declare them when submitting the final report. However, they may also declare them in the periodic reports.

In many cases receipts do not affect the grant amount since they do not lead to a profit. However, particularly in actions funded at 100%, they may have an impact and cause a reduction.

Examples:

1. *Eligible costs: 100 and grant amount: 70*
If receipts: 30 ➔ no impact
If receipts: 20 ➔ no impact
If receipts: 60 ➔ the grant amount will be reduced to 40.

2. *Eligible costs: 100 and grant amount: 100*
If receipts: 0 ➔ no impact;
If receipts: 20 ➔ the grant amount will be reduced to 80

Best practice: Beneficiaries are advised to foresee the potential implications of receipts — before the signature of the GA — in the **consortium agreement** (given that the receipts will be appreciated at the level of the action, and not anymore on the level of each beneficiary as was the case in FP7) and the proposal.

Step 4 — Reduction due to improper implementation or breach of other obligations under the GA

Proper implementation will be analysed by the Commission/Agency, comparing the work performed (according to the periodic and final technical reports) to the activities described in Annex 1.

Improper implementation may lead to a reduction of the grant (i.e. reduction of the 'maximum grant amount') — on a case-by-case basis (and only after a contradictory procedure with the coordinator or the beneficiary concerned; *see Article 43*). In principle, the Commission/Agency will not reduce the final grant amount for minor delays/deviations in the technical work foreseen in Annex 1.

Example (reduction): *of the 3 test plants was not built, and several testing activities were not carried out; breach of the obligation to display the EU emblem or to respect confidentiality of information identified as confidential.*

Examples (no reduction): *a deliverable is delayed by a couple of days because the researcher responsible is on sick leave; a scientific test has to be redone at a later time due to meteorological conditions*

⚠ A reduction of the maximum grant amount is not a sanction, but the consequence of a breach of an obligation under the GA.

Example (calculation of the final grant amount):

Grant for a consortium with a maximum grant amount of EUR 3 000 000, where the eligible costs are reimbursed at 100%, and the indirect costs are calculated on the basis of a flat rate of 25% on the direct costs (minus subcontracting, costs incurred by third parties not used in the beneficiaries' premises and costs of providing financial support to third parties).

The total direct eligible costs of the consortium approved by the Commission/Agency are EUR 2 500 000.

One of the beneficiaries is sponsored for this project by a private company, with an amount of EUR 60 000 dedicated to the reimbursement of the remuneration of one young researcher, and another beneficiary (a university) receives as in-kind contribution from its government the secondment of a scientist specifically assigned to the project (the "action"). The salary of this seconded scientist (EUR 80 000) is declared as eligible by this beneficiary, even if paid by the Government.

Both these contributions fit the definition of receipts (see above).

Rejection of ineligible costs and application of the reimbursement rates:
Eligible costs = EUR 2 500 000 direct costs (including EUR 200 000 for subcontracting) + EUR 575 000 for indirect costs (25 % flat rate on direct costs minus subcontracting) = EUR 3 075 000
Reimbursement rate= 100%
Amount obtained = EUR 3 075 000

Limit to the maximum grant amount:
The total eligible costs of EUR 3 075 000 are higher than the maximum grant amount of EUR 3 000 000. However, the maximum amount cannot be increased and therefore, it is limited to EUR 3 000 000.

Reduction due to the no-profit rule and receipts:
In the example above, the profit at the level of the action would be calculated by taking the surplus of EUR 3 000 000 (amount obtained after steps 1 and 2), plus the action's total receipts (60 000 + 80 000), over the action's total approved eligible costs (EUR 3 075 000):

3 000 000 + 60 000 + 80 000 = EUR 3 140 000.
Total eligible costs: EUR 3 075 000.
Profit: EUR 3 140 000 – EUR 3 075 000=EUR 65 000
Grant amount after reduction due to no-profit rule: EUR 3 000 000 – EUR 65 000 = EUR 2 935 000.

Reduction due to improper implementation or breach of other obligations under the GA:
Reduction of 2% of the maximum grant amount as the Coordinator of the consortium breached a confidentiality obligation of article 36 GA, namely EUR 60 000 → 3 000 000 - 60 000 = EUR 2 940 000
The final amount of the grant will be the lower between the following two:

- *the amount obtained after applying the reimbursement rates to the total eligible costs, within the ceiling of the maximum grant amount and after applying the no-profit rule (Steps 1, 2 and 3): 2 935 000*
- *the reduced maximum grant amount obtained in Step 4: 2 940 000*

Final grant amount = *EUR 2 935 000.*

5.4 Revised final grant amount — Calculation

If — after the payment of the balance (in particular, after checks, reviews, audits or investigations; see Article 22) — the *[Commission][Agency]* rejects costs (see Article 42) or reduces the grant (see Article 43), it will calculate the '**revised final grant amount**' for the beneficiary concerned by the findings.

This amount is calculated by the *[Commission][Agency]* on the basis of the findings, as follows:

- in case of **rejection of costs**: by applying the reimbursement rate to the revised eligible costs approved by the *[Commission][Agency]* for the beneficiary concerned;
- in case of **reduction of the grant**: by calculating the concerned beneficiary's share in the grant amount reduced in proportion to its improper implementation of the action or to the seriousness of its breach of obligations (see Article 43.2).

In case of **rejection of costs and reduction of the grant**, the revised final grant amount for the beneficiary concerned will be the lower of the two amounts above.

1. Revised final grant amount

If the Commission/Agency finds — after the payment of the balance — ineligible costs, improper implementation of the action or breach of other obligations (and therefore **rejects the costs** or **reduces the grant**), it will revise the final grant amount, for each beneficiary concerned (i.e. at beneficiary level)

For **rejection of costs**: the Commission/Agency will deduct the amount rejected from the total eligible costs declared by the beneficiary in the final summary financial statement *(see Article 42.3)*. The revised final grant amount will be calculated by applying the reimbursement rate to the revised eligible costs of the beneficiary concerned.

Example:

Maximum grant amount: 500 000
There are three Beneficiaries A, B and C
Reimbursement rate: 100%
Direct eligible costs accepted for Beneficiary A at the payment of balance: 150 000
Total eligible costs accepted for Beneficiary A at the payment of balance = 150 000 + 25% (indirect costs) = 187 500
Costs rejected following audit: 30 000
Revised direct eligible costs: 120 000
Revised total eligible costs= 120 000 + 25% (indirect costs) = 150 000
Revised final grant amount: 100% of 150 000 = 150 000

If for the beneficiary the revised final grant amount is lower than its share of the final grant amount, there will be a recovery *(see Article 44.1.3)*.

For **reduction of the grant**: the Commission/Agency will:

– reduce the maximum grant amount, in proportion to the improper implementation or to the seriousness of the breach *(see Article 43)*

– calculate the revised final grant amount (for each beneficiary concerned), by allocating the amount of the reduction to each of them in proportion to its improper implementation or breach of obligation

Example 1:

Maximum grant amount and final grant amount: 500 000
There are three Beneficiaries A, B and C
Reimbursement rate: 100%
According to the estimated budget, Beneficiary A was entitled to a maximum contribution of 200 000 for carrying out its work set out in Annex I.
Total eligible costs accepted for Beneficiary A at the payment of balance = 187 500

1a: *The Commission/Agency finds that Beneficiary A has implemented only 80% of its work provided for in Annex 1.*
Revised final grant amount of Beneficiary A: 80% of the share of Beneficiary A in the maximum grant amount: 80% of 200 000 = 160 000

1b: *The Commission/Agency finds that Beneficiary A breached its confidentiality obligations, which had an impact of the full action and for which the reduction rate is set at 2%.*
2% of the maximum grant amount = 10 000
The breach is entirely attributable to Beneficiary A: 100% of the reduction is allocated to Beneficiary A
Revised final grant amount of Beneficiary A: 187 500 – 10 000= 177 500

If for the beneficiary the revised final grant amount is lower than its share of the final grant amount, there will be a recovery *(see Article 44.1.3)*.

For **rejection of costs *and* reduction of the grant**: the revised final grant amount for the beneficiary concerned will be the lower of the two amounts above.

Example:

The revised final grant amount for beneficiary A will be 150 000 (the lowest between 150 000 (amount obtained following the rejection of ineligible costs) and 160 000/ 177 500 (amounts following the reduction of the grant in the 2 examples above).

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

6.1 General conditions for costs to be eligible

'**Eligible costs**' are costs that meet the following criteria:

(a) **for actual costs**:

(i) they must be actually incurred by the beneficiary;

(ii) they must be incurred in the period set out in Article 3, with the exception of costs relating to the submission of the periodic report for the last reporting period and the final report (see Article 20);

(iii) they must be indicated in the estimated budget set out in Annex 2;

(iv) they must be incurred in connection with the action as described in Annex 1 and necessary for its implementation;

(v) they must be identifiable and verifiable, in particular recorded in the beneficiary's accounts in accordance with the accounting standards applicable in the country where the beneficiary is established and with the beneficiary's usual cost accounting practices;

(vi) they must comply with the applicable national law on taxes, labour and social security, and

(vii) they must be reasonable, justified and must comply with the principle of sound financial management, in particular regarding economy and efficiency.

(b) **for unit costs**:

(i) they must be calculated as follows:

{amounts per unit set out in Annex 2 or calculated by the beneficiary in accordance with its usual cost accounting practices (see Article 6.2, Point A)

multiplied by

the number of actual units};

(ii) the number of actual units must comply with the following conditions:

- the units must be actually used or produced in the period set out in Article 3;
- the units must be necessary for implementing the action or produced by it, and
- the number of units must be identifiable and verifiable, in particular supported by records and documentation (see Article 18).

(c) **for flat-rate costs**:

(i) they must be calculated by applying the flat-rate set out in Annex 2, and

(ii) the costs (actual costs or unit costs *[or lump-sum costs]*) to which the flat-rate is applied must comply with the conditions for eligibility set out in this Article.

(d) ***[OPTION if lump sum foreseen in Article 5.2: for lump sum costs:***

(i) the eligible amount is equal to the amount set out in Annex 2, and

*(ii) the corresponding tasks or parts of the action must have been properly implemented in accordance with Annex 1.]***

1. Eligible costs

The grant can only reimburse eligible costs (i.e. costs that comply with the general and specific conditions set out in this Article) ('**reimbursement of eligible costs grant**').

⚠ This means that the beneficiaries (and linked third parties) must:

– at proposal stage: enter only eligible costs into the estimated budget for your action *(see Article 4)*

– at reporting stage: declare only eligible costs in your financial statements *(see Article 20)*.

Moreover, the **burden on proof** for eligibility is **on the beneficiaries** (and linked third parties). They must keep sufficient supporting documents *(see Article 18)* to show that the costs they declare are eligible.

If the Commission/Agency finds ineligible costs, they will be rejected *(see Article 42)*.

Article 6.1 refers to general eligibility conditions applicable *per cost form (see Article 5)*.

Article 6.2 refers to specific eligibility conditions applicable *per budget category (see Article 4)*.

2. General eligibility conditions for actual costs

In order to be **eligible**, actual costs must be:

- **actually incurred by the beneficiary** (i.e.:
  - real and not estimated, budgeted or imputed and
  - definitively and genuinely borne by the beneficiary (not by any other entity))

  The beneficiary must have an obligation to pay the amount of the cost (for depreciation costs, the amount of the costs must be recorded in the beneficiary's profit and loss accounts).

  Specific case:

  For **in-kind contributions provided by third parties free of charge** and **costs of linked third parties**, eligible direct costs must be actually incurred by the third party.

- **incurred during the action duration** (i.e. the generating event that triggers the costs must take place during the duration of the action)

  The duration of the action is the period running from the starting date of the action to the end date of the action *(see Article 3)*.

  Example: *A conference for which costs are claimed must take place during the course of the action*

  Exception:

  Costs related to drafting and submitting the **periodic report for the last reporting period** and the **final report** (including costs of certificates of financial statements required by the GA) are eligible — even if they are incurred after the action duration.

This exception refers exclusively to costs related to the drafting and sending of the reports, and not to RTD/innovation activities (which as indicated above, must be carried out during the action duration).

Costs actually incurred should normally also be **paid** during the action duration.

In general, costs declared but not paid during the action duration *(for instance because the beneficiary is waiting for the payment of the balance)* are eligible only if the debt (and invoice) exists, and the final cost is known.

Costs of services or equipment supplied to a beneficiary (or to its linked third party) may be invoiced and paid after the action is completed, if the services or equipment were used by the beneficiary (or to its linked third party) during the action duration.

⚠ If there is a check or an audit after the action ends, beneficiaries will need to prove (with supporting documents) that the payments were actually made (except for depreciation costs).

⚠ Costs of services or equipment **supplied after the end** of the action or the GA termination are not eligible.

Specific cases:

Costs related to drafting the consortium agreement are not eligible because the consortium agreement should be signed before the action starts. However, costs related to updating the consortium agreement are eligible if incurred during the action duration.

Depreciation costs for equipment used for the action but bought before the action's start — If the equipment has not yet been fully depreciated according to the beneficiary's usual cost accounting practices, the remaining depreciation costs may be eligible (only for the portion corresponding to the duration of the action and rate of actual use for the purposes of the action; *see Article 6.2.D.2*).

Costs related to preparing, submitting and negotiating the proposals cannot be declared as eligible for the action (they are incurred before the action starts).

Travel costs for the kick-off meeting — If the first leg of the journey takes place before the starting date of the action *(e.g. the day before the kick-off meeting)*, the costs may be eligible if the meeting is held during the action duration.

- **entered as eligible costs in the estimated budget of the action**, under the relevant budget category *(see Annex 2)*

  When the final amount of the grant is calculated, the eligible costs cannot include costs under budget categories that did not appear in the action estimated budget, unless the initial estimated budget was amended or if these additional costs were approved in accordance with Articles 11 to 13.

  Costs included in the estimated budget may be transferred between beneficiaries and budget categories without amending the GA under the conditions set out in Article 4.2.

- **connected to the action as described in Annex 1** (i.e. necessary to achieve the action's objectives)

  The EU/Euratom grant cannot be used to finance activities other than those approved by the Commission.

- **identifiable and verifiable** (i.e. come directly from the beneficiary's accounts (be directly reconcilable with them) and supported by documentation)

  ⚠ Accounting documentation is necessary only for actual costs.

  Indirect costs do not need supporting evidence because they are declared using a flat-rate (⚠ new in Horizon 2020).

  Costs must be calculated according to the applicable accounting rules of the country in which the beneficiary is established and according to the beneficiary's usual cost accounting practices.

  Example: *if a beneficiary always charges a particular cost as an indirect cost, it must do so also for Horizon 2020 actions, and should not charge it as a direct cost.*

  ⚠ This principle cannot be used as justification for non-compliance with other GA provisions. A beneficiary must make any changes needed to bring its usual cost accounting practices in line with all GA provisions.

  Examples: *conditions for calculation of productive hours (see below); conditions for the eligibility of depreciation costs (in line with the international accounting standards, which may deviate from the accounting rules of the country)*

  Specific case:

  For **in-kind contributions** provided by third parties **free of charge** and costs of **linked third parties**, eligible direct costs must be:

  – recorded in the third party's accounting records

  – calculated in accordance with the accounting standards applicable in the country in which the third party is established

  – calculated according to the third party's usual cost accounting practices.

- in **compliance with applicable national laws on taxes, labour and social security**

- **reasonable, justified and must comply with the principles of sound financial management, in particular regarding economy and efficiency** (i.e. be in line with good housekeeping practice when spending public money and not be excessive)

  'Economy' means minimising the costs of resources used for an activity (input), while maximising quality; 'efficiency' is the relationship between outputs and the resources used to produce them.

  ⚠ Costs must reflect the budget allocation and cost breakdown.

  Examples: *The beneficiary may not increase the remuneration of its personnel, upgrade its travel policy or its purchasing rules because of the Commission/Agency support.*

⚠ The conditions described here are cumulative, i.e. all of them have to be met for a cost to be eligible.

3. General eligibility conditions for unit costs

In order to be **eligible**, unit costs must be:

- calculated by **multiplying** the **number of actual units** used to carry out the work *(e.g. number of hours worked on the action, number of tests performed, etc.)* or produced *(e.g. number of square meters for energy efficiency in buildings)* **by the value per unit** ('amount per unit')

  Example: *A Commission decision that sets the unit costs related to laboratory analysis at EUR 300 per test. This amount per unit is included in Annex 2.*

  ⚠ The number of actual units used or produced may change based on actual implementation and it may be subject to controls by the Commission.

  Example: *Audit carried out after the action ends to verify that the number of hours declared for the action corresponds to reality.*

  For personnel costs declared on the basis of the beneficiary's usual cost accounting practices ('average personnel costs'), the beneficiary:

  – must calculate them (the average or standard personnel costs) according to its usual accounting practices

  – must budget and declare a total amount; the amount per unit must not be included in Annex 2.

  ⚠ You may not declare other types of unit costs according to your own usual cost accounting practices. For the other types of unit costs, the amounts per unit will be pre-defined *(in Annex 2 of the GA; see Article 5.2)*.

  Example (eligible unit cost): *Average personnel costs declared in Annex 2 by a beneficiary. Annex 2 includes the total value of eligible personnel costs estimated by the beneficiary for the action.*

  Example (ineligible unit cost): *Costs of minor consumables (e.g. a department's total minor consumable costs per hour worked), declared according to the beneficiary's usual accounting practices. This is not possible under Horizon 2020 rules.*

- the **number of units** must be **necessary** for the action, the units must be used or produced during the course of the action and the beneficiaries must be able to show the link between the number of units charged and the work on the action

  ⚠ It is the number of units used for work on the action which must be recorded, documented and justified in case of an audit, not the actual costs of the work.

  Example:

  A beneficiary which is a SME declares for its owner who does not receive a salary 300 hours worked for an action in 2014. If there is an audit, the SME beneficiary must be able to show a record of the number of hours worked by the owner for the action.

4. General eligibility conditions for flat-rate costs

In order to be **eligible**, flat-rate costs must be calculated by **applying** a **flat rate** to the relevant **eligible costs** (whether actual, unit or lump-sum costs).

Example (25 % flat rate for indirect costs):

A SME beneficiary that charges costs of its owner without a salary is working on an innovation action and uses the EUR30 per hour unit cost fixed in Annex 2 for personnel costs. The SME beneficiary declares as eligible 300 hours of direct personnel costs for its owner + EUR 1 400 for other direct costs + EUR 1 500 for subcontracting for work in an innovation action during the first reporting period.
Eligible direct costs: (30 X 300 = 9 000) + 1 400 + 1 500 = 11 900

Eligible indirect cost: 25 % flat-rate of 9 000 + 1 400 (not the 1 500 for subcontracting) = EUR 2 600
Total eligible costs: 11 900 + 2 600 = EUR 14 500.
Reimbursement rate of 70 % (innovation action, 'for profit' beneficiary) = EUR 10 150.

5. General eligibility conditions for lump sum costs

In order to be **eligible**:

- the lump sum costs must correspond to the amount of lump sum costs set out in Annex 2 and
- the **work** must have been **carried out** in accordance to Annex 1 of the GA.

⚠ Therefore, the beneficiaries do not need to justify that the actual eligible costs correspond to the amount of the lump sum; they only need to prove that the action tasks described in Annex 1 have been carried out.

6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

A. direct personnel costs;
B. direct costs of subcontracting;
C. ***[OPTION to be used if Article 15 applies:*** *direct costs of providing financial support to third parties;]* ***[OPTION:*** *not applicable;***]**
D. other direct costs;
E. indirect costs;
F. **[*OPTION for specific categories of costs if unit costs foreseen by Commission decision*:** *costs of [insert cost category or activity[13]]***]**.

'**Direct costs**' are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point E below).

'**Indirect costs**' are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

[13] Insert precise name of the costs as in the Commission decision authorising the use of the unit cost or lump sum. For example: 'access costs for providing trans-national access to research infrastructure'; costs of 'clinical studies'; costs of 'energy efficiency measures in buildings'

1. Specific conditions for costs to be eligible

Article 6.2 refers to specific eligibility conditions, applicable per budget category.

For ease of reference, the annotations for Article 6.2 will summarise — for each budget category — the information necessary to establish the eligible costs, i.e.

1. types of costs covered by the budget category
2. cost form under which the costs must be declared (i.e. actual costs, unit costs, flat rate)
3. conditions for eligibility
4. how the costs must be calculated.

2. Direct costs

'Direct costs' are specific costs directly linked to the performance of the action and which can therefore be directly booked to it.

They are:

- either costs that have been caused in full by the activities of the project
- or costs that have been caused in full by the activities of several projects, the attribution of which to a single project can, and has been, directly measured (i.e. not attributed indirectly via an allocation key, a cost driver or a proxy).

⚠ Any cost declared by a beneficiary as a direct cost of the action must be justified by supporting evidence (showing the link to the action).

3. Indirect costs

‘Indirect costs’ are costs not identifiable as specific costs directly linked to the performance of the action.

In practice, they are costs whose attribution to the specific action cannot be or has not been measured directly, but only by means of cost drivers or a proxy, which apportion the total indirect costs (overheads) among the different activities.

⚠ In Horizon 2020, indirect costs are charged under the form of a 25% **flat-rate** of the eligible direct costs (minus certain direct eligible costs; *see Article 6.2.E*) .

A. Direct personnel costs *[(not included in Point F)]*

Types of eligible personnel costs

A.1 **Personnel costs** are eligible if they are related to personnel working for the beneficiary under an employment contract (or equivalent appointing act) and assigned to the action. They must be limited to salaries (including during parental leave), social security contributions, taxes and other costs included in the remuneration, if they arise from national law or the employment contract (or equivalent appointing act).

Beneficiaries that are non-profit legal entities[14] may also declare as personnel costs **additional remuneration** for personnel assigned to the action (including payments on the basis of supplementary contracts regardless of their nature), if:

(a) it is part of the beneficiary's usual remuneration practices and is paid in a consistent manner whenever the same kind of work or expertise is required;

(b) the criteria used to calculate the supplementary payments are objective and generally applied by the beneficiary, regardless of the source of funding used.

Additional remuneration for personnel assigned to the action is eligible up to the following amount:

(a) if the person works full time and exclusively on the action during the full year: up to EUR 8 000;

(b) if the person works exclusively on the action but not full-time or not for the full year: up to the corresponding pro-rata amount of EUR 8 000, or

(c) if the person does not work exclusively on the action: up to a pro-rata amount calculated as follows:

{{EUR 8 000

divided by

the number of annual productive hours (see below)},

multiplied by

the number of hours that the person has worked on the action during the year**}**.

A.2 The **costs for natural persons working under a direct contract** with the beneficiary other than an employment contract are eligible personnel costs, if:

(a) the person works under the beneficiary's instructions and, unless otherwise agreed with the beneficiary, on the beneficiary's premises;

(b) the result of the work carried out belongs to the beneficiary, and

(c) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

A.3 The **costs for personnel seconded by a third party against payment** are eligible personnel costs if the conditions in Article 11 are met.

A.4 **Costs of owners** of beneficiaries that are small and medium-sized enterprises ('**SME owners**'), who are working on the action and who do not receive a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual hours worked on the action.

A.5 **Costs of 'beneficiaries that are natural persons'** not receiving a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual hours worked on the action.

[*A.6 [**OPTION to be used for trans-national access to research infrastructure:** **Personnel costs for providing trans-national access to research infrastructure** are eligible only if also the conditions set out in Article 16.1.1 are met.] [**OPTION to be used for virtual access to research infrastructure: Personnel costs for providing virtual access to research infrastructure** are eligible only if also the conditions set out in Article 16.2 are met.]**]***

Calculation

Personnel costs must be calculated by the beneficiaries as follows:

{{hourly rate

multiplied by

number of actual hours worked on the action},

plus

for non-profit legal entities: additional remuneration to personnel assigned to the action under the conditions set out above (Point A.1)**}**.

The number of actual hours declared for a person must be identifiable and verifiable (see Article 18).

The total number of hours declared in EU or Euratom grants, for a person for a year, cannot be higher than the annual productive hours used for the calculations of the hourly rate:

{number of annual productive hours for the year (see below)

minus

total number of hours declared by the beneficiary, for that person for that year, for other EU or Euratom grants}.

The '**hourly rate**' is one of the following:

(a) for personnel costs declared as **actual costs**: the hourly rate is the amount calculated as follows:

{actual annual personnel costs (excluding additional remuneration) for the person

divided by

number of annual productive hours}.

The beneficiaries must use the annual personnel costs and the number of annual productive hours for each financial year covered by the reporting period concerned. If a financial year is not closed at the end of the reporting period, the beneficiaries must use the hourly rate of the last closed financial year available.

For the 'number of annual productive hours', the beneficiaries may choose one of the following:

(i) 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);

(ii) the total number of hours worked by the person in the year for the beneficiary, calculated as follows:

{annual workable hours of the person (according to the employment contract, applicable labour agreement or national law)

plus

overtime worked

minus

absences (such as sick leave and special leave)}.

'Annual workable hours' means the period during which the personnel must be working, at the employer's disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation.

If the contract (or applicable collective labour agreement or national working time legislation) does not allow to determine the annual workable hours, this option cannot be used;

(iii) the 'standard number of annual hours' generally applied by the beneficiary for its personnel in accordance with its usual cost accounting practices. This number must be at least 90% of the 'standard annual workable hours'.

If there is no applicable reference for the standard annual workable hours, this option cannot be used.

For all options, the actual time spent on **parental leave** by a person assigned to the action may be deducted from the number of annual productive hours;

(b) for personnel costs declared on the basis of **unit costs**: the hourly rate is one of the following:

(i) for SME owners or beneficiaries that are natural persons: the hourly rate set out in Annex 2 (see Points A.4 and A.5 above), or

(ii) for personnel costs declared on the basis of the beneficiary's usual cost accounting practices: the hourly rate calculated by the beneficiary in accordance with its usual cost accounting practices, if:

- the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
- the hourly rate is calculated using the actual personnel costs recorded in the beneficiary's accounts, excluding any ineligible cost or costs included in other budget categories.

The actual personnel costs may be adjusted by the beneficiary on the basis of budgeted or estimated elements. Those elements must be relevant for calculating the personnel costs, reasonable and correspond to objective and verifiable information, and

- the hourly rate is calculated using the number of annual productive hours (see above).

[14] For the definition, see Article 2.1(14) of Regulation (EU) No 1290/2013: '**non-profit legal entity**' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

1. Direct personnel costs: Types of costs — Cost forms — Conditions for eligibility — Calculation

The beneficiaries may declare the following **types of costs** as direct personnel costs:

- costs for **employees** (or equivalent):
  - **basic remuneration** (basic salary and complements) and
  - for non-profit legal entities: **additional remuneration** ('bonus payments')
- costs for **natural persons working** under a direct contract
- costs for **personnel seconded by a third party**
- costs for '**beneficiaries that are SMEs for their owners not receiving a salary**'
- costs for '**beneficiaries that are natural persons not receiving a salary**'
- **personnel costs for** providing **trans-national or virtual access to research infrastructure** (if option applies).

1.1 Direct personnel costs: Costs for employees (or equivalent)

1.1.1 This budget category **covers** the following **types of costs**:

- **basic remuneration** (basic salary and complements) and
- for non-profit legal entities: **additional remuneration** ('bonus payments').

What is 'basic remuneration'?

The 'basic salary' includes (and is limited to):

- the salary stated on the beneficiary's payroll, including salaries paid during parental leave
- social security contributions, including social security contributions paid during parental leave
- taxes and other costs included in the remuneration.

Salaries and social security contributions paid during parental leave are eligible only if:

- they are mandatory under national law or collective labour agreements *(e.g. statutory maternity pay)*
- the beneficiary has actually incurred them
- they are not reimbursed by national (central, regional or local) authorities, (in other words, only the net amount paid by the beneficiary can be used to calculate the proportion to be charged to the action) and
- the employee worked for the action before the parental leave.

'Parental leave' covers both maternity leave and parental leave.

The 'complements' may include:

- general contractual complements to the basic salary and

  Examples: *a 13th month payment; complement for hazardous work or night shifts; transportation allowance, etc.*

- variable complements, if
  - they must be paid for the performance of the usual work, duties or tasks of the employee, on the basis of objective conditions and
  - the amounts and the conditions are established by national law or in the employment contract (or equivalent appointing act) and are in accordance with the internal regulations of the beneficiary.

Specific cases:

Teleworking may be accepted if it is the beneficiary's usual practice (i.e. if clear rules are available). The system in place must make it possible to both identify and record the productive hours worked for the action.

Costs of **benefits in-kind** to personnel (company car, vouchers, etc.) may be accepted if they are justified and in conformity with the beneficiary's usual remuneration practices. Like all costs, they must fulfil the eligibility conditions set out in Article 6.

In general, **recruitment costs** are not eligible as direct personnel costs, because the beneficiary is required to have the necessary human resources. If a beneficiary needs to recruit additional personnel during the action duration, the related costs would be considered part of the entity's normal indirect costs, which under Horizon 2020 are covered by a 25 % flat-rate of the eligible direct costs.

Remuneration of post graduate students employed by the university (beneficiary) — If a student works for a university, he/she may be exempt from paying (part of) the academic fees. Those fees (or part of them) are eligible as a personnel cost if the student's contract included the amount of waived fees as part of his/her remuneration. The other conditions set out in Article 6 have to be fulfilled as well *(e.g. the full remuneration, included the value of the waived fees, must be recorded in the university's accounts).*

Like any personnel costs, **PhD costs** (i.e. personnel costs of students) are eligible, if they fulfil the conditions set out in Article 6.

For public bodies, the **costs related to public officials** paid directly from central, regional or local government budgets may be considered eligible, if they fulfil the conditions set out in Article 6.

> ⓘ *For more information on personnel made available to a beneficiary by a third party, see below and Articles 11 and 12.*

What not?

The basic remuneration does not include components that must be considered to be 'additional remuneration'.

> ***Example (variable remuneration component acceptable as basic remuneration):*** *The contract of a professor includes as part of his/her usual tasks both teaching and researching; it foresees a basic fixed remuneration of 1 000 EUR/month plus a variable part of 10 EUR/hour, for each hour spent on research activities.*

> ⚠ The classification of a component of the remuneration as basic remuneration or as additional remuneration depends also on the classification of that component under the relevant national fiscal legislation, i.e. if the national tax authority considers something as part of the basic remuneration of the employee or as an additional remuneration ('bonus').

What is 'additional remuneration'?

'Additional remuneration' refers to payments higher than the employee's usual remuneration *(e.g. a 'bonus' resulting in an hourly rate higher than the normal one).*

What not? It does not refer to additional salary paid to the employee due to an increase in the number of hours worked on the standard work or expertise defined in the employment contract *(e.g. via an additional contract)* when this additional hours are remunerated according to the standard salary conditions of the employee.

Specific case:

'Supplementary contracts' (whatever their form) for carrying out tasks for specific actions *(e.g. an EU action)* with remuneration that is different from the standard remuneration are acceptable, if it is the beneficiary's usual practice, the beneficiary is a non-profit legal entity and this is authorised under national law. However, the difference between the remuneration paid in the additional contract and the standard remuneration package in the first non-action-related contract is considered 'additional remuneration' and is subject to the specific cost eligibility conditions mentioned above and, if eligible, to the eligibility ceiling.

1.1.2 Costs for employees (or equivalent) may be **declared as** actual costs or on the basis of unit costs (in accordance with the usual cost accounting practices, i.e. 'average personnel costs') *(see Article 5.2(a))*.

1.1.3 The costs must comply with the following **conditions for eligibility**:

For basic remuneration (basic salary and complements):

- fulfil the **general conditions** for costs to be eligible (i.e. incurred during the action duration, necessary, etc.; *see Article 6.1(a) and (b)*)
- be **mandatory** under national law, collective labour agreements or the employment contract
- be paid to the employee (or benefit to him/her) **for** his/her ***usual* work**, duties or tasks (as defined in the employment contract or equivalent appointment act).

  Payments linked to tasks *other* than those covered by the basic remuneration are not eligible.

  Example: *A payment linked to participation in a specific action (whether EU or non-EU) or project.*

It doesn't matter whether the employee works part time or full time or with a temporary or permanent employment contract, but he/she **must be 'assigned to the action'** (i.e. work for the action according to internal written instructions, organisation chart or other documented management decision).

If the employee does not work exclusively on the action, personnel costs can be charged only in proportion to the time dedicated to the action.

⚠ To avoid abuses, the eligibility ceiling for additional remuneration *(see below)* will exceptionally also be applied to the basic salary and complements, if they have been artificially increased for participation in the EU action.

Examples:

A researcher worked for the beneficiary, resigned, and subsequently signed a new contract with the same entity to work on the EU action for a higher salary.

A researcher worked for a beneficiary of the grant, resigned, and subsequently signed a new contract with another beneficiary (or a third party) to work on the EU action for a higher salary.

Specific case:

For **secondments** or **linked third parties**, the employment contract or equivalent appointing act must be with the third party and the salaries must be on the third party's payroll.

For additional remuneration ('bonus' payments) **for non-profit legal entities:**

- fulfil the **general conditions** for costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a) and (b)*)

  Additional remuneration paid to a researcher that is not directly linked to the participation in the EU action *(e.g. additional remuneration based on the corporate performance)* is not eligible.

Additional remuneration is considered linked to the action if the researcher would not have received it if s/he had not participated in the action.

Example:

A nuclear researcher in a public research centre (non-profit) worked for 1 600 productive hours
Remuneration components:
a = annual salary: EUR 50 000
b = salary complement for holding a management post (e.g. Head of department): EUR 5 000
c = additional remuneration for being Head scientist in a project: EUR 2 000
d = additional remuneration for being First Assistant on an internal action: EUR 1 000
a *and* ***b*** *would be used to calculate the researcher's hourly rate:*
hourly rate for the EU action = {(50 000 + 5 000)/1 600} = EUR 34
c *would be subject to the specific eligibility conditions for additional remuneration. If eligible, it would be subject to the eligibility ceiling.*
d *would not be eligible and would not be taken into account when calculating the hourly rate for the EU action, as it is not linked to the participation in the EU action.*

- be paid to the employee (or benefits him/her) for **additional work** or **expertise**

The work to be carried out (or expertise used) must be different from the standard work or expertise defined in the employment contract (or equivalent appointment act) and covered by the standard remuneration package. This difference must be relevant and verifiable.

Examples (acceptable additional remuneration):

A normal salary is paid for teaching + additional remuneration is paid for doing research.

A normal salary is paid for research + additional remuneration is paid for taking on the role of 'principal investigator' (in an ERC action).

A normal salary is paid for laboratory research + additional remuneration is paid for field research.

Examples (not acceptable additional remuneration):

Additional remuneration paid for using English.

Additional remuneration is paid for participating in EU funded or multi-partner actions.

- be part of the beneficiary's usual remuneration practices and be consistently paid whenever the same kind of work or expertise is required

- be calculated on the basis of **criteria** that are **objective** and **generally applied** by the beneficiary, regardless of the source of funding used.

The objective criteria must be related to the additional work or expertise.

The system for making additional payments should be established in the beneficiary's internal rules or at least be documented and known by the employees.

⚠ The additional remuneration cannot be paid to a specific employee at the discretion of the management.

Example (acceptable additional remuneration): *All teachers carrying out research on top of their usual teaching activities get an extra payment equal to 10% of their salary.*

Example (not acceptable additional remuneration): *The Director decides at its sole initiative to pay an extra 10% to one professor carrying out research.*

When a supplementary contract is used, the remuneration scheme must be described in it.

The rules for additional remuneration may not depend on the fund provider. In particular, they cannot be set up for actions funded by a specific donor, if these actions do not require a clearly identifiable different kind of work or expertise.

Examples (acceptable additional remuneration): *All professors carrying out research will be paid 10% more.*

Examples (not acceptable additional remuneration): *All professors carrying out research will be paid 10% more when they work on EU funded actions.*

⚠ Additional remuneration is only eligible for non-profit legal entities.

⚠ Additional remuneration is eligible only **up to a certain ceiling** ('eligibility ceiling'; *see below*).

1.1.4 The costs must be **calculated** as follows:

{{**hourly rate**

multiplied by

number of actual **hours worked on the action**},

plus

for non-profit legal entities: **additional remuneration** to personnel assigned to the action under the conditions set out above (Point A.1)**}**.

⚠ The total number of hours declared in EU and Euratom grants, for a person for a year, cannot be higher than the standard number of annual productive hours used for the calculation of the hourly rate *(see below)*.

Example (for calculation of costs for employees):

A nuclear researcher working for a public research laboratory (non-profit) worked:
1 600 productive hours
800 hours declared for the action (at an hourly rate of EUR 40)
400 hours declared for another EU grant
S/he received eligible additional remuneration of EUR 2 000 for being Head of Project.
*Calculation of the personnel costs: EUR 40/hour * 800 hours =* ***32 000***
Addition of the additional remuneration: = ***2 000***
Total costs charged to the action for the year: ***32 000 + 2 000 = EUR 34 000***

⚠ *Condition: Actual hours declared for action + actual hours declared for another EU grant ≤ total productive hours (800 + 400 <* ***1 600****)*

Procedure for calculating personnel costs:

Step 1 — **Calculation of the hourly rate**

According to the GA, the **hourly rate** — for personnel costs declared as **actual costs** — must be calculated as follows:

{actual **annual personnel costs** (excluding additional remuneration) for the person

divided by

number of **annual productive hours**}.

Example (for calculation of hourly rate):

A nuclear researcher working for a public research laboratory (non-profit) worked 1 600 productive hours.
Remuneration components:
a = annual salary: EUR 50 000
b = extra payment for holding a post involving radioactive hazards: EUR 5 000
c = additional remuneration for being Head Scientist in a Project: EUR 2 000
***a** and **b** would be used to calculate the hourly rate. The calculation must exclude any additional remuneration which, if eligible, will have to be calculated separately.*
hourly rate for the action = {(50 000 + 5 000)/1 600} = ***EUR 34***

⚠ For the sake of simplicity and in order to avoid calculation errors, the hourly rate must be calculated **by financial year** and has to be made always on the basis of full financial years.

***Example:** When the financial year matches the calendar year (most common case), i.e. 1st January – 31st December, the hourly rate for the hours worked in 2014 will be calculated using the personnel costs from January to December 2014.*

If at the end of the reporting period the on-going financial year is not yet completed, the beneficiary must use the same hourly rate it calculated for the last closed financial year. In other words, if on a reporting period there are months for which the financial year is not closed the beneficiaries must use the last closed financial year available to declare those costs *(see example below)*.

⚠ The beneficiary cannot submit adjustments (neither positive nor negative) in the next reporting period resulting from a re-calculation of the hourly rate once the on-going financial year is closed.

Exception:

Employees hired during the **on-going financial year** (at the end of the reporting period). Since these employees did not work for the beneficiary during the last financial year, the hourly rate can only be calculated on the basis of his/her personnel costs incurred during the reporting period.

Examples:

***1.** Action with 1 reporting period of 18 months from 1.10.2014 to 31.3.2016. The beneficiary's financial year closes on 31 December of every year.*

Calculation of the hourly rate:
From 1.10.2014 to 31.12.2014: on the basis of the closed financial year 2014.
From 1.01.2015 – 31.12.2015: on the basis of the closed financial year 2015.
From 1.01.2016 – 31.3.2016: hourly rate calculated for the last closed financial year available → 2015.

***2.** The beneficiary hires a new employee on 1.2.2016 ➔ the hourly rate would be calculated taking into account his/her personnel costs for February and March 2016.*

⚠ *In order to avoid calculation errors, particular attention must be given in order to correctly determine the pro-rata of the annual productive hours (e.g. if 1 720 hours are used, the productive hours for the period February-March would be 1 720 /12 * 2 = 287).*

The **annual personnel costs** may include only eligible personnel costs and must exclude eligible additional remuneration (since that will be added at the end).

For calculating the **annual productive hours**, the beneficiary must use one of the following three options:

– 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time) (‘**1720 fixed hours**’)

– the total number of hours worked by the person in the year for the beneficiary **(‘individual annual productive hours**’)

– the ‘standard number of annual hours’ generally applied by the beneficiary for its personnel in accordance with its usual cost accounting practices **(‘standard annual productive hours’)**.

⚠ The option must be applied not only to the person for whom it declares costs, but per group of personnel employed under similar conditions.

⚠ Productive hours must be calculated on the basis of *all* working activities. Using only ‘billable hours’ is not acceptable.

Example productive hours vs. billable hours:

X is a researcher employed full time in a research organisation participating in a Horizon 2020 action. According to the beneficiary’s cost accounting practices, the standard number of annual hours (productive hours) is 1 600 hours.

At the end of the year, the distribution of time of X is as follows:

Type of activity	***Annual productive hours/activity***	***Billable hours***
for Horizon 2020 action	***400***	***400***
for other projects	*200*	*200*
for the preparation of proposals for new projects	*600*	*0*
member of the management board of the RO	*400*	*0*
total number of hours	***1 600***	***600***

⚠ In case the person concerned has been on parental leave during the year, the annual productive hours may be reduced by subtracting from them the actual time spent on parental leave.

The table below explains the three **different options** for **annual productive hours**:

Options	What does it mean?	When can it be used? How should it be used?	What happens if you make a mistake?
Option 1 **1 720 fixed hours**	The number of hours is fixed for full-time employees (and it is pro-rata for employees working part-time).	Can be used **in all cases**; any beneficiary can use this option.	**Not applicable**
Option 2 **Individual annual productive hours**	The number of hours is calculated on the basis of the 'annual workable hours' of the employee (i.e. the total number of hours for which a employee is working for the beneficiary, including the overtime worked and absences *(such as sick leave or other types of special leave)*.	This option can be used, if: – the number of 'individual annual productive hours' is calculated according to the formula specified in the grant agreement {annual workable hours of the person (according to the employment contract, applicable labour agreement or national law) plus overtime worked minus absences (such as sick leave and special leave)} – the 'annual workable hours' are established according to one of the following: – employment contract of the person concerned – applicable collective labour agreement – national law on working time ***Example:*** *contract stipulating 35 hours of work per week* ⚠ If the employment contract, collective labour agreement or national law does not allow to determine the number of individual annual workable hours, this option cannot be used. – this calculation method is consistently applied (per group	If our auditors find that a beneficiary made a mistake, the Commission/Agency will recalculate the eligible costs as follows: – if the calculation method was not consistently applied *(e.g. the beneficiary used option 2 for one employee and option 3 for another employee employed under similar conditions)*: the auditors will adjust the number of annual productive hours by applying option 2 to all persons concerned, where possible. – if the employment contract, applicable collective labour agreement or national working time legislation does not allow determining the number of individual annual workable hours: the auditors will apply option 1. – if not *all* annual workable hours were included, the auditors will recalculate the productive hours to include all workable hours.

		of personnel under similar conditions). ***Example (calculation of individual annual workable hours):*** *X is a full-time researcher (working eight hours per day, from Monday to Friday) at Research Centre Z. X's contract includes 22 working days of annual leave, plus eight days of public holidays. In the financial year covered by the reporting period in question, X worked 29 hours of overtime and was on sick leave for five days.* *The **individual annual workable hours** would therefore be:* *365 days — 104 days (Saturdays and Sundays) — 22 days (annual leave) — 8 days (public holidays) = 231 days x 8 hours per day = 1 848 hours* ***Individual annual productive hours** for Researcher X:* *Annual working hours = **1 848*** *+ overtime (hours) = 29* *- annual sick leave (5 days x 8 hours) = 40* *➔ individual annual productive hours for Researcher X = 1 837* *Research Centre Z may use 1 837 as individual annual productive hours for this researcher.*	
Option 3 **Standard annual productive hours**	The number of hours is calculated on the basis of the 'standard annual productive hours' generally applied by the beneficiary for its personnel, in accordance with its usual cost accounting practices. The standard annual productive hours may be calculated for the entity as a whole, per category of personnel, per cost centre, etc. The beneficiary may include or exclude certain activities *(e.g. general training, general meetings etc.)* when calculating the standard annual productive hours, if this is in line with its usual cost accounting practices.	This option can be used if: – the number of standard annual productive hours is calculated in accordance with the beneficiary's usual cost accounting practices – this calculation method is consistently applied (per group of personnel under similar conditions) – the number of standard annual productive hours is at least 90 % of 'standard annual workable hours'. The standard annual workable hours is the standard number of hours that a full time employee of the group having the same standard productive hours ('reference group', *e.g. a category of employees, employees of a cost centre, etc.*) must be present at work under normal circumstances, as defined in: – the employment contracts of the reference	If our auditors find that a beneficiary made a mistake, the Commission/Agency will recalculate the eligible costs as follows: – if the standard annual productive hours were calculated not in accordance with the beneficiary's usual cost accounting practices, the auditors will adjust the number of annual productive hours by applying option 2, if possible; – if the calculation method was not applied consistently, the auditor will adjust the number of annual productive hours by applying option 2, if possible; – if there is no applicable reference for the standard annual workable hours, the auditors will apply option 1;

		group – an applicable collective labour agreement or – the national law on working time legislation. ⚠ If the contract, collective labour agreement or national law does not allow to determine the number of individual annual workable hours, this option cannot be used. ***Example (no applicable reference for standard annual workable hours):*** *A researcher carries out research for the beneficiary for a fixed salary per month. However, the employment contract does not allow to determine the number of hours to be worked. There is no applicable collective agreement and national legislation does not regulate the number of workable hours per year for this type of labour agreement.* *In this case, there is no applicable reference for standard annual workable hours. Therefore, the beneficiary must use option 1 (1 720 annual productive hours).* If its number of standard annual productive hours is **higher** than 90%, the beneficiary must use the number of standard annual productive hours. If its number of standard annual productive hours is **lower** than 90%, the beneficiary must use the 90% or choose one of the other options. ***Example (calculation of standard annual workable hours):*** *Full-time researchers hired by Research Centre Z have an employment contract that states that they must work eight hours per day, from Monday to Friday. National legislation provides for 22 working days of annual leave, plus eight days of public holidays. The applicable collective labour agreement adds three extra days of annual leave.* *The **standard annual workable hours** for Research Centre Z would therefore be:* *365 days — 104 days (Saturdays and Sundays) — 22 days (annual leave) — 8 days (public holidays) — 3 days (collective agreement) = 228 days * 8 hours*	– if the number of standard annual productive hours used by the beneficiary was lower than 90% of standard annual workable hours, the auditor will use either the 90% of workable hours or option 1, whichever is more favourable for the beneficiary. – if conditions a) and b) are fulfilled but the beneficiary uses 90% of standard annual workable hours instead of the number of annual productive hours arrived at by using its usual accounting practices (higher than 90%), the auditor will adjust the number of productive hours to the higher number.

		per day = 1 824 hours ***Standard annual productive hours*** *for Research Centre Z:* *Research Centre Z would like to use its usual cost accounting practices to calculate the hourly rates for EU actions. It calculates the number of standard annual productive hours as follows:* *Annual working days =* ***228*** *- average annual sick leave (days) = 3* *- days of general training = 4* *- other unproductive activities (days) = 9* ➔ *productive days =* ***212*** *Multiplied by 8 working hours per day* ➔ *standard annual productive hours = 1 696* *This number of standard annual productive hours must then be compared with 90% of standard annual workable hours (in this example 1 824).* *90% of 1824 =* ***1 642*** ***1 696 hours*** *(usual cost accounting practice) >* ***1 642 hours*** *(90% annual workable hours)* *Research Centre Z may apply its number of standard annual productive hours (i.e. 1 696) to EU actions since the number is higher than 90% of annual workable hours.* ⚠ *If its number of standard annual hours is lower than 1 642 (e.g. 20 days of other unproductive tasks instead of 9 ➔ 1 608 annual productive hours), Research Centre Z must apply 1 642 hours (90% of the annual workable hours).* ⚠ *If its number of standard annual productive hours is higher than 90% (in our example it is 93%: 1 696/1 824), Research Centre Z must use this number (and not 90% of annual workable hours).*	

Specific case:

For **personnel costs declared as a unit cost** (on the basis of the beneficiary's usual cost accounting practices, i.e. 'average personnel costs'), the **hourly rate** must be calculated by the beneficiary in accordance with its usual cost accounting practices for determining the hourly rates of its personnel.

The GA sets the following conditions:

– the cost accounting practices used must be applied in a consistent manner, based on objective criteria, regardless of the source of funding

The beneficiary must consistently apply its usual cost accounting practices based on objective criteria that must be verifiable if there is an audit. It must do this no matter who is funding the action.

⚠ This does not mean that cost accounting practices must be the same for all types of employees, departments or cost centres. If, for instance, the beneficiary's usual cost accounting practices include different calculation methods for permanent personnel and temporary personnel, this is acceptable. However, the beneficiary cannot use different methods for specific research actions or projects on an ad-hoc basis.

Example (acceptable usual cost accounting practices): *Individual (actual) personnel costs are used for researchers, average personnel costs (unit costs calculated in accordance with the beneficiary's usual cost accounting practices) are used for technical support staff.*

Example (unacceptable usual cost accounting practices): *Average personnel costs are used to calculate costs in externally-funded projects only.*

– the hourly rate must be calculated using the actual **personnel costs** recorded in the beneficiary's accounts, excluding any ineligible cost or costs already included in other budget categories

Any cost considered ineligible by the Commission but included in the beneficiary's usual accounting practices must be excluded when calculating the personnel costs for the action.

If necessary, it must be adjusted to fulfil all eligibility criteria.

Example: *A beneficiary calculates the hourly rate in accordance with its usual cost accounting practices and includes taxes not included in remuneration. These are ineligible and must therefore be removed from the hourly rate declared for personnel working on the action.*

Costs that are already included in other budget categories must be taken out (double funding of the same costs).

Example: *Beneficiaries whose cost accounting practices include for the calculation of the hourly rate indirect costs under Article 6.2.These indirect costs must be removed from the pool of costs used to calculate the hourly rate charged to Horizon 2020 actions. In Horizon 2020 actions, indirect costs must be declared using a flat rate of 25%, so personnel costs cannot include any indirect costs.*

Budgeted or estimated figures are not costs actually incurred and may only be accepted as eligible components of the hourly rate if they:

– are relevant, i.e. clearly related to personnel costs

– are used in a reasonable way, i.e. they do not play a major role in calculating the hourly rate

– correspond to objective and verifiable information, i.e. their basis is clearly defined and the beneficiary can show how they were calculated

Example: *calculating average 2014 hourly rates by using 2013 payroll data and increasing them by adding the CPI (consumer price index) on which the basic salaries are indexed.*

– the hourly rate must be calculated using the number of annual productive hours (i.e. either option 1 or 3).

⚠ The beneficiaries may request the **approval of the methodology** used by them, by submitting (via the following functional mailbox: EC-H2020-UNIT-COST-METHODOLOGY-CERTIFICATION@ec.europa.eu) an audit certificate on their usual cost accounting practices *(for information on this point, see Article 18.1.2(b) and Annex 6)*. Costs declared in line with an approved methodology will not be challenged subsequently (unless the beneficiaries concealed information for the purpose of the approval).

Step 2 — **Multiplying the hourly rate by the number of actual hours worked on the action**

By multiplying the hourly rate by the number of hours actually worked by the person, the beneficiary determines the amount it can declare as personnel cost.

Step 3 — **For non-profit legal entities: addition of the additional remuneration (if any)**

If the person received eligible additional remuneration (and if the beneficiary is a non-profit legal entity), it may also declare the share of the additional remuneration that can be attributed to the action in the way described below.

If the resulting amount is above the following **eligibility ceilings**, it must be capped:

Occupation	**Contract**	
	hired full time during the entire year	NOT hired full time during the entire year
working exclusively for the EU action	**EUR 8 000**	pro-rata amount of EUR 8 000
NOT working exclusively for the EU action	{8 000 / annual productive hours FTE} * hours worked for the action over the year	

The eligibility ceiling is *fixed* at EUR 8 000 per year for each full time equivalent (FTE), i.e. EUR 8 000 for a **full-time employee working exclusively for the action during the entire year**.

Example*: A researcher employed part time by the beneficiary to work four days a week would correspond to 0.8 FTE ➔ the ceiling would be fixed at EUR 8 000* 0.8 = EUR 6 400 per year.*

For an **employee working exclusively for the action but not hired full time during the entire year**, the ceiling is reduced pro-rata.

Example*:*

*A researcher employed full time to work for the action from January to March (i.e. for three months) would correspond to 0.25 FTE (3 out of 12 months) ➔ the ceiling would be fixed at EUR 8 000 * 0.25 = EUR 2 000.*

*If the researcher was employed part time (e.g. 80%), ➔ the ceiling would be adjusted as follows: 8 000 * 0.25 * 0.80 = EUR 1 600.*

For **an employee not working exclusively for the action**, the ceiling is *calculated pro-rata*, based on the hours worked for the action. Therefore, additional remuneration paid on top of the standard hourly rate is eligible up to a maximum of:

$$\frac{\text{EUR 8 000}}{\text{annual productive hours of an FTE}} * \text{hours worked by the employee for the action over the year}$$

Example:

An employee received a EUR 2 000 bonus for being Head of Project for the EU action.
S/he worked 1 600 annual productive hours, 800 of them for the EU action.
Maximum additional remuneration eligible for the EU action (eligibility ceiling):
{EUR 8 000 / 1 600} * 800 ➔ 5 * 800 = EUR 4 000
The additional remuneration paid for the EU action is eligible in full because it is lower than the eligibility ceiling (2 000 < 4 000).

If the additional remuneration paid for being Head Scientist in the action had been EUR 7 000 instead of EUR 2 000, the eligibility ceiling would apply and only EUR 4 000 could be charged to the action (even if the actual payment was EUR 7 000).

If the researcher had worked 200 hours instead of 800 hours for the EU action, the eligibility ceiling would have been:

{(EUR 8 000 / 1 600} * 200 ➔ 5 * 200 = EUR 1 000

In this case, the ceiling would also apply, since EUR 2 000 (additional remuneration paid) > EUR 1 000 (ceiling). Only EUR 1 000 could be charged to the action even if the actual payment was EUR 2 000.

1.2 Direct personnel costs: Costs for natural persons working under a direct contract

1.2.1 This budget category **covers** typically in-house consultants (i.e. self-employed *natural* persons working part-time or full-time for the action, under a contract which is not governed by labour law; not companies).

What not? Persons provided by a temporary work agency.

⚠ The cost of using a temporary work agency that makes personnel available to a beneficiary may nevertheless be eligible as 'purchase of a service' *(see Article 10)* or as a 'subcontracting cost' *(see Article 13).*

1.2.2 Costs for natural persons working under a direct contract may be **declared as** actual costs or on the basis of unit costs (in accordance with the usual cost accounting practices, i.e. 'average personnel costs') *(see Article 5.2(a)).*

1.2.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for costs to be eligible (i.e. incurred/used during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a) and (b)*)

- there must be a **direct contract** between the natural person (individual) and the beneficiary

  The contract cannot be with a third party legal entity *(e.g. a temporary work agency)*.

- the person must work under the **beneficiary's instructions** and, unless otherwise agreed with the beneficiary through a teleworking agreement, on the **beneficiary's premises**

  It must be the beneficiary who decides on, designs and supervises all work. The consultant must report to the beneficiary.

- the **result** of the work carried out must **belong to** the **beneficiary**

  The work carried out, including any resulting patents or copyright, must belong to the beneficiary.

- **not** be **significantly different** from costs for personnel performing similar tasks under an employment contract with the beneficiary.

  The remuneration must be based on working hours, rather than on delivering specific outputs/products.

1.2.4 The **calculation** of the costs depends on how the contract is established (i.e. if it is based on an hourly rate, or on a monthly one, or even on a fixed amount). A calculation method is required, especially if the natural person works on different projects.

Cost of natural persons working under a direct contract for a beneficiary must be calculated according to the same **formula** explained in point 1.1.4 (i.e. hourly rate multiplied by the number of actual hours worked on the action).

However, the hourly rate is different (since it is not based on the annual personnel costs as registered on the payroll).

For the **hourly rate**, the beneficiaries must use one of the following options:

- if the contract specifies an hourly rate: this hourly rate must be used
- if the contract states a fixed amount for the services of the natural person: this global amount must be divided by the number of hours worked for the beneficiary under that contract.

1.3 Direct personnel costs: Costs for personnel seconded by a third party

1.3.1 This budget category **covers** personnel seconded by a third party as an in-kind contribution against payment' *(see Article 11)*.

ⓘ For information on in-kind contributions provided by third parties free of charge, see Articles 6.4 and 12.

1.3.2 Costs for personnel seconded by a third party may be **declared as** actual costs or on the basis of unit costs (in accordance with the usual cost accounting practices, i.e. 'average personnel costs') *(see Article 5.2(a))*.

1.3.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for costs to be eligible (i.e. incurred/used during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a) and (b)*)
- the person must be **seconded**

  Secondment refers to the temporary transfer of personnel from a third party to the beneficiary. The seconded person is still paid and employed by the third party, but works for the beneficiary. S/he is at the disposal of the beneficiary.

  Example: *A researcher in a public research centre is seconded to work in a university that is a beneficiary in a GA.*

  ⚠ Secondment does not necessarily require the seconded person to work at the beneficiary's premises, though this is what usually happens.
- the beneficiary must **reimburse the costs** to the third party (i.e. not for free)
- fulfil the **additional eligibility conditions** set out in Article 11.1.

1.3.4 The same rules for **calculation** apply as in point 1.1.4.

1.4 Direct personnel costs: Costs of beneficiaries that are SMEs for their owners not receiving a salary — Costs of beneficiaries that are natural persons not receiving a salary

1.4.1 These budget categories **cover** the costs of SME owners and the costs of beneficiaries that are natural persons not receiving a salary.

What not? SME owners who receive a salary (registered as such in the accounts of the SME) cannot declare personnel costs under this budget category, unless s/he can show that this salary corresponds exclusively to the management of the SME (and is therefore not linked to the action). (In this case, the salary for the management of the SME cannot be declared.)

⚠ If the remuneration status of the SME owner changes during the course of the action, the beneficiary has to request an amendment *(see Article 55)*, in order to change the form of costs used *(e.g. from unit cost to actual costs)*.

Example:

A GA was signed in 2014 with an SME whose owner does not receive a salary. The action's personnel costs are calculated based on the unit cost set out in Annex 2.

In 2016, the SME starts paying the owner a salary for his/her work. From that moment on, any costs charged to the Horizon 2020 action require an amendment to the GA to remove the unit cost and to allow the SME owner to charge personnel costs based on his/her salary. The SME may no longer use unit costs to declare the costs of its owner.

1.4.2 These costs must be **declared** on the basis of the unit cost (hourly rate) fixed by Commission Decision C(2013) 8197[18] and indicated in Annex 2 of the GA.

This unit cost (hourly rate) is calculated according to the following formula:

{EUR 4,650/ 143 hours}

multiplied by

[18] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_sme-owners_natural-persons-no-salary_en.pdf

{country-specific correction coefficient / 100}

ⓘ *For the country-specific correction coefficient, see the* MSC calls conditions of the Main Work Programme[19] *(Table 4).*

Example: *A German SME owner not receiving a salary will calculate the hourly rate as follows:*
EUR 4.650/143 * 98.8% = *EUR 32,13/hour*

1.4.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for unit costs to be eligible (i.e. units used during the action duration, necessary, linked to the action, correct calculation etc.; *see Article 6.1(b)*)
- be declared for an **owner** of an **SME/ beneficiary that is natural person**, who **works on the action** but **does not receive a salary**.

  The owner may be compensated by means such as dividends, service contracts between the company and the owner, etc.

1.4.4 They must be **calculated** as follows:

amount per unit (hourly rate) **x** number of actual hours worked on the action

⚠ The total number of hours declared in EU and Euratom grants for an SME owner for a year cannot be higher than the standard number of annual productive hours used for the calculation of the hourly rate. For SME owners without salary, this is 1 720 hours.

The Commission may verify that the beneficiary fulfils the conditions for charging this unit cost, and if it applied the formula correctly.

1.5 Direct personnel costs: Personnel costs for providing trans-national or virtual access to research infrastructure

1.5.1 This budget category **covers** the personnel costs in actions under the Research Infrastructures Part of Horizon 2020 with 'provision of access activity' *(see Article 16)*, i.e.:

- costs for employees (or equivalent)
  - basic remuneration and
  - for non-profit legal entities: additional remuneration
- costs for natural persons working under a direct contract and
- costs of personnel seconded by a third party against payment.

⚠ You may use this option only if it is foreseen in your GA.

1.5.2 Personnel costs for providing trans-national or virtual access to research infrastructure may be **declared as** actual costs or on the basis of unit costs (in accordance with the usual cost accounting practices, i.e. 'average personnel costs') *(see Article 5.2(a))*.

1.5.3 The costs must comply with the following **conditions for eligibility**:

[19] Available at http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#h2020-work-programmes-2014-15.

- fulfil the **general conditions** for costs to be eligible (i.e. incurred/used during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a) and (b)*)
- fulfil the specific conditions for costs for employees (or equivalent), costs for natural persons working under a direct contract or costs of personnel seconded by a third party against payment
- be incurred for providing **trans-national** or **virtual access** to research infrastructure
- fulfil the **additional eligibility conditions** set out in Article 16.1 or 16.2.

1.5.4 The same rules for **calculation** apply as in points 1.1.4., 1.2.4 and 1.3.4.

B. Direct costs of subcontracting *[(not included in Point F)]* (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if the conditions in Article 13 are met.

[OPTION to be used for trans-national access to research infrastructure: *Subcontracting costs for providing trans-national access to research infrastructure are eligible only if also the conditions set out in Article 16.1.1 are met.**]***

[OPTION to be used for virtual access to research infrastructure: *Subcontracting costs for providing virtual access to research infrastructure are eligible only if also the conditions set out in Article 16.2 are met.**]***

1. Direct costs of subcontracting: Types of costs — Cost form — Conditions for eligibility — Calculation

1.1 This budget category **covers** (and is limited to) the price paid for subcontracts and the related taxes *(for VAT, see Article 6.5).*

⚠ The options for access to research infrastructure may be used, only if it is foreseen in your GA.

1.2 Direct costs of subcontracting must be **declared as** actual costs (i.e. on the basis of the prices actually paid) *(see Article 5.2(b)).*

1.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)
- be incurred for the **subcontracting of action tasks** described in Annex 1 *(see Article 13)*
- fulfil the **additional eligibility conditions** set out in Article 13.1.1
- for subcontracting costs incurred for providing **trans-national or virtual access to research infrastructure**: fulfil the **additional eligibility conditions** set out in Article 16.1 or 16.2.

1.4 There is no specific **calculation** method; the costs must correspond to the eligible costs actually incurred.

C. Direct costs of providing financial support to third parties ***[(not included in Point F)] [OPTION to be used if Article 15 applies:*** *are eligible if the conditions set out in Article 15 are met.]**[OPTION**: not applicable]*

1. Direct costs of providing financial support to third parties: Types of costs — Cost form — Conditions for eligibility — Calculation

1.1 This budget category **covers** costs for financial support to third parties under Article 15.

⚠ You may use this option only if it is foreseen in your GA.

1.2 Direct costs of providing financial support to third parties must be **declared as** actual costs (i.e. on the basis of the financial support actually paid) *(see Article 5.2(c))*.

1.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)
- fulfil the **additional eligibility conditions** set out in Article 15.1.1.

1.4 There is no specific **calculation** method; the costs must correspond to the eligible costs actually incurred.

D. Other direct costs *[(not included in Point F)]*

D.1 **Travel costs and related subsistence allowances** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if they are in line with the beneficiary's usual practices on travel.

***[OPTION to be used for trans-national access to research infrastructure:** Travel costs for providing trans-national access to research infrastructure are eligible only if also the conditions set out in Article 16.1.1 are met.]*

1. Travel costs and related subsistence allowances: Types of costs — Cost form — Conditions for eligibility — Calculation

1.1 This budget category **covers** travel costs and related subsistence allowances (including all related duties, taxes and charges that the beneficiary has paid, if including them is part of the usual practices for travel *(e.g. non-deductible VAT; see Article 6.5)*).

> **Best practice:** Beneficiaries may contact the Commission/Agency to ask whether a particularly expensive travel plan would be accepted or not.

Travel and subsistence costs may relate to the personnel of the beneficiaries as well as to external experts that participate in the action on an ad hoc basis *(e.g. attending specific meetings)*, if the experts' participation is envisaged in Annex 1. In this case, the beneficiary may reimburse the experts or handle the travel arrangements itself (and be invoiced directly).

There is no distinction between travelling in or outside of Europe.

⚠ The option for access to research infrastructure may be used, only if it is foreseen in your GA.

1.2. Travel and subsistence costs must be declared as actual costs *(see Article 5.2(d))*.

1.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)

  The travel for which costs are claimed must be necessary for the action *(e.g. to present a paper explaining the results of a conference)*. ⚠ Travel costs related to an event at which the beneficiary carried out work not specifically related to the action are not eligible.

  All travel costs must be limited to the needs of the action; ⚠ costs related to extensions (for other professional or private reasons) are not eligible.

  Moreover, they must be adequately recorded.

- be in line with the beneficiary's usual practices on travel

  ***Example*:**

  Beneficiary A declares the cost of a business class airplane ticket for one of its employees.
  If the beneficiary usually pays for staff in this category to travel in business class, then the cost of the business class ticket is eligible.

If the beneficiary's usual practice is to only pay for economy class tickets for staff in this category, then the cost of the business class ticket is not eligible.

If the beneficiary reimburses travel and/or related subsistence allowances as a lump sum and/or *per diem* payment, it is the lump sum or *per diem* amount that is considered an eligible cost, not the actual prices paid by the person receiving the lump sum or *per diem*.

⚠ Such lump sums or per diem payments are not 'unit costs' or 'lump sum costs' under Article 5.2, but actual costs (because they are the actual cost incurred by the beneficiary). The amount of the per diem or lump sum paid by the beneficiary must be recorded in the beneficiary's accounting system and will be checked if there is an audit.

- for travel and subsistence costs incurred for providing **trans-national access to research infrastructure**: fulfil the **additional eligibility conditions** set out in Article 16.1.

1.4 There is no specific **calculation** method; the costs must correspond to the eligible costs actually incurred.

D.2 ***[OPTION by default**: The **depreciation costs of equipment, infrastructure or other assets** (new or second-hand) as recorded in the beneficiary's accounts are eligible, if they were purchased in accordance with Article 10 and written off in accordance with international accounting standards and the beneficiary's usual accounting practices.*

*The **costs of renting or leasing** equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.*

*The **costs of equipment, infrastructure or other assets contributed in-kind against payment** are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 11 are met.*

*The only portion of the costs that will be taken into account is that which corresponds to the duration of the action and rate of actual use for the purposes of the action.**]***

***[OPTION (alternative to option above) to be used if foreseen in the work programme[15]:** The **cost of purchasing equipment**, **infrastructure** or **other assets** (new or second-hand) (as recorded in the beneficiary's accounts) are eligible if the equipment, infrastructure or other assets was purchased in accordance with Article 10.*

*The **costs of renting or leasing** equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.*

*The costs of equipment, infrastructure or other assets **contributed in-kind against payment** are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 11 are met.**]***

[OPTION (in addition to one of the two options above) for trans-national and virtual access to research infrastructure:** As an exception, the beneficiaries must not declare such costs (i.e. costs of renting, leasing, purchasing depreciable equipment, infrastructure and other assets) for providing trans-national or virtual access to research infrastructure (see Article 16).**]

[15] To be used as an exception, only if justified by the nature of the action and the context of the use of the equipment or assets, if provided for in the work programme.

1. Equipment costs: Types of costs — Cost form — Conditions for eligibility — Calculation

The beneficiaries may declare the following **types of** equipment **costs** as 'other direct costs (equipment costs)':

one of the following:

- either **depreciation costs** of equipment, infrastructure or other assets
- or **purchase costs** of equipment, infrastructure or other assets (if option applies)

and:

- costs of **renting or leasing** of equipment, infrastructure or other assets
- costs of equipment, infrastructure or other assets **contributed in-kind against payment**.

1.1 Equipment cost: Depreciation costs of equipment, infrastructure or other assets

1.1.1 This budget category **covers** the depreciation of equipment, infrastructure or other assets, for the relevant periodic report.

In some cases *(e.g. infrastructure)*, equipment costs may include the costs necessary to ensure that the asset is in good condition for its intended use *(e.g. site preparation, delivery and handling, installation, etc.)*.

What not? If the beneficiary's usual practice is to consider durable equipment costs (or some of them) as indirect costs, these cannot be charged as direct costs, but are covered by the 25% flat rate for indirect costs *(see Article 6.2.E)*. Any depreciation charged as a direct cost under a Horizon 2020 action must be a direct cost under the beneficiary's cost accounting practices *(see concept of 'direct cost' in Article 6.2.)*

Example: *Log book used to record the time and use of a wind tunnel for a specific action/activity.*

1.1.2 Equipment costs must be **declared as** actual costs *(see Article 5.2(d))*.

1.1.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, recorded in the beneficiary's accounts, etc.; *see Article 6.1(a)*)
- have been **purchased** in **accordance with Article 10.1.1**
- be **written off** in accordance with the beneficiary's **usual accounting practices** and with **international accounting standards**.

  'International accounting standards' are an internationally recognised set of rules for maintaining books and reporting company accounts, designed to be compared and understood across countries.

  Example: *The IAS (international accounting standards) or the International Financial Reporting Standards (IFRS), originally created by the EU and now in common international use.*

1.1.4 They must be **calculated** according to the following:

It is expected that the beneficiaries allocate the depreciable amount (purchase price) of an asset on a systematic basis over its useful life (i.e. the period during which the asset is expected to be usable; *see also 'cash-based accounting' below*).

⚠ Depreciated equipment costs can never exceed the equipment's purchase price.

⚠ Depreciation cannot be spread over a period longer than the equipment's useful life

Specific cases:

Equipment not used exclusively for the action — If the beneficiary does not use the equipment, assets, etc. exclusively for the action, only the part of the equipment's or asset's 'working time' for the action may be charged (i.e. the percentage of actual use and time used for the action). The amount of use (percentage and time used) must be auditable.

Example:

A microscope was bought but had not been fully depreciated before the action started. For 6 months in reporting period 1, it was used for action for 50% of the time and for other activities for the other 50% of the time. Linear depreciation according to the beneficiary's usual practices (depreciation over the expected period of use of the microscope): EUR 100 000 per year (EUR 50 000 for 6 months).

Costs charged to the project: EUR 50 000 (6 months of use) multiplied by 50% of use for the action during those 6 months = EUR 25 000.

Charging the full price of an asset in one single year might be considered either as not compliant with the international accounting standards or as an 'excessive' cost, if the asset is expected to be used over more than one year. It may therefore be considered ineligible *(see 'cash-based accounting' below).*

Depreciation costs for **equipment** used for the action, but **bought before the action start** are eligible if they fulfil the general eligibility conditions of Article 6.1(a). These remaining depreciation costs (the equipment has not been fully depreciated before the action's start) may be eligible only for the portion corresponding to the action duration and to the rate of actual use for the purposes of the action.

Example:

According to the beneficiary's accounting practices, an equipment bought in January 2013 has a depreciation period of 48 months.

If the GA is signed in January 2015 (when 24 months of depreciation have already passed) and the equipment is used for this action, the beneficiary can declare the depreciation costs incurred for the remaining 24 months, in proportion to the equipment's use for the action.

Cash-based accounting — if recording the equipment's *total* purchase cost as an expense follows the beneficiary's usual accounting practices and national accounting law, the beneficiary may charge the *part* of the cost that corresponds to the use of the item for the action to the relevant reporting period. This is however only accepted, if all of the following apply:

- the cost is economic and necessary;
- only the portion of the equipment used for the action is charged.

  ⚠ If the equipment is used for other projects and/or for other activities, part of the equipment cost must be charged to these other projects/activities.
- the amount of use (percentage used and time) must be auditable.
- the percentage of the purchase cost charged to the action is calculated as follows:

  {amount of time during which the equipment was used for the action (from the purchase date to the end of use for the action)

  divided by

  {equipment's total useful life}.

  'Useful life' means the time during which the equipment is useful to the beneficiary.

  ⚠ Useful life may be defined according to the beneficiary's practices or be established per type of equipment by national tax regulations.

Example:

A beneficiary that uses cash-based accounting buys a machine for EUR 100 000 in March 2015. The machine is used for the action 50% of the time from 1 July 2015. The action started in January 2015 and runs for three years with two reporting periods. The machine's useful life is six years.

In the reporting period ending in June 2016, the beneficiary must declare part of the purchase cost, taking into account the percentage of use, the time used for the action and the machine's useful life:

EUR 100 000 x (12/72 months) x 50% (used for the action) = amount charged for the machine in the first reporting period

In the reporting period ending in December 2017, the beneficiary must declare:

EUR 100 000 x (18/72 months) x 50% (used for the action) = amount charged for the machine in the second reporting period

1.2 Equipment costs: Cost of purchasing equipment, infrastructure or other assets

This budget category **covers** the *full* purchase costs of the equipment, infrastructure or other assets (not only the depreciation costs for the relevant periodic report).

⚠ You may use this option only if it is foreseen in your GA.

1.3 Equipment costs: Costs of renting or leasing equipment

1.3.1 This budget category **covers** the costs of renting or leasing equipment (finance leasing, renting and operational leasing).

1.3.2 Equipment costs must be **declared as** actual costs *(see Article 5.2(d))*.

1.3.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)
- **not exceed** the depreciation **costs of similar equipment**, infrastructure or assets
- **not** include any **financing fees**.

1.3.4 They must be **calculated** according to the following principles:

Leasing (finance leasing) with the option to buy the durable equipment: the equipment leased by the beneficiary is recorded as an asset of the beneficiary and the corresponding depreciation costs may be charged in accordance with the beneficiary's usual accounting practices.

⚠ The cost claimed cannot exceed the costs that would have been incurred if the equipment had been purchased and depreciated under normal accounting practices. The finance charges included in the finance lease payments are thus ineligible.

⚠ The costs declared under the action cannot include any interest on loans taken to finance the purchase, or any other type of financing fee.

Renting and operational leasing: the equipment rented or leased by the beneficiary is not recorded as an asset of the beneficiary. There is no depreciation involved (as the item is still the property of the renting or leasing firm), but the rental or lease costs of the beneficiary (i.e. its periodic payments to the renting or leasing firm) are eligible, if they follow the beneficiary's usual practices and do not exceed the costs of purchasing the equipment (i.e. are comparable to the depreciation costs of similar equipment).

1.4 Equipment costs: Costs of equipment, infrastructure or other assets contributed in-kind against payment

1.4.1 This budget category **covers** the costs of equipment, infrastructure or other assets contributed in-kind against payment.

1.4.2 Equipment costs must be **declared as** actual costs *(see Article 5.2(d))*.

1.4.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)
- **not exceed** the depreciation **costs of similar equipment**, infrastructure or assets
- **not** include any **financing fees**
- fulfil the **additional eligibility conditions** set out in Article 11.1.

D.3 **Costs of other goods and services** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible, if they are:

(a) purchased specifically for the action and in accordance with Article 10 or

(b) contributed in kind against payment and in accordance with Article 11.

Such goods and services include, for instance, consumables and supplies, dissemination (including open access), protection of results, certificates on the financial statements (if they are required by the Agreement), certificates on the methodology, translations and publications.

[OPTION to be used for trans-national access to research infrastructure: *Costs of other goods and services* ***for providing trans-national access to research infrastructure*** *are eligible only if also the conditions set out in Article 16.1.1 are met.**]***

[OPTION to be used for virtual access to research infrastructure: *Costs of other goods and services* ***for providing virtual access to research infrastructure*** *are eligible only if also the conditions set out in Article 16.2 are met.**]***

1. Costs of other goods and services: Types of costs — Cost forms — Conditions for eligibility — Calculation

1.1 This budget category **covers** any goods and services that were purchased for the action (or contributed in-kind against payment), including:

- costs for consumables and supplies *(e.g. costs of purchasing scientific publications (e.g. books, manuscripts, articles, digital copies, etc.)*
- dissemination costs (including open access during the action) and conference fees for presenting project-related research
- costs of intellectual property rights (IPR), including protecting results and royalties on access rights

Specific cases:

Royalty fees for background — Royalty fees (and by extension any down payments, etc.) paid to a third party (i.e. not a beneficiary) *(see Article 24)* are normally eligible, if all the eligibility conditions are met *(e.g. necessary for the implementation of the project, etc.)*. Eligibility may however be limited in specific cases.

Examples (limitations):

Eligibility of royalty fees with respect to an exclusive licence: it must be demonstrated that the exclusivity (and the higher royalty fees which are likely to be associated with it) is absolutely necessary for the implementation of the project.

Eligibility of royalty fees with respect to licensing agreements which were already in force before the start of the action: as a rule only a fraction of the corresponding licence fees should be considered eligible, as the licence was presumably taken for reasons other than participation in Horizon 2020.

Royalty fees paid for access rights to background granted by other beneficiaries *(see Article 25)* are exceptionally eligible on a case-by-case basis, if justified, if agreed by all beneficiaries before the GA is signed and if all the other eligibility conditions *(e.g. incurred during the action, etc)* are met.

Best practice: Eligibility of royalty fees for background should be discussed with the Commission/Agency on a case-by-case basis

Costs related to protection of the action's results *(e.g. consulting fees, fees paid to the patent office for patent registration; see Article 27)* are eligible if the eligibility conditions are fulfilled.

Costs for drafting the 'plan for the exploitation and dissemination of the results' are normally not eligible since it is expected that they will have been incurred before the start of the action, to prepare the proposal. Costs that occur when implementing this plan may be eligible.

– costs for certificates on financial statements (CFS) and certificates on methodology (unless unnecessary, *for instance because the EU or Euratom contribution is less than EUR 325 000) or the certificate was submitted not for the final report but before*).

– translation costs, if translation is necessary for the action's implementation, is justified, etc.

Best practice: If there is any doubt about whether a cost is eligible, you should contact the Commission/Agency.

⚠ The option for access to research infrastructure may be used, only if it is foreseen in your GA.

What not? If it is the beneficiary's usual accounting practice to consider some of these costs (or all of them) as *indirect* costs, they cannot be declared as direct costs (since they will already be covered by the 25 % flat rate).

Specific cases:

Supplies and consumables which were **already in** the **stock** of the beneficiary may be eligible as a direct cost if they are used for the action and fit the definition of direct costs under Article 6.2.

Internally invoiced costs — Sometimes the use of certain resources is shared between different units of the same legal entity, and the costs of their use are charged through internal invoices. This type of costs may be eligible if their use for the project and the usage is properly recorded.

Internally invoiced personnel costs for project specific activities may be eligible if the time worked on the project is substantiated by records covering all the workable time of the relevant personnel. The eligible hourly rate must be calculated based on the actual cost for salaries and social charges incurred by the beneficiary.

Internal invoices must not include indirect costs elements or profit margin or mark-up.

1.2 Costs of other goods and services must be declared as actual costs *(see Article 5.2(d))*.

1.3 The costs must comply with the following **conditions for eligibility**:

- **fulfil** the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)

and

  - be either **purchased specifically** for the action and in **accordance with Article 10.1.1** or
  - **contributed in kind against payment** and in **accordance with Article 11.1**

- for costs of other goods and services incurred for providing **trans-national or virtual access to research infrastructure**: fulfil the **additional eligibility conditions** set out in Article 16.1 or 16.2.

1.4. There is no specific **calculation** method. The costs must correspond to the eligible costs actually incurred (i.e. the amount paid by the beneficiary for the supply of the goods or services).

D.4 ***[OPTION by default:*** *The **capitalised and operating costs of 'large research infrastructure'**[16] directly used for the action are eligible, if:*

*(a) the value of the **large research infrastructure** represents at least 75% of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure[17]);*

*(b) the beneficiary's methodology for declaring the costs for large research infrastructure has been positively assessed by the Commission ('**ex-ante assessment**');*

(c) the beneficiary declares as direct eligible costs only the portion which corresponds to the duration of the action and the rate of actual use for the purposes of the action, and

*(d) they comply with the **conditions** as further detailed in the Horizon 2020 Grant Manual.]*

OPTION for all topics within calls under Part 'Research Infrastructure' (except for e-Infrastructure topics): *not applicable.]*

[OPTION to be used if foreseen in the work programme: *not applicable.]*

6 '**Large research infrastructure**' means research infrastructure of a total value of at least EUR 20 million, for a beneficiary, calculated as the sum of historical asset values of each individual research infrastructure of that beneficiary, as they appear in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure.

17 For the definition see Article 2(6) of Regulation (EU) No 1291/2013: **'Research infrastructure'** are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructures such as data and computing systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructures may be 'single-sited', 'virtual' or 'distributed'.

1. Capitalised and operating costs of large research infrastructure: Types of costs — Cost forms — Conditions for eligibility — Calculation

This budget category covers **capitalised costs** and **operating costs** of research infrastructure used for the action.

Capitalised and operating costs of large research infrastructures are **eligible**, if all of the following apply:

- they **fulfil** the **general conditions** for actual costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)
- the **sum of historical asset values of each individual research infrastructure** of the beneficiary, as they appear in its last closed balance sheet before the date of the signature of the GA or as determined on the basis of the rental and leasing costs of the research infrastructure, represents a total value of at least EUR 20 million for that beneficiary
- the **value of large research infrastructures** of the beneficiary represents at least 75% of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the GA or as determined on the basis of the rental and leasing costs of the research infrastructure)
- the beneficiary's methodology for declaring the costs for large research infrastructure has been positively assessed by the Commission ('**ex-ante assessment**');

- the beneficiary declares as direct eligible costs only the **portion** which corresponds to the **duration** of the action and the rate of **actual use** for the purposes of the action, and

- they comply with the **conditions** set out below.

⚠ The beneficiary must operate research infrastructure that falls under the definition of large research infrastructure (i.e. a total value of at least EUR 20 million and representing at least 75% of the total fixed assets). If this is the case, the value of the specific research infrastructure used for the action (and for which the costs are charged to the action) is irrelevant (i.e. it can be lower or higher than EUR 20 million) *(see also below Section 2).*

Costs of capitalised and operating costs of large research infrastructure must be declared as actual costs *(see Article 5.2(d))*.

What? Capitalised costs are:

– all costs incurred in setting up and/or renewing the research infrastructure and

– some costs of specific repair and maintenance of the research infrastructure and parts or essential integral components.[20]

These costs are recorded as an asset in the balance sheet and expensed over the years. They can be claimed as direct costs through depreciation costs. The capitalised costs of the research infrastructure must be depreciated in line with international accounting standards (in particular, based on the useful economic life of the infrastructure) and with the beneficiary's usual accounting practices.[21] Only the depreciation costs of the research infrastructure corresponding to actual use may be declared as eligible direct costs.

Methods and national reporting practices may differ, but, for the declaration of costs under Horizon 2020 grants, it is these guidelines that must be followed for the financial reporting.

⚠ The beneficiaries must use their 'usual accounting principles', i.e. the general and cost accounting principles, standards and procedures that they use to compile their legal/statutory financial accounts (i.e. balance sheet, profit and loss accounts, etc.), together with their analytical management information. These standards and principles must not be set up specifically for declaring costs under EU-funded actions. They should be changed/adapted only where strictly necessary to comply with the EU cost eligibility criteria. *Ad hoc* accounting and/or management schemes will not be accepted.

The costs of renting and/or leasing (excluding any finance fee/interest) of a research infrastructure may also be declared as eligible direct costs. As regards depreciation, only leasing costs of the research infrastructure corresponding to actual use may be declared as eligible direct costs.

⚠ If a (tenant) beneficiary uses the values of contracts of renting or leasing of a research infrastructure for the calculation of the EUR 20 million threshold *(see below)* and consequently declares costs for such an infrastructure, these costs cannot be considered nor declared by any other beneficiary under any other Horizon 2020 grant (in particular not by the owner of the research infrastructure).

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20 *See also International Financial Reporting Standard No 16.*

21 *See Article 126 of the Financial Regulation.*

Operating costs are costs:

- which the beneficiary incurs specifically (i.e. directly for the research infrastructure that is used for the action) for running the research infrastructure (including scientific, technical and administrative personnel) and
- are directly linked to the research infrastructure.

In the statutory accounting, these are recorded in the beneficiary's statement of comprehensive income (profit and loss account).

Only the following operating costs can be claimed as direct costs:

- personnel cost of administrative and support staff directly assigned to the functioning of the research infrastructure;
- rental/lease of the research infrastructure (for the period of its actual use for the action);
- maintenance and repair contracts (including calibrating and testing) specifically awarded for the functioning of the research infrastructure;
- consumables, materials and spare parts specifically used for the research infrastructure;
- facility management contracts including security fees, insurance costs, quality control and certification, upgrading to national and/or EU quality, safety or security standards (if not capitalised), specifically awarded for the functioning of the research infrastructure;
- energy and water specifically supplied for the research infrastructure.

What not?

The following costs cannot be declared as direct costs (non-exhaustive list):

- rental, lease or depreciation of buildings or plants not directly used for the action (e.g. administrative buildings, headquarters)
- statutory audit and legal fees (not including costs of certificates required under the GA)
- office supplies and petty office equipment (purchased in bulk)
- other general services (cleaning, medical, library, services for publication, communication and connection, postage, dues and subscriptions, clothing, literature, transport, catering and similar items (i.e. items recorded by the beneficiary under the same account in the general ledger)
- management tasks and horizontal services (accounting and controlling, head office, corporate communications, HR and training, internal audit, management, quality management, strategic development, etc.);
- non-specific, non-activity-related or non-project-related costs (general): consumables, maintenance, general facilities management, conferences, hosted activities, security fees, insurance costs, general utilities, energy and water, and similar (i.e. items recorded by the beneficiary under the same account in the general ledger).

These costs are reimbursed through the flat-rate for indirect costs *(see Article 6.2.E)*.

2. Large research infrastructure

Beneficiaries can declare capitalised and operating costs for '***large* research infrastructure**', if they comply with the definition and conditions listed in Point D.4 of Article 6.2 (in particular if the large research infrastructure has a total value of at least EUR 20 million[22] and if the value of the large research infrastructure represents at least 75% of the beneficiary's total fixed assets, at historical value).

⚠ The values of contracts of renting or leasing of research infrastructure may be considered for the calculation of the EUR 20 million threshold of the (tenant) beneficiary *(see above)*.

The infrastructure used for the action must be a '**research infrastructure**' in technical terms, i.e. a facility, resource or service that is used by the research communities to conduct research and foster innovation in their fields; it may be used beyond research, e.g. for education or public services[23].

This covers for instance:

- major scientific equipment (or sets of instruments)
- knowledge-based resources such as collections, archives or scientific data
- e-infrastructures, such as data, and computing systems, and communication networks.

The infrastructure may be 'single-sited', 'virtual' or 'distributed'.

Moreover, it must be a research infrastructure in accounting terms, i.e. recorded in the accounts of the beneficiary on the basis of a '**grouping of costs**' (comprising a wide range of items: buildings, machinery, equipment, IT, staff, repair and maintenance, specific security fees, etc.), specifically dedicated to the research infrastructure and necessary for it/them to function, and excluding costs that are incidental to the research infrastructure or necessary for accessing it, such as a car parks, conference and teaching rooms.

⚠ In analytical (cost) accounting, this grouping of costs can be recorded in many different ways.

Best practice: Recording them with a specific code for the research infrastructure or under a cost centre.

3. Ex-ante assessment

Only beneficiaries that have obtained a positive ex-ante assessment of their costing methodology may declare capitalised and operating costs for large research infrastructure.

Only the costs actually incurred from the date of the positive ex-ante assessment can be declared in accordance with these guidelines.

When? Applications for ex-ante assessment can be submitted at any time during the preparation of any grant agreement.

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[22] Calculated as the sum of the historical asset values of the individual research infrastructures as they appear in the beneficiary's last closed balance sheet before the date on which the grant agreement is signed, or determined on the basis of the rental and leasing costs of the infrastructures.

[23] *See Article 2(6) of the H2020 Framework Programme.*

⚠ Costs incurred for operating large research infrastructure can be declared according to these guidelines only after having obtained the positive ex-ante assessment from the Commission.

How? The **ex-ante assessment** is composed of two steps: Status validation and methodology compliance.

Procedure for ex-ante assessment:

Step 1 — **Status validation** (i.e. if the beneficiary qualifies with definition and criteria for declaring costs under Point D.4 of Article 6.2)

The beneficiary must self-declare whether it complies with the conditions set out above (in particular the EUR 20 million and the 75% thresholds), by filling the appropriate field in the 'Beneficiary Register' of the Participant Portal. The beneficiary must then provide the relevant supporting documents to the Commission within one month.

The Commission will confirm or — after a contradictory procedure — refuse the status and inform the beneficiary accordingly.

⚠ If the status is refused, the guidelines cannot be applied and the beneficiary cannot declare its costs of research infrastructure according to these guidelines.

Step 2 — **Methodology compliance** (i.e. if the beneficiary's methodology complies with the conditions set out below)

Following an in-depth (in principle on-the-spot) assessment, the Commission will issue a draft report and submit it to a contradictory procedure with the Beneficiary. During this phase the beneficiary has the possibility to amend its methodology by removing any non-compliant component of it. Thereafter, a final (negative or positive) 'ex-ante assessment report' will be issued.

⚠ The guidelines cannot be applied before a positive final ex-ante assessment report. Therefore, any cost declared under Point D.4 of Article 6.2 without such a report (or declared before such a report is issued) will be rejected. However, a positive final ex-ante assessment report allows the beneficiary to adjust, if needed, the costs already declared in previous financial statements.

⚠ Costs declared in accordance with the methodology positively assessed by the Commission will **not** be **challenged during audits**, except in case of irregularity and fraud. During an audit, the auditors will:

- ensure that the methodology positively assessed is the one being used and
- verify the accuracy of the calculations made applying the methodology.

ⓘ *For more information on the procedure for the ex-ante assessment, see the Horizon 2020 Online Manual.*

4. Other conditions

4.1 Costs must be identifiable and verifiable

All declared costs must be identifiable and verifiable, i.e. supported by persuasive evidence allowing for a sufficient audit trail.

⚠ The sufficiency and the persuasiveness of the evidence provided, as well as the audit trail, will be assessed against the International Standards on Auditing.

Capitalised costs claimed as depreciation costs must be supported by:

- proper registration in the assets' register
- evidence of actual use for the action, e.g. through time registration
- adequate calculation of potential use (total productive time)
- adequate calculation of the useful economic life of the asset
- evidence that depreciation is calculated in line with the beneficiary's usual accounting principles and the applicable accounting standards.

4.2 Costs must be incurred in direct relationship with the research infrastructure *and* with the action

Beneficiaries cannot declare their full organisational or general operating costs, even if they are fully research-oriented (e.g. a research organisation, technical university, research enterprise). These costs are covered by the flat-rate for indirect costs *(see Article 6.2.E)*.

Only costs that have been incurred in **direct relationship** with the research infrastructure and that are necessary for the implementation of the action can be claimed as direct costs under Article 6.2.D.4.

This applies if:

- for capitalised costs: the implementation of the action specifically requires the use of the research infrastructure
- for operating costs: the functioning of the research infrastructure specifically requires the assignment of administrative and support staff, or the award of service or supply contracts.

The beneficiaries must be able to demonstrate eligibility by means of an audit trail and sufficient evidence, such as:

- their usual management practices and procedures

  ⚠ Only written and consigned practices and procedures which are part of the beneficiary's internal control framework will be accepted. Oral statements will not be accepted.

- internal management exchanges necessary for the approval of an underlying transaction
- purchase orders, delivery notes, invoices, proof of payment or any other evidence of exchanges between the client and the provider(s) prior to signature of the contract or agreement

  ⚠ The beneficiary must prove the reality of the underlying transaction (including the absence of a credit note or back-payment offsetting the transaction). Gathering such evidence may require a comprehensive analysis of the beneficiary's general ledger.

- for works contracts, any statement of work in progress, delivery status or assembling overview.

The evidence mentioned in the last three points must be explicitly linked to the specific research infrastructure and/or action, and to the specific cost item.

Beneficiaries may prove the direct link through alternative persuasive evidence. The sufficiency and the persuasiveness of the alternative evidence provided, as well as the audit trail, will be assessed against the International Standards on Auditing.

Example 1 (link between research infrastructure and action(s)):

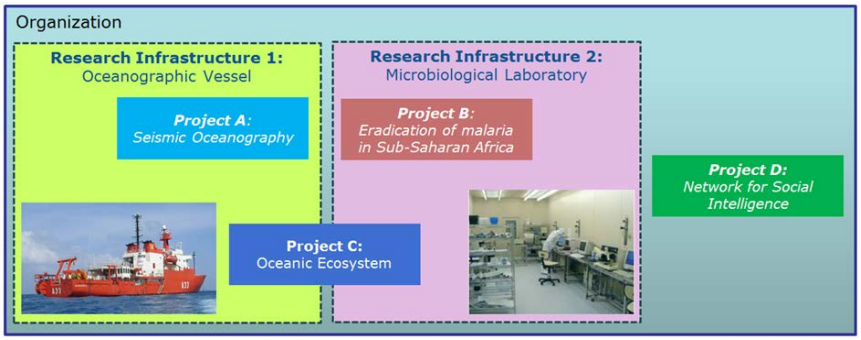
A beneficiary involved in different research areas owns several research infrastructures: an oceanographic vessel and a laboratory for microbiological analysis.

Costs relating to the oceanographic vessel cannot be claimed as direct costs for an action for which it is not used (e.g. an action on eradicating malaria in Africa or on setting up a network for social intelligence).

*Part of the **costs of the vessel** can however be claimed where the vessel is used for an action (e.g. an action on seismic oceanography or on the oceanic ecosystem), provided the beneficiary demonstrates the extent of use (e.g. through a board-book).*

*Similarly, part of the **laboratory costs** can be claimed for an action on eradicating malaria in Africa or on the oceanic ecosystem, provided the beneficiary demonstrates the extent to which the laboratory is used for the action.*

The costs of the two research infrastructures cannot be charged to the action on setting up the network for social intelligence.



4.3 Costs must not be included as direct costs in any other category

Costs may not be declared twice *(see Article 6.5)*[24].

Thus:

- any (part of a) cost item that has been capitalised and recorded as an asset is *de facto* included in the depreciation costs of the infrastructure and cannot be declared in another cost category (e.g. if the capitalised costs of installing a large telescope are depreciated, they cannot be declared as operating costs)

- (part of) the costs of an infrastructure that have already been declared in respect of another EU or Euratom grant (including grants awarded by a Member State, or by bodies other than the Commission for the purpose of implementing the EU or Euratom budget) cannot be declared again *(e.g. costs already declared in an FP7 action to set up or renew an infrastructure; costs already declared in an action under the Research Infrastructures Part of Horizon 2020 (i.e. providing of trans-national access to research infrastructure; see Article 16); costs already declared in a grant co-financed by the Structural Funds or the ESIF Funds)*

[24] *See Article 129(1) of the Financial Regulation.*

⚠ This means that a *cost item already declared* under a Structural Funds or ESIF grant cannot be declared again under the Horizon 2020 grant. However, *cost items that have not already been declared* under a Structural Funds or ESIF grant, may be declared under the Horizon 2020 grant, even if they belong to the same action ('synergies between Horizon 2020 and the Structural Funds and ESIF Funds').

⚠ The terminology under the different regimes — Horizon 2020, the Structural Funds and the ESIF Funds —may differ (e.g. 'capitalised costs' under Horizon 2020 versus 'investment costs' under the Structural Funds, etc.).

4.4 Costs must be directly measured

Costs can be claimed as direct costs under Point D.4 of Article 6.2 only if they are '**directly measured**' (i.e. directly quantified by a monetary value assigned to a given cost item, or a share of it). The measurement system used by the beneficiary must accurately quantify the cost (i.e. reflect its actual true value), be supported by sufficient persuasive evidence and be auditable.

This is considered to be the case if the unit of measurement (generally obtained from the supplier's invoice) is that used to measure the direct consumption of the item.

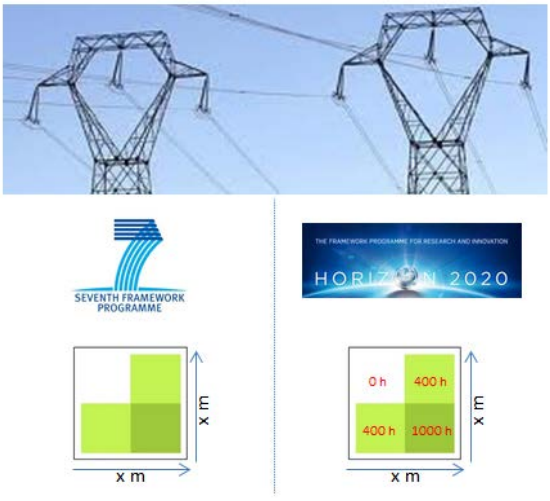
This measurement must be accurate (i.e. show the *real* consumption and/or use of a cost item on the action), therefore only actual elements of cost and consumption or use are accepted.

⚠ Direct measurement of costs does not mean fair apportionment of costs through proxies or cost drivers (which was standard for declaring real indirect costs under FP7). Fair apportionment is not a *measurement* but an attempt to *estimate* the costs that were incurred for an action.

Example 2 (comparison between fair apportionment and direct measurement):

Under the fair apportionment method, the general electricity costs of a beneficiary operating a laboratory used for an action are allocated to the pool of indirect cost and then apportioned fairly via an absorption method (e.g. m^2).

Under the direct measurement method, the cost is claimed as direct cost; however the beneficiary must ensure that the electricity invoice specifies the electricity costs for the research infrastructure (explicitly labelled invoice or separate invoice). Moreover, the cost must then be measured with respect to the actual time of use of the research infrastructure for the action.



⚠ *Direct* measurement implies that a cost cannot be attributed to projects via an allocation key, a cost driver or a proxy.

While accurate measurement systems may differ depending on the nature of the cost, they will normally involve time actually used for the action ('project time') and therefore require reliable time-recording (through timesheets, logbooks, counters, etc.). The measurement system must be justifiable through sufficient persuasive evidence and auditable.

Project time must correspond:

- for the costs of administrative and support staff directly assigned to the functioning of the research infrastructure: to the number of hours actually worked for the action, measured and documented in accordance with Article 31 of the Rules for Participation Regulation No 1290/2013

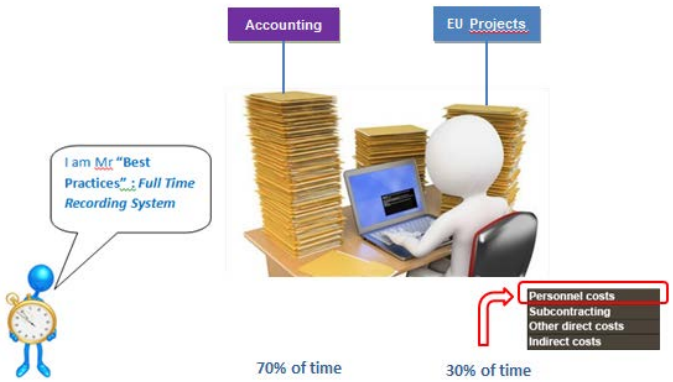
- for the other costs of the research infrastructure: to the number of hours/days/months of actual use of the research infrastructure for the action as a part of full capacity (i.e. the number of productive hours/days/months corresponding to the full potential use of the infrastructure)

  This includes any time during which the research infrastructure is usable but not used, but take due account of real constraints such as the opening hours of the entity, repair and maintenance time (including calibrating and testing) due to research activities.

  ⚠ If a cost can be directly measured to the research infrastructure but — because of technical constraints — cannot be measured directly to the action, beneficiaries may measure costs by means of '**units of actual usage**' for the action, supported by accurate technical specifications and actual data and determined on the basis of the beneficiary's analytical cost accounting system. These data must be regularly updated.

Example 3 (costs of administrative and support staff directly assigned to the functioning of the research infrastructure):

If an employee of the administration and finance department is employed to carry out specific tasks necessary for the operation of a research infrastructure specifically used for an action (e.g. assigning time-slots between users, monitoring actual use, managing security contracts), the personnel costs can be declared as direct costs of the action, in proportion to the time the employee actually spent on the action and provided that this is recorded reliably.



Example 4 (part-time use of the research infrastructure for the action):

An oceanographic vessel is used full-time for a period of two months for an EU- funded action and three months for a non-EU research project (or for a non-research activity (commercial, industrial, etc.) of the beneficiary) and stays idle for seven months.

If the annual costs of the vessel (i.e. capitalised and operating costs) amount to EUR 120 000, the part that can be charged to the EU funded action is:

(EUR 120 000 / 12 months) x 2 months = EUR 20 000

and not:

(EUR 120 000 / 5 months[25]) x 2 months = EUR 48 000

Renting or leasing costs can be directly measured to an action as follows:

Example 5 (rental/leasing costs):

The surface area of the premises rented/leased by a beneficiary is occupied as follows:

** 50 % by a research infrastructure;*
** 50 % by conference rooms and offices.*

The overall rental/leasing costs are EUR 100 000 per year, split (according to the rental/leasing agreement) as follows:

** EUR 80 000 for the research infrastructure;*
** EUR 20 000 for the conference rooms and offices.*

The rental costs that can be claimed as direct costs for an action using this research infrastructure are determined as follows:

Step 1 *Calculation of the rental costs that can be directly attributed to the research infrastructure*

⚠ *On the basis of the rental/leasing agreement, the invoice must refer to separate amounts for the research infrastructure and the conference rooms/offices (the rental/leasing costs cannot be directly allocated on the basis of the respective surface areas).*

⚠ *The basis for the calculation must be EUR 80 000 and not EUR 50 000 (EUR 100 000 x 50 % of m²).*

Step 2 *The rental/leasing amount invoiced for the research infrastructure (i.e. EUR 80 000) is precisely distributed between the activity(ies) and project(s) that make use of it (**best practice:** time of actual use). Installed usage capacity is taken (so as not to exclude idle time) and the resulting cost per unit of usage is multiplied by actual usage on the action (which thus absorbs its share of the overall renting/leasing cost).*

[25] 5 months = 2 months for an EU funded action + 3 months for non-EU research or other activities.

Best practices (for direct measurement):

- Depreciation (for capitalised costs): accounting statements accompanied by the beneficiary's depreciation policy (under its usual accounting principles), to show adequate calculation of the potential use of the asset (total productive time based on full capacity) + calculation of the useful economic life of the asset, evidence of project time (or units of actual usage for the action) and evidence of the actual use of the asset for the action

- Rental or lease of the research infrastructure: specific explicitly labelled rental or lease invoice/contract; adequate calculation of the potential use of the asset (total productive time based on full capacity) + calculation of the useful economic life of the asset, evidence of project time (or units of actual usage for the action) and evidence of the actual use of the asset for the action

- Personnel (administrative and support staff): time recording (without prejudice to the need for persuasive evidence of actual involvement in the action);

- Maintenance and repair (including calibrating and testing): specific explicitly labelled invoice relating to the research infrastructure + project time (or units of actual usage for the action)

- Consumables, materials and spare parts: specific explicitly labelled invoice relating to the research infrastructure, if available, or stocktaking; actual consumption for the action (based on analytical cost accounting) or project time (or units of actual usage for the action)

- Facilities management, including security fees, insurance costs, quality control and certification, upgrading to national and/or EU quality, safety or security standards: specific explicitly labelled invoice relating to the research infrastructure + project time (or units of actual usage for the action)

- Energy and water: specific explicitly labelled invoice relating to the research infrastructure + project time (or units of actual usage for the action).

  ⚠ The energy consumption of a specific research infrastructure can be obtained from the measured consumption (e.g. number of kilowatts per hour of use) as stated in its technical specifications, or provided by the supplier or an independent body. These specifications must be identifiable and verifiable.

⚠ **Alternative to the best practices:** The beneficiaries may determine eligible direct costs on the basis of an aggregate of the capitalised and operating direct costs of each research infrastructure.

This option corresponds to the declaration of eligible costs actually incurred; it should not be confused with using 'unit cost' as a simplified form of grant which is subject to a Commission decision[26].

With this method, it is possible to determine a 'cost per unit of use' covering all the actual direct costs relating to the operation of the research infrastructure being used for the action, i.e. depreciation costs plus necessary operating costs of the research infrastructure.

The **cost per unit of use** must be calculated as follows:

$$\frac{\{\text{all capitalised costs of the research infrastructure}\} + \{\text{all operating costs of the research infrastructure}\}}{\{\text{total annual capacity}\}}$$

The unit of use must correspond to:

(i) the time of use expressed in hours, days or months and supported by evidence or

[26] *See Articles 29(2) and 33 of the Rules for Participation and Article 124 of the Financial Regulation.*

(ii) the number of accesses, for which supporting evidence may take the form of records or electronic log of units-of-access provision.

The calculation must take due account of real constraints (e.g. opening hours), but must reflect the research infrastructure's full capacity and include any time during which the research infrastructure is usable but not used or any unit of access available but not used.

The direct costs that can be claimed are calculated as follows:

{actual eligible costs per unit of use} **x** {actual number of units of use used on the action}.

The calculation must be verifiable, i.e. allow for a sufficient audit trail reconciling it to the beneficiary's statutory accounts.

E. Indirect costs *[(not included in Point F)]*

Indirect costs are eligible if they are declared on the basis of the flat-rate of 25% of the eligible direct costs (see Article 5.2 and Points A to D above), from which are excluded:

(a) costs of subcontracting *[and][;]*

(b) costs of in-kind contributions provided by third parties which are not used on the beneficiary's premises *[and][;]*

*(c) [**OPTION to be used if Article 15 applies:** costs of providing financial support to third parties][**OPTION**: not applicable][and*

*(d) **OPTION if Point F applies and the unit or lump sum cost includes indirect costs:** [unit costs under Article 5.2(f) and Point F below)][lump sum costs under Article 5.2(f) and Point F below]].*

Beneficiaries receiving an operating grant[18] financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

[18] For the definition, see Article 121(1)(b) of the Financial Regulation: '**operating grant**' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

1. Indirect costs: Types of costs — Cost forms — Conditions for eligibility — Calculation

1.1 This budget category covers costs that are *not directly* linked to the action *(see Article 6.2)*.

1.2 Indirect costs must be declared on the basis of a flat-rate (*see Article 5.2(e)* ⚠ new in Horizon 2020).

1.3 The costs must comply with the following **conditions for eligibility**:

- fulfil the **general conditions** for flat-rate costs to be eligible (i.e. costs to which the flat-rate is applied must be eligible, correct calculation etc.; *see Article 6.1(c)*)

1.4 They must be **calculated** by applying a 25% flat-rate to the beneficiary's eligible direct costs, minus:

– subcontracting costs *(see Article 13)*

***Example:** subcontracting of opinion surveys.*

⚠ The purchase of goods, work or services that do not represent action tasks described in Annex 1 *(see Article 10)* is not considered subcontracting under a Horizon 2020 action, and must not be subtracted when calculating the 25% flat rate

– costs of in-kind contributions incurred by third parties outside of the beneficiary's premises

– costs of providing financial support to third parties (if option applies)

– unit or lump-sum costs covering specific categories of costs which include indirect costs.

Example (indirect costs):

A public university is a beneficiary under a grant agreement and has incurred the following costs
- EUR 100 000 in personnel costs (EUR 7 000 of which are an in-kind contribution made by a laboratory technician carrying out work for the action from his/her laboratory in a public research centre),

- EUR 20 000 in subcontracting costs,
- EUR 10 000 in consumables costs.
Eligible direct costs: 100 000 + 20 000 + 10 000 = EUR 130 000
Eligible indirect costs: 25 % of (100 000 – 7 000 + 10 000) = EUR 25 750
Total eligible costs: EUR 155 750

[F. OPTION for specific categories of costs if unit costs foreseen by Commission decision: Costs of [insert cost category(ies) or activity(ies)]

Costs of [insert cost category or activity]:

*(a) declared as **unit costs**: are eligible if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual units, and if [insert eligibility conditions];*

*(b) [declared as **actual costs**: are eligible, if they comply with the conditions set out above (Points A to [D][E]) [and if [insert eligibility conditions];]*

*(c) [declared as a **combination of the two**: if the part declared as actual costs fulfils the conditions for actual costs and the part declared as unit costs fulfils the conditions for unit costs].*

[same for each specific category of costs]

***[OPTION for specific lump sum costs (i.e. costs which may be/have to be declared as lump sum costs) if foreseen by Article 5.2(f)): Costs of [insert cost category or activity]** are eligible if they correspond to the lump sum set out in Annex 2 and the corresponding tasks or parts of the action have been properly implemented in accordance with Annex 1.]]*

1. Specific categories of costs: Types of costs — Cost forms — Conditions for eligibility — Calculation

For some actions under the General MGA, the beneficiaries may declare unit costs for **specific categories of costs**, i.e.:

- for Energy Challenge actions involving additional energy efficiency measures: **costs for additional energy efficiency measures**

  ⚠ This unit cost will only apply for Smart Cities and Communities calls *(e.g. SCC-01-2014 for the Work Programme 2014-2015).*

  These grants combine different activities. The reimbursement on the basis of the unit cost applies only for the building-related demonstration activities.

- for actions under the Research Infrastructures Part of Horizon 2020 with 'provision of access activity': **access costs for providing trans-national access to research infrastructures**

  ⚠ This unit cost will apply only to Research Infrastructure calls *(e.g. INFRAIA-1-2014-2015, INFRADEV-3-2015 and INFRADEV-4-2014-2015 of the Work Programme 2014-2015).*

- for actions under Health Challenge actions involving clinical studies: **costs for clinical studies**

⚠ You may use these options only if they are foreseen in your GA.

⚠ Costs that are already covered by the unit cost may not be declared (a second time) as direct costs *(for the costs that are covered, see below).*

Examples:

***Case 1:** The unit costs for efficiency energy measures covers subcontracting costs related to the energy efficiency measures. These cannot be declared as direct costs of subcontracting. However, costs for*

subcontracts not included in the unit cost or lump sum (e.g. subcontracts required by the implementation of the action but not related to the efficiency energy measures) can be declared.

Case 2:*A is a beneficiary in an action with a specific activity on 'intelligent buildings', where a Commission decision setting unit costs has been adopted in order to cover the costs of purchasing and operating (personnel + related indirect costs (overheads)) the equipment needed for the action.*

The situation of A is the following:
A has 3 employees operating the equipment in that specific activity on 'intelligent buildings', and another 2 working on other activities of the action. The personnel costs for the 3 employees operating the equipment are EUR 150 000, and the personnel costs of the other 2 employees are EUR 80 000.
A incurs other direct costs for the action worth EUR 250 000, out of which EUR 100 000 are the costs of purchasing the equipment needed for carrying out the activity on 'intelligent buildings'.
A declares as actual costs the personnel costs for the employees working on the activities other than the specific activity on 'intelligent buildings', as well as the other direct costs of those activities (not included in the unit costs).

The unit cost adopted by Commission decision is EUR 800. The number of units used for the project is 300.

Both the personnel costs and the purchasing costs included in the unit costs (150 000 +100 000) and the indirect costs associated to them must be excluded from the calculation of the actual costs of the beneficiary declared under the budget categories 'direct personnel costs' and 'other direct costs' and 'indirect costs'.

A will declare its costs in the financial statement (Annex 4):

Direct personnel costs	*Direct costs of subcontracting*	*Direct costs of support to third parties*	*Other direct costs (EUR)*	*Indirect costs*	*Costs of 'intelligent buildings' (special unit costs)*	*Total costs*
80 000	*0*	*0*	*150 000*	*57 500 =* *25% (150 000 + 80 000)*	*300x800= 240 000*	*527 500*

Case 3: *A Commission decision allows for the use of a unit cost of 30 Euro for each laboratory analysis of the samples collected in an action. This is included in the GA under the option of article 5.2 (f). That unit cost covers the costs of the laboratory technicians involved in the analysis and of the equipment used. The beneficiary will declare the actual costs of the direct personnel working in the action under 'direct personnel costs', but excluding the costs of the laboratory technicians analysing the samples, because they are already covered by the unit cost under 'specific category of costs'.*

Personnel Costs of beneficiary A:
100 000 for 2 researchers working in the action + 10 000 for 2 laboratory technicians working on laboratory analysis
Eligible personnel costs under the budget category 'direct personnel costs': 100 000 as direct personnel costs (and not the 10 000 of the technicians)
Number of sample analysis in a laboratory for beneficiary A: 450
Eligible costs under 'specific category of costs': 450 X 30 = EUR 13 500

1.1 Specific category 'costs for additional energy efficiency measures'

1.1.1 This budget category **covers** two categories of eligible costs:

- costs of purchasing equipment, infrastructures and other assets directly necessary for the demonstration of additional energy efficiency measures in buildings and
- costs of subcontracting the works necessary for the demonstration of additional energy efficiency measures in buildings.

Examples: *the costs of building elements as new isolation, new ventilation system, window, door, heating elements, system controlling the system will be reimbursed.*

What not? Fluids and indirect costs.

1.1.2 Costs of additional energy efficiency measures must be **declared** on the basis of the unit cost (EUR/m^2 of eligible conditioned gross floor area) set out in Commission Decision C(2013) 8196[27] and indicated in Annex 2 of the GA.

This unit cost (EUR/m^2 of eligible conditioned gross floor area) is calculated according to the following formula:

{standard cost in EUR to save 1 kWh * estimated total kWh saved per m² per year * standard payback period in years}

'standard cost to save 1 kWh' = EUR 0.1
'standard payback period' to be used = 10 years

The m^2 of eligible conditioned gross floor area do not include parts of the buildings which are not affected by the measures, *e.g. garages*.

⚠ The specifications per type of demonstration building must already be part of your project proposal (by completing the BEST table (Building Energy Specification Table))[28]. These specifications are then included in Annex 1.

⚠ You may submit a proposal requesting funding for a number of kWh saved per m² per year *lower* than the estimated one. But this will not be evaluated as an advantage against other proposals.

1.1.3 The costs must comply with the following **conditions for eligibility**:

- **fulfil** the **general conditions** for unit costs to be eligible (i.e. units used during the action duration, necessary, linked to the action, correct calculation, etc.; *see Article 6.1(b)*)
- be incurred for **additional energy efficiency measures in buildings** that go beyond the national regulation or, if there is no national regulation applicable, beyond the market practice *(e.g. for refurbishment of buildings)*

1.1.4 They must be **calculated** as follows:

amount per unit (EUR/m^2 of eligible conditioned gross floor area) x number of actual m^2 of surface area built or refurbished

Example (calculation):

Assuming that the refurbishment of a building results in energy savings of 100 kWh/m²/year
Payback period (standard figure to be used in the calculation) = 10 years
Standard cost in euro to save 1 kWh (standard figure to be used in the calculation)= 0,1€/kWh

The formula gives:

*{standard cost in euro to save 1 kWh * estimated total kWh saved per m² per year * standard payback period in years} =*

[27] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_energy_en.pdf.

[28] Available at http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#h2020-grants-manual-amga.

*0.1€/kWh * 100kWh/m²/year * 10 years= 100€/m²*

After application of the 70% funding rate for innovation actions, it will give an indicative EU contribution of 70€/m².

1.2 Specific category 'access costs for providing trans-national access to research infrastructure'

1.2.1 This budget category **covers** 'access costs for providing trans-national access to research infrastructure' (i.e. the installation's operating costs and costs related to logistical, technological and scientific support for users, including ad-hoc user training and the preparatory and closing activities needed to use the installation).

What not? Travel and subsistence costs incurred for the selected users are not included in the access costs. (These costs can be reimbursed separately, as 'other direct costs'; *see Article 6.2.D.1 and Article 16*).

1.2.2 If they are declared under this budget category, these costs must be **declared** on the basis of the unit cost calculated in accordance with Commission Decision C(2013) 8199[29] and set out in Annex 2 of the GA.

⚠ The Decision does not *fix* the unit cost for access costs; the unit cost must be established for each installation — before signature of the GA — as follows (and then reflected in Annex 2 of the GA):

- identification of a *unit* of access to the installation; this is used to measure the total quantity of access that the installation provides to its users

– establishment of the *unit cost* of access, calculated as follows:

Unit cost = **average annual total access cost** (over past two years[30])
average annual total quantity of access (over past two years[31])

The averages are based on:

– the beneficiary's certified or auditable historical data

– costs allocated to the installation according to the beneficiary's usual cost-accounting practices (including where the installation has been in operation for less than two years) and

– a period excluding times when the installation was not usable (out of order, under repair or undergoing maintenance).

The 'total quantity of access to the installation' includes all the units of access annually provided by the installation, included access financed by the EU under previous grant agreements, if any.

The 'annual total access costs to the installation' is calculated on the basis of the following categories of eligible costs:

[29] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_tna-infra_en.pdf.

[30] In exceptional and duly justified cases, the Commission may agree to a different reference period.

[31] In exceptional and duly justified cases, the Commission may agree to a different reference period.

- the direct costs incurred by the access provider for the 'annual total quantity of access to the installation', as recorded in the certified or auditable profit and loss accounts of the reference period (years N-1 and N-2) for:
  - personnel cost of administrative, technical and scientific staff directly assigned to the functioning of the installation and to the support of the users

    By way of exception, these costs may be calculated in accordance with the beneficiary's usual cost accounting practices ('average personnel costs').
  - costs of contracts for maintenance and repair (including specific cleaning, calibrating and testing) specifically awarded for the functioning of the installation (if not capitalised)
  - costs of consumables specifically used for the installation and the research work of the users
  - costs of contracts for installation management, including security fees, insurance costs, quality control and certification, upgrading to national and/or EU quality, safety or security standards (if not capitalised) specifically incurred for the functioning of the installation
  - costs of energy power and water supplied for the installation
  - costs of general services when they are specifically included in the provided access services (library costs, shipping costs)
  - costs of software licence, internet connection or other electronic services for data management and computing when they are needed to provide access services
  - costs of specific scientific services included in the access provided or needed for the provision of access
- the eligible indirect costs for providing access to the installation, equal to 25% of the identified direct costs, minus any costs of subcontracting (i.e. costs in the categories 'costs of contracts for maintenance and repair', 'costs of contracts for installation management', 'costs of scientific services' and 'cost for other electronic services')

  and excluding:
  - all contributions to the capital investments of the installation (including costs of renting or leasing or depreciation costs of buildings as well as depreciation and leasing of instrumentation). Those costs are not eligible *(see also Article 6.2.D.2)*
  - travel and subsistence costs to support the visits of users.

A form[hyperlink] for the calculation of unit cost will be provided on the Research Infrastructures call pages on the Participant Portal.

⚠ Do not forget to describe in your proposal the services provided to users as well as the support users need to make use of the installation: logistical, technological and scientific, including ad-hoc training needed by users and preparatory and closing activities that may be necessary to use the installation

Example (calculation):

Assuming that a telescope provided 6 100 hours of access in year N-1 and 5900 hours of access in year N-2 and that the total access costs (for the provision of these total quantities of access) in the two years calculated on the basis of the categories of costs indicated above (with the exclusion of any contribution to capital investment and of travel and subsistence costs of users) is respectively EUR 3 200 000 and EUR 2 800.000, then the unit cost is
Average costs= average (3 200 000, 2 800 000) = 3 000 000
Average hours = average (6100, 5900) = 6000
Unit cost = average (3 200 000, 2 800 000) / average (6100, 5900) = 3 000 000 /6000 = 500 €
Access providers are allowed to submit a proposal with a unit cost calculated on the basis of average costs lower than their historical costs.

⚠ Before signature of the GA, the beneficiaries can opt for declaring all access costs (or a part relating to a given installation — ⚠ one cost form per installation) not as unit cost but as actual costs. Such costs must then be declared under the other budget categories *(see Article 6.2.A-E)*. If a beneficiary has initially opted for actual costs, it may only change its choice to unit costs through an amendment to the agreement *(see Article 55)*.

1.2.3 The costs must comply with the following **conditions for eligibility**:

- **fulfil** the **general conditions** for costs to be eligible (i.e. incurred/used during the action duration, necessary, linked to the action, correct calculation, etc.; *see Article 6.1(a) and (b)*)
- be incurred for **providing trans-national access to research infrastructure** to scientific communities
- fulfil the **additional eligibility conditions** set out in Article 16.1

1.1.4 They must be **calculated** as follows:

– for each installation:

amount per unit (EUR/unit of access) x number of actual units of access provided

6.3 Conditions for costs of linked third parties to be eligible

[OPTION to be used if Article 14 applies: *Costs incurred by linked third parties are eligible if they fulfil — **mutatis mutandis** — the general and specific conditions for eligibility set out in this Article (Article 6.1 and 6.2) and Article 14.**]***

[OPTION: *not applicable**]***

1. Costs of linked third parties

The costs of linked third parties are **eligible**, if:

- they fulfil — *mutatis mutandis* — the **general conditions** and **specific conditions** for costs to be eligible *(see Article 6.1 and 6.2)* and
- they fulfil the **additional eligibility conditions** set out in Article 14.1.1.

'*Mutatis mutandis*' means with the necessary modifications; the same rules apply but with the changes needed to render them applicable to the linked third parties.

Examples:

'*Incurred by the beneficiary' should be read as 'incurred by the linked third party'.*

'On the beneficiary's payroll' should be read as 'on the linked third party's payroll'.

6.4 Conditions for in-kind contributions provided by third parties free of charge to be eligible

In-kind contributions provided free of charge are eligible direct costs (for the beneficiary *[or linked third party])*, if the costs incurred by the third party fulfil — *mutatis mutandis* — the general and specific conditions for eligibility set out in this Article (Article 6.1 and 6.2) and Article 12.

1. In-kind contributions provided by third parties free of charge

Contributions provided by third parties free of charge are **eligible** if:

- they fulfil — *mutatis mutandis* — the **general conditions** and **specific conditions** for costs to be eligible *(see Article 6.1 and 6.2)* and
- they fulfil the **additional eligibility conditions** set out in Article 12.1.

6.5 Ineligible costs

'**Ineligible costs**' are:

(a) costs that do not comply with the conditions set out above (Article 6.1 to 6.4), in particular:

(i) costs related to return on capital;

(ii) debt and debt service charges;

(iii) provisions for future losses or debts;

(iv) interest owed;

(v) doubtful debts;

(vi) currency exchange losses;

(vii) bank costs charged by the beneficiary's bank for transfers from the *[Commission][Agency]*;

(viii) excessive or reckless expenditure;

(ix) deductible VAT;

(x) costs incurred during suspension of the implementation of the action (see Article 49);

(b) costs declared under another EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the *[Commission][Agency]* for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period.

1. Ineligible costs

Cost are ineligible, if one of the following applies:

– they **do not meet the general and specific eligibility criteria** set out in Articles 6.1 to 6.4

Examples: *additional remuneration ('bonuses') paid by for-profit or non-profit entities do not fulfil the conditions set out in Article 6.2; subcontracting costs do not comply with Article 13*

– they are **listed in Article 6.5**, in particular:

– costs related to **return on capital** or **return generated by an investment**

Examples: *dividends paid as remuneration for investing in the action; remuneration paid as a share in the company's equity.*

– **debt and debt service charges**

'Debt service' is the amount paid on a loan in principal and interest, over a period of time.

Example: *If a beneficiary takes a loan used to acquire equipment or consumables for the project of EUR 100 000 at 9 percent interest for 10 years, the debt service for the first year (principal and interest) is EUR 15 582*

– **provisions for future losses or debts**

'Provision' means an amount set aside in an organisation's accounts, to cover for a known liability of uncertain timing or amount. This includes allowances for doubtful or bad debts.

– **interest owed** (i.e. interest on a loan to borrow capital)

– **excessive or reckless expenditure**

'Excessive' means paying significantly more for products, services or personnel than the prevailing market rates or the usual practices of the beneficiary (and thus resulting in an avoidable financial loss to the action).

'Reckless' means failing to exercise care in the selection of products, services or personnel (and thus resulting in an avoidable financial loss to the action).

– **currency exchange losses** (i.e. for beneficiaries using currencies other than euros or being invoiced in a currency other than the currency they use: any loss due to exchange rate fluctuations *(e.g. between the date of invoicing and the date of payment)*)

– **bank costs** charged by the beneficiary's bank for transfers from the Commission/Agency

– **deductible VAT**

'Deductible VAT' means VAT that is recoverable under the national VAT system. Such VAT is not a genuine and definitive cost and, according to accounting standards, should not be recorded as such. Therefore, it is not actually incurred by the beneficiary.

The cost and revenue accounts should exclude deductible VAT; such VAT should be recorded in *separate* payable or receivable accounts, without effect on revenue or cost line items.

> The VAT *paid* is a claim against the tax authority. It should be recorded in the 'assets' part of the balance sheet. It should not be recorded as expenditure in the profit and loss accounts (only the purchase price of goods and services *excluding* VAT should be recorded). Similarly, for the value of purchased equipment or assets, only the net purchase cost should be recorded in the balance sheet's fixed asset line, and the depreciation cost should be calculated based on this value, excluding VAT.
>
> The VAT *collected* is a debt towards the tax authority and should therefore be recorded in the 'liabilities' part of the balance sheet.

⚠ Conversely, if VAT is **not deductible** it is an eligible cost.

> The full price of the goods or services bought by the beneficiary can be recorded as expenditure in its profit and loss accounts, without any distinction between the net price and the amount of VAT charged on it. The full price of equipment and assets bought can be recorded in the balance sheet's fixed asset line and is the basis for the depreciation allowances recorded in the profit and loss accounts.
>
> **Specific cases:**

Non-identifiable VAT — In exceptional cases where the beneficiary cannot identify the VAT charged by the supplier *(e.g. small non-EU invoices)*, the full purchase price can be recorded in the accounts, since non-identifiable VAT is not deductible. VAT is thus eligible.

– **costs incurred during the suspension of the implementation of the action**

Example: *Action is suspended and one of the beneficiaries continues working on it after the date of the suspension*

– **costs declared under another EU or Euratom grant** (i.e. double funding).

This includes:

– costs funded directly by EU programmes managed by the Commission or Executive Agencies *(e.g. other Horizon 2020 grants)*

– costs managed/funded/awarded by Member States but co-funded with EU/Euratom funds *(e.g. European Structural and Investment Funds (ESIF))*

– costs for grants awarded/funded/managed by other EU, international or national bodies and co-funded with EU/Euratom funds *(e.g. Joint Undertakings, Article 185 TFEU bodies)*

– if a beneficiary is receiving an operating grant[32] from the EU/Euratom (i.e. a grant to finance its functioning), then the indirect costs of that beneficiary are not eligible and the 25% flat-rate should not be applied.

Examples (operating grants): *Grants awarded to support the running costs of certain institutions pursuing an aim of European interest, such as: College of Europe, European Standards bodies (CEN, CENELEC, ETSI).*

[32] *For the definition, see Article 121(1)(b) of the Financial Regulation:* '**operating grant**' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

6.6 Consequences of declaration of ineligible costs

Declared costs that are ineligible will be rejected (see Article 42).

This may also lead to any of the other measures described in Chapter 6.

1. Consequences of declaration of ineligible costs

The other measures specified in Chapter 6 *(e.g. reduction of the grant)* may be applied in addition to the ineligible costs being rejected.

CHAPTER 4 RIGHTS AND OBLIGATIONS OF THE PARTIES

SECTION 1 RIGHTS AND OBLIGATIONS RELATED TO IMPLEMENTING THE ACTION

ARTICLE 7 — GENERAL OBLIGATION TO PROPERLY IMPLEMENT THE ACTION

7.1 General obligation to properly implement the action

The beneficiaries must implement the action as described in Annex 1 and in compliance with the provisions of the Agreement and all legal obligations under applicable EU, international and national law.

7.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Proper implementation of the action

The beneficiaries must properly implement the action. This general obligation is twofold, i.e. they must:

- carry out the project (and especially the research work) as detailed in Annex 1 ('technical implementation') and
- comply with all the other provisions of the GA and all the applicable provisions of EU, international and national law.

⚠ Normally, the beneficiaries must comply with the national law of the country in which they are established and that of the country where the action is implemented.

Example: *Each beneficiary must comply in particular with the labour law applicable to the personnel working on the action and must fulfil the tax and social obligations related to the activities it carries out under the relevant national law.*

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

The beneficiaries must have the **appropriate resources** to implement the action.

If it is necessary to implement the action, the beneficiaries may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the *[Commission][Agency]* and the other beneficiaries for implementing the action.

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

The beneficiaries must normally have the **technical and financial resources** needed to carry out the action **themselves**.

The resources must be available **at the moment of the implementation of the work** (but not necessarily at the moment of submitting the proposal or signing the GA).

⚠ However, in these last two cases, the beneficiaries must show in the proposal how the resources will be made available when they are needed.

Example (acceptable): *Start-up company with no resources at the time of proposal submission, but with a credible business plan described in the application.*

Example (acceptable): *SME which, if successful, intends to double its capacity/staff.*

Example (not acceptable): *Consultancy company which submits a proposal where the majority of the work is subcontracted.*

As an exception, beneficiaries may purchase goods, works or services *(see Article 10)*, use in-kind contributions provided by third parties *(see Articles 11 and 12)* or call upon subcontractors or linked third parties to carry out work under the action *(see Articles 13 and 14)* ('**third parties involved in the action**').

Third parties involved in the action do not sign the GA *(see Article 1)*.

⚠ Beneficiaries using third parties in an action remain responsible for the work attributed to them under the GA.

The differences between subcontracts *(Article 13)* and other contracts for purchase of goods, works or services *(Article 10)* are:

Article 10 **Contracts to purchase goods, works or services**	**Article 13** **Subcontracts**
These contracts do not cover the implementation of action tasks, but they are	Subcontracts concern the implementation of action tasks; they imply the implementation of

necessary to implement action tasks by beneficiaries.	specific tasks which are part of the action and are described in Annex 1.
Do not have to be indicated in Annex 1.	Must be indicated in Annex 1.
The price for these contracts will be declared as 'other direct costs' — column D in Annex 2 — in the financial statement; they will be taken into account for the application of the flat-rate for indirect costs.	The price for the subcontracts will be declared as 'direct costs of subcontracting' — column B in Annex 2 — in the financial statement; they will not be taken into account for the application of the flat-rate for indirect costs.

Example (contracts): *Contract for a computer; contract for an audit certificate on the financial statements; contract for the translation of documents; contract for the publication of brochures; contract for the creation of a website that enables action's beneficiaries to work together (creating the website is not an action task); contract for organization of the rooms and catering for a meeting (if the organization of the meeting is not an action tasks mentioned as such in Annex 1); contract for hiring IPR consultants/agents.*

Example (subcontracts): *Contract for (parts of) the research or innovation tasks mentioned in Annex 1.*

The differences between subcontractors *(Article 13)* and contractors *(Article 10)* on one side and linked third parties *(Article 14)* on the other are:

Articles 10 & 13 **Contracts and subcontracts**	**Article 14** **Implementation by linked third parties**
The beneficiaries have a contractual link with contractors or subcontractors having as their object the purchase goods, works or services or the implementation of specific action tasks.	The beneficiaries have a legal link with the linked third parties not limited to the action and not based on a contract for the purchase goods, works or services or the implementation of specific action tasks.
The eligible costs are the prices charged to the beneficiary by the contractors or subcontractors (usually containing a profit margin for the contractors or subcontractors but not for the beneficiary).	The eligible costs are only the costs of the linked third party, no profit is allowed (neither for the linked third party nor for the beneficiary).
The beneficiary must award the contracts and subcontracts on the basis of best value for money (or lowest price) and absence of conflict of interests.	The linked third parties have to be affiliates to a beneficiary or must have a legal link (as explained in Article 14) with the beneficiary.

Example (implementation by linked third party): *Company X and company Y do not control each other, but they are both fully owned by company Z. Company X is beneficiary in the grant and company Y implements some of the action tasks described in Annex 1(Testing and analysis of the resistance of a new component under high temperatures and building of a prototype plant).*

The differences between contracts *(Article 10)* and in-kind contributions against payment *(Article 11)* are:

Article 10 **Contracts**	**Article 11** **In-kind contributions against payment**
Contractors act as economic operators selling to the beneficiary goods, works or services that are necessary for the action.	Third parties contributing in-kind make available some of their resources to a beneficiary without this being their economic activity (*i.e. seconding personnel, contributing equipment, infrastructure or other assets, or*

	other goods and services).
The eligible costs are the prices charged to the beneficiary by the contractors or subcontractors (usually containing a profit margin for the contractors or subcontractors but not for the beneficiary).	The eligible costs are the amounts that the beneficiary pays to the contributors according to their agreements, within the limit of the third party's costs (the amounts to be paid to the contributors usually exclude a profit margin but if they do, the profit margin is not eligible).

Example (in-kind contribution against payment): *Civil servant working as a professor in a public university. His salary is paid by the Government (the Ministry) which employs him. According to the secondment agreement, the beneficiary (the university) has to reimburse the Government an amount corresponding to the paid salary. The reimbursed amount is a cost for the beneficiary and is recorded as such in its accounts. The beneficiary will declare the amount reimbursed to the Government in its financial statements.*

Example (in-kind contribution free of charge): *Civil servant working as a professor in a public university. His salary is paid not by the beneficiary (the university) but by the Government (the Ministry). According to the secondment agreement, the Government does not ask any reimbursement in exchange (non-cash donation). The beneficiary will declare these salary costs in its financial statements, even if they are paid by a third party (the Ministry/Government).*

ARTICLE 9 — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING EU FUNDING

9.1 Rules for the implementation of action tasks by beneficiaries not receiving EU funding

[OPTION for beneficiaries not receiving EU funding: *Beneficiaries not receiving EU funding must implement the action tasks attributed to them in Annex 1 according to Article 7.1.*

Their costs are estimated in Annex 2 but:

- *will not be reimbursed and*
- *will not be taken into account for the calculation of the grant (see Articles 5.2, 5.3 and 5.4, and 21).*

Chapter 3, Articles 10 to 15, 18.1.2, 20.3(b), 20.4(b), 20.6, 21, 26.4, 28.1 ***[OPTION:*** *with the exception of additional exploitation obligations****]****, 28.2, 30.3, 31.5, 40, 42, 43, 44, 47 and 48 do not apply to these beneficiaries.*

They will not be subject to financial checks, reviews and audits under Article 22.

*Beneficiaries not receiving EU funding may provide in-kind contributions to another beneficiary. In this case, they will be considered as a third party for the purpose of Articles 11 and 12****.]***

[OPTION: *not applicable****]***

9.2 Consequences of non-compliance

[*If a beneficiary not receiving EU funding breaches any of its obligations under this Article, its participation of the Agreement may be terminated (see Article 50).*

*Such breaches may also lead to any of the other measures described in Chapter 6 that are applicable to it****.]***

[OPTION: *not applicable****]***

1. Beneficiaries not receiving EU funding

Beneficiaries that do not receive EU funding are considered beneficiaries (although they do not receive EU funding) and therefore must carry out the work under the action and comply with most of the obligations under the GA. However, some obligations will not apply.

'Beneficiaries not receiving EU funding' are usually third country participants (i.e. participants that are neither from an EU Member State nor from an associated country[33]) that:

- are not from a country listed in General Annex A to the Main Work Programme and
- were not granted exceptional EU funding by the Commission/Agency (during the selection procedure

ⓘ For more information on third country participants, see the Horizon 2020 Online Manual.

[33] *For the definition, see Article 2.1(3) Rules for Participation:* '**associated country**' means a third country which is party to an international agreement with the Union, as identified in Article 7 of Regulation (EU) No 1291/2013.

Obligations that do not apply to beneficiaries not receiving EU funding:

These beneficiaries must, in particular, **not**:

- comply with the conditions for declaring costs *(e.g. cost form, eligibility, calculation, etc) (Chapter 3 and Articles 10-15)*
- keep records and other supporting documentation for costs *(Article 18.1.2)*
- submit financial reports and convert their costs in euro *(Articles 20.3(b), 20.4(b) and 20.6)*
- comply with some of the rules on management of intellectual property, background and results *(Articles 26.4, 28.1, 28.2, 30.3 and 31.5)*
- fear rejection of costs, reduction of the grant or recoveries, suspension of the payment deadline or suspension of payments *(Articles 42, 43 and 44)* .

⚠ Apart from this, they are treated like the other beneficiaries.

Their tasks will appear in Annex 1 and their estimated costs (although not eligible) in Annex 2.

The other obligations apply, just like for normal beneficiaries *(e.g. provide requested information and allow technical checks, reviews, audits, investigations or evaluations of the action's impact; maintain confidentiality; comply with security-related obligations; promote the action and give visibility to the EU funding).*

In case of breach of any of their obligations, their participation may be terminated and any of the other measures of Chapter 6 (except for rejection of costs, reduction of the grant or recovery) may be applied.

Example: *A non-EU beneficiary that does not receive EU funding does not carry out the tasks attributed to it in Annex 1.*

At the end of the action, only part of the action is implemented ⇨ the Commission may, at the payment of the balance, if the action tasks were not properly implemented, reduce the grant awarded in accordance with Article 43.

In addition, the non-EU beneficiary has breached fundamental ethical principles ⇨ it may be excluded from all contracts or grants financed by the EU or Euratom for a maximum period of five years (see Article 45.2).

ARTICLE 10 — PURCHASE OF GOODS, WORKS OR SERVICES

10.1 Rules for purchasing goods, works or services

10.1.1 If necessary to implement the action, the beneficiaries may **purchase goods, works or services**.

The beneficiaries must make such purchases ensuring the **best value for money or**, if appropriate, the **lowest price**. In doing so, they must avoid any conflict of interests (see Article 35).

[OPTION:** In addition, if the value of the purchase exceeds EUR […], the beneficiaries must comply with the following rules: […].*[19]]***

The beneficiaries must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their contractors.

10.1.2 **Beneficiaries that are 'contracting authorities'** within the meaning of Directive 2004/18/EC[20] or 'contracting entities' within the meaning of Directive 2004/17/EC[21] must comply with the applicable national law on public procurement.

10.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 10.1.1, the costs related to the contract concerned will be ineligible (see Article 6) and will be rejected (see Article 42).

If a beneficiary breaches any of its obligations under Article 10.1.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

[19] If the authorising officer decides to set specific rules, they should have due regard for the principle of proportionality taking into account the value of the contracts and the relative size of the EU contribution in relation to the total cost of the action and the risk. Specific rules must be based on the rules contained in the Financial Regulation. Simply citing the FR without specifying the applicable provisions should be avoided. Specific rules may only be set for the award of contracts of a value higher than EUR 60 000. The authorising officer may set a threshold higher than EUR 60 000 on the basis of a risk assessment.

[20] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004, p. 114).

[21] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, p. 1).

1. Purchase of goods, works or services

If necessary to implement the action, the beneficiaries may purchase goods, works or services.

'Contracts' for the purchase of goods, works or services are ordinary contracts for services, works *(i.e. buildings)* or goods *(e.g. equipment)*, needed to carry out the action, including the purchase of consumables and supplies.

***Example (contracts):** Contract for a computer; contract for an audit certificate on the financial statements; contract for the translation of documents; contract for the publication of brochures; contract for the creation of a website that enables an action's beneficiaries to work together; contract for logistic support (e.g. organization of the rooms, catering) for organising a meeting (if this is not an action tasks described as such in Annex 1); contract for hiring IPR consultants/agents.*

***Example (subcontracts):** Contracts for (parts of) the research or innovation tasks mentioned in Annex 1.*

⚠ Contracts to purchase goods, works or services are usually limited in cost and scope.

ⓘ *For more information on the differences between contracts, subcontracts, in-kind contributions against payment and implementation by linked third parties, see Article 8.*

2. Additional eligibility condition: Best value for money or lowest price

The beneficiaries must base their purchases on the best value for money considering the quality of the service, good or works proposed (also called '**best price-quality ratio'**) or on the lowest price.

This requirement is the mere application of the general cost eligibility criterion set out in Article 6.1(a)(vii) — to be eligible, costs must be reasonable and comply with the principle of sound financial management — to the costs of the purchase of goods, works or services.

For the best price-quality ratio, price is an essential aspect — together with quality criteria, such as technical quality, running costs, delivery times, after-sales service and technical assistance, etc. —, but it is not automatically necessary to select the offer with the lowest price.

Selecting the lowest price may however be appropriate for automatic award procedures where the contract is awarded to the company that meets the conditions and quotes the lowest price.

Example: *electronic tendering for consumables*

⚠ In order to provide a good analysis of the price-quality ratio, the criteria defining 'quality' must be clear and coherent with the purpose of the purchase.

⚠ The obligations in Article 10.1.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs of the contract concerned *(see Article 6.2.D.3 and 6.6)*. Beneficiaries must demonstrate (upon request) that the selection of the contractor complied with these rules.

Specific cases:

Goods, works or services purchased under framework contracts and contracts existing before the signature of the GA — Costs may be declared if they are necessary for the action and if the award of the contracts by the beneficiary complied with these two conditions (best value for money and absence of conflict of interests).

Additional conditions — Occasionally (and only for contracts with a value higher than EUR 60 000) the Commission/Agency may set out additional conditions (in view of the possible financial risks, taking into account the size of the contract and the EU contribution). These conditions must also be described in the Work Programme/call — as special eligibility conditions for the subcontracting costs — and be based on the rules applied by the Commission for its own procurement contracts.

Examples (additional conditions): *minimum number of offers received; publication in the Official Journal or in specific media such as internet, national newspapers, etc.*

3. Additional eligibility condition: Controls on the contractor (by the Commission/Agency, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the contractor *(see Article 22)*.

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the contractor *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

4. Other obligation: Compliance with national procurement rules

Beneficiaries that are 'contracting authorities' or 'contracting entities' (within the meaning of the EU public procurement Directives 2004/18/EC[34] and 2004/17/EC[35] — or any EU legislation that replaces these Directives[36]) must **moreover** comply with the applicable **national law on public procurement**. These rules normally provide for special procurement procedures, for the types of contracts they cover.

'Contracting authority' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law *(see Article 1(9) of Directive 2004/18/EC).*

⚠ 'Bodies governed by public law' also include entities **financed** mostly by the State, regional or local authorities, or other bodies governed by public law and entities **controlled** by those bodies *(for the full definition, see Article 1(9) of that Directive).*

'Contracting entities' means entities operating in a utilities sector (water, energy, transport, postal services). They may be contracting authorities, public undertakings or entities operating on the basis of special or exclusive rights *(for the full definition, see Article 2 of Directive 2004/17/EC).*

⚠ Non-compliance with this obligation does not lead to a rejection of costs, but is considered improper implementation of the GA (i.e. breach of 'another obligation'). The Commission/Agency may therefore reduce the grant in proportion to the seriousness of the breach.

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34 Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

35 Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

36 *See Directive 2014/24/EC of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65) and Directive 2014/25/EC of the European Parliament and of the Council of 26 February 2014 on public procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243).*

ARTICLE 11 — USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES AGAINST PAYMENT

11.1 Rules for the use of in-kind contributions against payment

If necessary to implement the action, the beneficiaries may use **in-kind contributions** provided by third parties **against payment**.

The **beneficiaries may declare costs related to the payment** of in-kind contributions as eligible (see Article 6.1 and 6.2), **up to the third parties' costs** for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services.

The **third parties and their contributions must be set out in Annex 1**. The *[Commission][Agency]* may however **approve** in-kind contributions not set out in Annex 1 **without amendment** (see Article 55), if:

- they are specifically justified in the periodic technical report and
- their use does not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

The beneficiaries must ensure that the **Commission** *[and the **Agency**]*, the European Court of Auditors (**ECA**) and the European Anti-fraud Office (**OLAF**) can exercise their rights under Articles 22 and 23 also towards the **third parties**.

11.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the costs related to the payment of the in-kind contribution will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. In-kind contributions against payment

If necessary to implement the action, the beneficiaries may use in-kind contributions provided by third parties against payment.

'Third party' means any legal entity that has not signed the GA *(see Article 1).*

This Article refers to 'in-kind contributions' (*i.e. non-financial resources of third parties put at the beneficiaries' disposal*) that beneficiaries receive **against payment**. (⚠ In this case, the beneficiary makes a payment and therefore incurs a cost.)

Example: *medical equipment provided by a hospital to a university in order to carry out research*

Both this Article and Article 12 only refer to in-kind contributions, and do not concern the case of linked third parties carrying out part of the work of the action (which is covered by Article 14).

ⓘ For more information on the differences between contracts, subcontracts, in-kind contributions against payment and implementation by linked third parties, see Article 8.

2. Additional eligibility condition: Costs of the payment to the third party, up to the third parties' costs

The beneficiaries may declare *their* costs for paying the in-kind contribution, if the eligibility conditions set out in Article 11.1 and in Article 6.1 and 6.2 are fulfilled *(e.g. necessary for the action, recorded in the accounts of the beneficiary, etc.)*, up to the direct costs actually incurred by the third party for the in-kind contribution.

The *direct* costs incurred by the third party may not be based on unit costs or lump sums (i.e. they must be identifiable and verifiable in the accounts of the third party). Thus, the beneficiary cannot declare as a cost the unit costs for SME owners or natural persons who do not receive a salary from the third party.

Indirect costs of the third party are not taken into account (when calculating the limit), if they are used in the premises of the beneficiary.

Example (no indirect costs of the third party accepted):

A researcher is seconded to a beneficiary by a legal entity. This researcher works for the beneficiary on its premises. The third party charges the researcher's direct costs (salary and related social security charges of EUR 50 000) and is reimbursed by the beneficiary.

Additionally, the beneficiary has eligible direct costs of EUR 200 000.

The third party's direct costs equal EUR 50 000

Total eligible costs declared by the beneficiary are:

- *total eligible direct costs: EUR 200 000 (direct costs of beneficiary) + EUR 50 000 (up to the amount of third party's direct costs) = EUR 250 000*
- *eligible indirect costs : 25%* EUR 250 000 = EUR 62 500. No work was subcontracted, and no financial support by third parties was given.*

TOTAL eligible costs declared by the beneficiary: EUR 250 000 + EUR 62 500 = EUR 312 500

Specific case:

For **in-kind contributions** against payment that are **not used on the beneficiary's premises but on the third party's premises**, the amount charged by the third party and paid by the beneficiary may be eligible up to the direct costs actually incurred by the third party increased by a flat-rate of 25% on these costs (in order to take into account the indirect costs of the third party).

Example (direct costs of third party plus a 25% flat-rate for indirect costs):

A legal entity makes available to a beneficiary the use of an installation or specialised piece of infrastructure that the beneficiary needs for the action. The third party charges the full direct and indirect costs of this and is reimbursed by the beneficiary.

The costs of the third party equal EUR 20 000 of actual direct costs plus EUR 8 000 of actual indirect costs. This is a cost for the beneficiary, which may charge it to the action. However, since in H2020 actions indirect costs are reimbursed on the basis of a flat-rate of 25% of the direct eligible costs (calculated as indicated in article 6.2.E of the GA), the beneficiary will declare as eligible costs for in-kind contributions against payment only EUR 20 000 (payment of third party's direct costs) + EUR 5 000 for (cap for payment of third party's indirect costs) (flat-rate of 25% of 20 000) = EUR 25 000.

Additionally, the beneficiary has got eligible direct costs of EUR 200 000.

Total eligible costs declared by the beneficiary are:

- *total eligible direct costs: EUR 200 000 (direct costs of the beneficiary)+ EUR 25 000 (eligible costs of in-kind contributions against payment) = EUR 225 000*
- *eligible indirect costs: EUR 50 000= 25%* EUR 200 000 (direct costs of the beneficiary, excluding costs of in-kind contributions not used in its premises). No work was subcontracted, and no financial support by third parties was given.*

TOTAL eligible costs declared by the beneficiary: EUR 225 000 + EUR 50 000 = EUR 275 000.

⚠ If an audit shows that the costs declared by the beneficiary are higher than those incurred by the third party, the costs in excess will be rejected as ineligible (even though they correspond to the amount actually paid by the beneficiary).

The obligations in Article 11.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs concerned *(see Article 6.2.A.3, 6.2.D.2, 6.2.D.3 and 6.6)*.

3. Additional eligibility condition: Third parties and their contributions be set out in Annex 1 — Approval without formal amendment

The **third parties**, their **in-kind contributions** (*i.e. non-financial resources*) and an estimation of the **costs budgeted** for the in-kind contributions must be mentioned in **Annex 1** to the GA.

If the need for third parties' in-kind contributions was not known at the moment of the signature of the GA, the coordinator must request an **amendment** of the GA in order to introduce it in the Annex 1. Exceptionally, the Commission/Agency may **approve** costs related to the payment of in-kind contributions not included in Annex 1 **without formally amending the GA** (under the conditions set out in this Article).

Example (approval without amendment): *A new researcher brought into a team working for a H2020 action during the action's second year of implementation. The beneficiary fails to inform the coordinator of the fact that this researcher is seconded from a public research centre to the beneficiary (a university), and therefore the GA is not amended (to include this in Annex 1). These circumstances are explained and justified in the technical report which includes the work carried out by this researcher.*

⚠ The approval is at the discretion of the Commission/Agency, and there is no automatic entitlement to it.

Therefore, beneficiaries that do not amend the GA to include third parties, their in-kind contributions and estimated costs in Annex 1 assume the risk of non-approval by the Commission/Agency and rejection of costs.

⚠ Approval will not be granted if the in-kind contribution risks to substantially change the nature of the project (i.*e. there is doubt whether the project is still (in substance) the same as the one that was selected or whether the beneficiary has still the operational capacity to carry out the action*).

Example (no approval): *A proposal includes a beneficiary owning a prestigious laboratory and employing a specialised team of technicians in the field of the call. The proposal is selected after evaluation, taking into account the value provided by the involvement of this laboratory in the action. The GA is signed, but then the beneficiary decides to carry out the tests in another laboratory of a third party, without informing the Commission and amending the GA.*

4. Additional eligibility condition: Controls on the third parties (by the Commission/Agency, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits, and investigations on the third parties (see Article 22), and in particular audit their underlying costs.

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the third party *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

ARTICLE 12 — USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES FREE OF CHARGE

12.1 Rules for the use of in-kind contributions free of charge

If necessary to implement the action, the beneficiaries may use **in-kind contributions** provided by third parties **free of charge**.

The **beneficiaries may declare costs incurred by the third parties** for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services as eligible in accordance with Article 6.4.

The third parties and their contributions must be set out in Annex 1. The *[Commission][Agency]* may however approve in-kind contributions not set out in Annex 1 without amendment (see Article 55), if:

- they are specifically justified in the periodic technical report and
- their use does not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

The beneficiaries must ensure that the **Commission** *[and the **Agency**]*, the European Court of Auditors (**ECA**) and the European Anti-fraud Office (**OLAF**) can exercise their rights under Articles 22 and 23 also towards the **third parties**.

12.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the costs incurred by the third parties related to the in-kind contribution will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. In-kind contributions free of charge

If necessary to implement the action, the beneficiaries may use **in-kind contributions** provided by third parties free of charge.

This Article refers to the case where a third party makes available some of its resources to a beneficiary, **for free** (*i.e. without any payment, contrary to the case covered by Article 11*). (⚠ In this case, the beneficiary makes no payment and there is therefore no cost incurred *by the beneficiary*).

Examples (in-kind contributions provided by third parties free of charge):

Civil servant working as a professor in a public university. His salary is paid not by the beneficiary (the university) but by the Government (the Ministry). The beneficiary will declare these salary costs in its individual financial statements, even if they are paid by a third party (the Ministry/Government).

Foundations, spin-off companies, etc., created in order to handle the administrative/financial tasks of the beneficiary. This is typically the case of a legal entity created or controlled by a beneficiary (usually public bodies like Universities/Ministries) which is in charge of the financial administration of the beneficiary, but which does not perform scientific/technical work in the action. This third party handles the financial and administrative aspects of the beneficiaries' involvement in RTD actions — including issues related to employment and payment of personnel, purchase of equipment, consumables, etc. — with the aim in most cases to improve and rationalise the administrative and financial management of these public bodies.

2. Additional eligibility condition: Costs of the third party

The beneficiaries may declare the costs *of the third party* for the in-kind contribution, if the eligibility conditions set out in Article 12.1 and in Article 6.4 are fulfilled *(e.g. actually incurred by the third party, necessary for the action, incurred during the duration of the action, etc.),*

⚠ These costs **must be recorded in the accounts of the third party**.

The obligations in Article 12.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs concerned *(see Article 6.4 and 6.6).*

⚠ Normally, **only** the **direct costs actually incurred by the third party** for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services may be declared.

The direct costs incurred by the third party may not be based on unit costs or lump sums (*e.g. they must be identifiable and verifiable in the accounts of the third party*).

Following this, the beneficiary cannot declare as a cost the unit costs for SME owners or natural persons who do not receive a salary from the third party

Indirect costs of the third party are normally not taken into account, except if the in-kind contributions are used by the beneficiary in the third party's premises.

The indirect costs of the beneficiary related to the use of in-kind contributions free of charge on its own premises will be covered by the 25% flat-rate for indirect costs applied to the value of the in-kind contributions used on its premises.

Specific case:

For **in-kind contributions** that are **not used on the beneficiary's premises but on the third party's premises**, the beneficiary may declare as eligible the direct costs actually incurred by the third party increased by a 25% flat-rate on these costs, calculated according to the formula specified in Article 6. 2. E of the GA.

The beneficiary must exclude the costs of the in-kind contributions free of charge not used on its own premises from its eligible direct costs when it calculates the 25% flat-rate for indirect costs.

If an audit shows that the costs declared by the beneficiary are higher than those incurred by the third party, the costs in excess will be rejected as ineligible.

⚠ If these in-kind contributions free of charge fulfil the conditions set out in Article 5.3.3(c) they also have to be declared as receipts of the action (for an amount corresponding to the amount declared as eligible costs).

3. Additional eligibility condition: Third parties and their contributions set out in Annex 1 — Approval without formal amendment

The **third parties**, their **in-kind contributions** and an estimation of the **costs budgeted** for the in-kind contributions must be mentioned in **Annex 1** to the GA.

If the need for third parties' in-kind contributions was not known at the moment of the signature of the GA, the coordinator must request an **amendment** of the GA in order to introduce it in the Annex 1. Exceptionally, the Commission/Agency may **approve** costs related to the payment of in-kind contributions not included in Annex 1 **without formally amending the GA** (under the conditions set out in this Article).

ⓘ *For more information on approvals without formal amendment, see Article 11.*

4. Additional eligibility condition: Controls on the third parties (by the Commission/Agency, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the third parties *(see Article 22)*, and in particular to audit their costs.

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the third party *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 Rules for subcontracting action tasks

13.1.1 If necessary to implement the action, the beneficiaries may award subcontracts covering the implementation of certain action tasks described in Annex 1.

Subcontracting may cover only a limited part of the action.

The beneficiaries must award the subcontracts ensuring the **best value for money** or, if appropriate, the **lowest price**. In doing so, they must avoid any conflict of interests (see Article 35).

[OPTION:** In addition, if the value of the subcontract to be awarded exceeds EUR […], the beneficiaries must comply with the following rules: […].[22]**]

***[OPTION for actions involving PCP or PPI:** In addition, for the pre-commercial procurement (PCP) or procurement of innovative solutions (PPI), the beneficiaries must follow a transparent and non-discriminatory procedure, including at least the following:*

*(i) an '**open market consultation**' published in the Official Journal of the European Union via a '**prior information notice (PIN)**' and promoted and advertised widely;*

*(ii) a '**contract notice**' allowing for a time-limit for receipt of tenders of at least 2 months, published in the Official Journal of the European Union and promoted and advertised widely;*

*(iii) a '**request for tenders**' based on functional or performance-based specifications (that take into account the outcome of the open market consultation) and describing the practical set-up for the implementation of the subcontract(s);*

*(iv) an objective and non-discriminatory **evaluation** of the tenders and **award** of subcontract(s) to the tender(s) offering **best value for money**;*

*(v) a '**contract award notice**' published in the Official Journal of the European Union.*

The beneficiaries must also ensure that every prior information notice, contract notice or contract award notice published in relation to the subcontracting includes the following disclaimer:

> *"This procurement receives funding under the European Union's Horizon 2020 research and innovation programme under the grant agreement No [number]). The EU is however not participating as a contracting authority in this procurement."**]***

***[OPTION only for actions involving PPI:** Participation in PPI tendering procedures must be open on equal terms to tenderers from EU Member States, associated countries and other countries with which the EU has an agreement in the field of public procurement. If the WTO Government Procurement Agreement applies, PPI subcontracts must also be open to tenderers from States that have ratified this agreement.*

*If the procurement of the innovative solution (PPI) consists (and is limited to) buying a set of prototypes and/or test products that were developed during a preceding PCP Cofund action, the beneficiaries do not need to make an open market consultation, contract notice and contract award notice under Points (a), (b) and (e) above. In this case, they must make a **request for offers** from at least **three providers** (including the providers that participated in the preceding PCP), in accordance with the negotiated procedure without publication under Directives 2004/18/EC and 2004/17/EC [23].**]***

***[OPTION only for actions involving PCP:** The subcontracts for pre-commercial procurement must provide for the following:*

- *the ownership, by the subcontractors, of the intellectual property rights on the results that they generate;*
- *the right of the buyers to access results — on a royalty-free basis — for their own use;*

- *the right of the buyers to grant (or to require the subcontractors to grant) non-exclusive licences to third parties to exploit the results — under fair and reasonable conditions — (without the right to sub-licence);*

- *the obligation of the subcontractors to transfer back to the buyers the ownership of intellectual property generated by subcontractors during the PCP, if subcontractors fail to commercially exploit the results within the period set out in the subcontract;*

- *the right of the buyers to publish — at the time of the contract award notice — the identity of the winning tenderers and a project summary provided by the winning tenderers, and to publish — after R&D has finished and after consulting the subcontractors — summaries of the results as well as the identities of the subcontractors that successfully completed the last phase of the PCP.*

The beneficiaries must ensure that the majority of the research and development work done by the subcontractor(s) (including the work of the main researchers) is located in the EU Member States or associated countries ('place of performance obligation').]

The **tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1** and the **total estimated costs** of subcontracting per beneficiary **must be set out in Annex 2**. The *[Commission][Agency]* may however **approve** subcontracts not set out in Annex 1 and 2 **without amendment** (see Article 55), if:

- they are specifically justified in the periodic technical report and

- they do not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

***[OPTION for classified deliverables:** Classified deliverables may be subcontracted only after explicit approval (in writing) from the [Commission][Agency] (see Article 37).]*

The beneficiaries must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their subcontractors.

13.1.2 The beneficiaries must ensure that their obligations under Articles 35, 36, 38 and 46 also apply to the subcontractors.

Beneficiaries that are 'contracting authorities' within the meaning of Directive 2004/18/EC or 'contracting entities' within the meaning of Directive 2004/17/EC must comply with the applicable national law on public procurement.

13.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 13.1.1, the costs related to the subcontract concerned will be ineligible (see Article 6) and will be rejected (see Article 42).

If a beneficiary breaches any of its obligations under Article 13.1.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

[22] If the authorising officer decides to set specific rules, they should have due regard for the principle of proportionality taking into account the value of the contracts and the relative size of the EU contributions in relation to the total cost of the action and the risk. Specific rules must be based on the rules contained in the Financial Regulation. Simply citing the FR without specifying the applicable provisions should be avoided. Specific rules may only be set for the award of contracts of a value higher than EUR 60 000. The authorising officer may set a threshold higher than EUR 60 000 on the basis of a risk assessment.

[23] See Articles 28 and 31(2)(a) of Directive 2004/18 and Article 40(3)(b) of Directive 2004/17/EC

1. Subcontracting

If necessary to implement the action, the beneficiaries may award subcontracts covering the **implementation** of certain **action tasks** described in Annex 1.

For the purposes of the GA, a 'subcontract' means a contract for the purchase of goods, works or services *that are identified in Annex 1 as action tasks*.

Characteristics of subcontracting:

- Based on 'business conditions'

  ⚠ This means that the subcontractor **charges a price**, which usually includes a profit (which distinguishes it from 'linked third parties' of Article 14; *see also Article 8*).

- Subcontractor works without the direct supervision of the beneficiary and is not hierarchically subordinate to the beneficiary

  This distinguishes a subcontract from action tasks implemented by in-house consultants *(see Article 6.2.A.2)*.

- Subcontractor's motivation is pecuniary, not the research work itself. The subcontractor is paid by the beneficiary in exchange for its work

- Responsibility vis-à-vis the EU/Euratom for the work subcontracted lies fully with the beneficiary

  The beneficiary remains responsible for all its rights and obligations under the GA, including the tasks carried out by a subcontractor.

  Subcontracts should in particular foresee that intellectual property generated by a subcontractor reverts to the beneficiary (so that it can meet its obligations towards the other beneficiaries in the GA and respect the other obligations of the GA).

- Subcontractor has no rights or obligations vis-à-vis the Commission or the other beneficiaries (it has no contractual relation with them).

  ⚠ However, the subcontractor can be audited by the Commission/Agency, the European Anti-Fraud Office (OLAF) and the Court of Auditors.

Examples (subcontracts):

Testing and analysis of the resistance of a new component under high temperatures, if described in Annex 1 as action task.

Building of a prototype or pilot plant, if described in Annex 1 as action task.

Only **limited parts of the action** may be subcontracted.

Exception:

For actions involving PCP or PPI**,** action tasks (research and innovation tasks) may be fully subcontracted by means of PCP or PPI.

Specific cases:

Subcontracting between beneficiaries — Is forbidden in the same GA. All beneficiaries contribute to and are interested in the action; if one beneficiary needs the services of another in order to perform its part of the work it is the second beneficiary who should declare the costs for that work.

Subcontracting to its **affiliates** — Is forbidden, unless they have a framework contract or the affiliate is their usual provider, and the subcontract is priced at market conditions. Otherwise, these affiliates may work in the action, but they must be identified as linked third parties under Article 14 and declare their own costs.

Coordination tasks of the coordinator *(e.g. distribution of funds, review of reports and others tasks listed under Article 41.2 (b))* — cannot be subcontracted *(see Article 41.2(b))*. Other activities of the coordinator may in principle be subcontracted.

ⓘ For more information on the differences between contracts, subcontracts, in-kind contributions against payment and implementation by linked third parties, see Article 8.

2. Additional eligibility condition: Best value for money or lowest price

The beneficiaries must base their subcontracts on the best value for money considering the quality of the service proposed (also called '**best price-quality ratio**') or on the lowest price.

For the best price-quality ratio, price is an essential aspect (together with quality criteria, such as technical quality, etc.), but it is not automatically necessary to select the offer with the lowest price. Selecting the lowest price may however be appropriate for automatic award procedures where the subcontract is awarded to the company that meets the conditions and quotes the lowest price.

⚠ In order to provide a good analysis of the price-quality ratio, the criteria defining 'quality' must be clear and coherent with the purposes of the action task that is subcontracted.

⚠ The obligations in Article 13.1.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs of the subcontract concerned *(see Article 6.2.B and 6.6)*. Beneficiaries have to demonstrate upon request that the selection of the subcontractor complied with these rules.

ⓘ For more information on additional conditions, framework contracts and subcontracts existing before the signature of the GA, see Article 10.

3. Additional eligibility conditions for actions involving PCP or PPI

For actions involving PCP or PPI, the beneficiaries must follow additional rules. These additional rules mirror the key obligations in the GA for PCP/PPI Cofund actions.

ⓘ For more information on the conditions for PCP or PPI subcontracting, see section VI PCP-PPI Cofund MGA.

4. Additional eligibility condition: Tasks set out in Annex 1 — Total estimated costs of subcontracting set out in Annex 2 — Approval without formal amendment

The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1.

It is the **work** (the **action tasks**) to be performed by a subcontractor which has to be identified in Annex 1. In principle, the identity of the subcontractors does not need to be indicated.

Specific case:

Existing framework contracts or subcontracts — The name of the subcontractor should be indicated (because it is known). Moreover, these (sub)contracts must have complied with the two conditions (best value for money and absence of conflict of interests) at the time of their award.

The description should also **include an estimation of costs for each subcontract**.

Moreover, it should explain the **need** for a subcontract, taking into account the specific characteristics of the action.

Additionally, the total estimated costs for subcontracting per beneficiary must appear in the table of estimated costs of Annex 2.

⚠ Costs for **subcontracts not set out in Annex 1 and 2** are in principle **not eligible.**

If the need for a subcontract is not foreseen at the moment of the signature of the GA, the coordinator must request an **amendment** of the GA in order to introduce it in Annex 1 and 2. Exceptionally, the Commission/Agency may **approve** costs related to subcontracts not included in Annex 1 and 2 **without formally amending** the GA (under the conditions set out in this Article).

Example (approval without amendment): *A beneficiary loses some personnel specialised in a particular field, and as a result decides to subcontract some tasks it had originally foreseen to carry out itself. The beneficiary fails to inform the coordinator of this fact and therefore the GA is not amended. These circumstances are justified in the report and it is approved by the Commission.*

The new subcontract must be included and explained in the technical periodic report (in the section 'Unforeseen subcontractor').

⚠ The approval is at the discretion of the Commission/Agency and there is no automatic entitlement to it. Therefore, a beneficiary that does not amend the GA to include a subcontract in Annex 1 and 2 assumes the risk of non-approval by the Commission/Agency and rejection of costs.

Approval will not be granted if the subcontract risks to substantially change the nature of the project (i.e. there is a doubt whether the project is still (in substance) the same as the one that was selected or whether the beneficiary has still the operational capacity to carry out the action).

Example (no approval): *Action where an essential beneficiary leaves and the coordinator subcontracts all the tasks of this beneficiary*

4. Additional eligibility condition: Controls on the subcontractor (by the Commission/Agency, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the subcontractor *(see Article 22)*.

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the subcontractor *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

5. Other obligation: Extension of obligations under the GA to subcontractors

The beneficiaries must ensure that the subcontractors comply with certain obligations under the GA.

Obligations that must be extended to subcontractors:

- Avoiding conflicts of interest *(see Article 35)*
- Maintaining confidentiality *(see Article 36)*
- Promoting the action and give visibility to the EU funding *(see Article 38)*
- Liability for damages *(see Article 46)*.

Best practice: The beneficiaries are advised to impose **contractual arrangements** on the third parties.

6. Other obligation: Compliance with national procurement rules

Beneficiaries that are 'contracting authorities' or 'contracting entities' (within the meaning of the EU public procurement Directives 2004/18/EC and 2004/17/EC — or any EU legislation that replaces these Directives[37]) must **moreover** comply with the applicable **national law on public procurement**. These rules normally provide for a special procurement procedure for the types of contracts they cover.

'Contracting authority' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law *(see Article 1(9) of Directive 2004/18/EC)*.

⚠ 'Bodies governed by public law' also include entities **financed** mostly by the State, regional or local authorities, or other bodies governed by public law and entities **controlled** by those bodies *(for the full definition, see Article 1(9) of that Directive)*.

'Contracting entities' means entities operating in a utilities sector (water, energy, transport, postal services). They may be contracting authorities, public undertakings or entities operating on the basis of special or exclusive rights *(for the full definition see Article 2 of Directive 2004/17/EC)*.

⚠ Non-compliance with this obligation does not lead to the rejection of costs, but is considered improper implementation of the GA (i.e. breach of 'another obligation'). The Commission/Agency may therefore reduce the grant in proportion to the seriousness of the breach.

[37] *See Directives 2014/24/EC and 2014/25/EC.*

ARTICLE 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

14.1 Rules for calling upon linked third parties to implement part of the action

[OPTION: *14.1.1 The following* ***affiliated entities***[24] *and* ***third parties with a legal link to a beneficiary***[25] *(‘**linked third parties**’) may implement the action tasks **attributed to them in Annex 1**:*

- *[name of the entity], affiliated or linked to [name or acronym of the beneficiary] [**OPTION if joint and several liability has been requested:**, if it has accepted **joint and several liability** with the beneficiary (see Annex 3a)]*
- *[name of the entity], affiliated or linked to [name or acronym of the beneficiary] [**OPTION if joint and several liability has been requested:**, if it has accepted joint and several liability with the beneficiary (see Annex 3a)]*

[same for more linked entities]

*The linked third parties **may declare** as eligible the **costs they incur** for implementing the action tasks in accordance with Article 6.3.*

The beneficiaries must ensure that the Commission [and the Agency], the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their linked third parties.

*14.1.2 The beneficiaries must ensure that their obligations under Articles 18, 20, 35, 36 and 38 also apply to their linked third parties.**]***

[OPTION: *not applicable**]***

14.2 Consequences of non-compliance

[*If any obligation under Article 14.1.1 is breached, the costs of the third party will be ineligible (see Article 6) and will be rejected (see Article 42).*

If any obligation under Article 14.1.2 is breached, the grant may be reduced (see Article 43).

*Such breaches may also lead to any of the other measures described in Chapter 6.**]***

[OPTION: *not applicable**]***

[24] For the definition see Article 2.1(2) Rules for Participation: ‘**affiliated entity**’ means any legal entity that:
- is under the direct or indirect control of a beneficiary, or
- is under the same direct or indirect control as the beneficiary, or
- directly or indirectly controls a beneficiary.

‘Control’ may take 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 or
(b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However, the following relationships between legal entities do not constitute control relationships:
(a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
(b) the legal entities concerned are owned or supervised by the same public body.

[25] ‘Third party with a legal link to a beneficiary’ is any legal entity which has a legal link to the beneficiary implying collaboration that is not limited to the action.

1. Linked third parties

Linked third parties may **implement part of the action**, although they do not sign the GA (and are therefore not beneficiaries).

Characteristics of implementation by linked third parties:

- Linked third party does not charge a price, but declares its *own costs* for implementing the action tasks

- Linked third party itself performs certain action tasks directly and is responsible for them vis-à-vis the beneficiary

  ⚠ However the beneficiary remains responsible vis-à-vis the Commission for the work carried out by the linked third party.

  ⚠ Moreover, beneficiaries are financially responsible for any undue amount paid by the Commission as reimbursement of costs of their linked third parties (unless the GA foresees joint and several liability; *see Article 44.1*).

- Work is attributed to the linked third party (in Annex 1) and is usually carried out on its premises

- Work is under the full and direct control, instructions and management of the linked third party, who carries out this part of the action (with its employees).

⚠ Only affiliated entities and entities with a legal link to a beneficiary can be linked third parties.

Affiliated entities cover not only the case of parent companies or holdings and their daughter companies or subsidiaries and vice-versa, but also the case of affiliates between themselves (e.g. entities controlled by the same entity).

Examples:

Company A established in France holding 20% of the shares in Company B established in Italy. However, that 20% of shares has 60% of the voting rights in company B. Therefore company A controls company B and both companies may be linked third parties in a Horizon 2020 GA.

Company X and company Y do not control each other, but they are both owned by company Z. They are both considered affiliated entities.

'Entities with a legal link' refers to an **established relationship** (between the third party and the beneficiary), which is:

– broad and not specifically created for the work in the GA

  Accordingly, its duration must go beyond the duration of the action and it usually pre-dates and outlasts the GA.

  ⚠ 'Ad hoc' collaboration agreements or contracts between legal entities to carry out work in the action are therefore not covered by this case. In this case both legal entities should be beneficiaries.

– a legal relationship.

  This may be in the framework of a legal structure (*e.g. the relationship between an association and its members)* or through an agreement or contract (not limited to the action).

Examples:

Joint Research Units (JRU) *(i.e. research laboratories/infrastructures created and owned by two or more different legal entities in order to carry out research). They do not have a legal personality different from that of its members, but form a single research unit where staff and resources from the different members are put together to the benefit of all. Though lacking legal personality, they exist physically, with premises, equipment, and resources individual to them and distinct from 'owner' entities. A member of the JRU is the beneficiary and any other member of the JRU contributing to the action and who is not a beneficiary of the GA has to be identified in Article 14. The JRU has to meet all the following conditions:*

– *scientific and economic unity*

– *last a certain length of time*
– *recognised by a public authority.*

It is necessary that the JRU itself is recognised by a public authority, i.e. an entity identified as such under the relevant national law. The beneficiary concerned shall provide to the Commission/Agency during the evaluation, a copy of the resolution, law, decree, decision, attesting the relationship between the beneficiary and the linked third party(ies), or a copy of the document establishing the 'joint research unit', or any alternative document proving that research facilities are put in a common structure, and correspond to the concept of scientific and economic unit.

Associations, foundations or other legal entities composed of members *(where the association/foundation etc. is the beneficiary and the members are the linked third parties).*

Linked third parties must fulfil the general conditions for participation and funding under Horizon 2020.[38]

Example: *Company A established in the UK is a beneficiary in a grant. A owns B, a French company and also owns C, an American company. B & C may be considered affiliates to A, however only B may charge costs as a third party linked to A, because company C is established in a third country, and the costs of participants established in third countries (not identified in the Work Programme) are not eligible for funding under Article 9 of the H2020 Rules for Participation.*

ⓘ *For more information on the general conditions for participation and funding, see the Horizon 2020 Online Manual.*

The Commission/Agency may (during the selection procedure) **require joint and several liability of a linked third party**, if:

– the financial viability/capacity of a beneficiary is 'weak' while that of its linked third parties is strong

ⓘ *For more information on the financial viability and the financial capacity check, see the Horizon 2020 Online Manual.*

– the beneficiary mainly coordinates the work of its linked third party.

Examples:

The beneficiary is an association and most of the work is carried out by several of its members as linked third parties.

The beneficiary is a small company with a substantial part of its work implemented by a bigger affiliated company.

The proposal submitted by four independent entities established in four Member States is positively evaluated. The four successful applicants decide to form a legal entity to simplify the management of the project. The newly established entity will be the beneficiary. The successful applicants will carry out the work as linked third parties.

⚠ If the Commission/Agency requests it, the third party **must accept** joint and several liability with the beneficiary.

In this case it must sign a declaration (on paper and in blue-ink, using Annex 3a) to be submitted by the beneficiary at the moment of its accession to the GA (or of the amendment introducing the linked third party in the GA*; see Article 56*). The linked third party must send the original to the beneficiary (by registered post with proof of delivery). The beneficiary must keep the original in its files and upload it (as a scanned PDF copy) in the system.

[38] *See Articles 8 and 9 of the Rules for Participation.*

The liability is for any amount owned by the beneficiary under the GA, and up to the maximum EU contribution indicated for the third party in the Annex 2 to the GA.

⚠ In principle, the **entity performing most of the work** should be the one appearing as **beneficiary**, and the others should appear in the GA as the linked third parties.

However, in some specific cases, the linked third parties may perform the R&I work.

Examples:

Entities specifically established for the purpose of implementing the action (e.g. EEIGs).

National research associations established according to the national law in order to carry out research not limited to the action.

A group of legal entities (companies/research organisations) have a common research agenda. They have an structure consisting of an association coordinating the research. This structure/consortium is not limited to the Horizon 2020 action and the members have strong contractual commitments among each other and the coordinating association. The association represents its members and coordinates administratively their work in the action, even if it is not performing any R&I work in the action. In this case, the association may be the beneficiary and the members of the association are its linked third parties carrying out the R&I work.

The roles of **subcontractors and contractors** are **not** exchangeable with the role of **linked third party**.

ⓘ *For more information on the differences between contracts, subcontracts, in-kind contributions against payment and implementation by linked third parties, see Article 8.*

2. Additional eligibility condition: Linked third parties identified in Article 14 — Tasks set out in Annex 1 — Estimated costs set out in Annex 2 — No approval without formal amendment

The third parties must be named in Article 14 and their tasks and estimated costs must be identified in Annexes 1 and 2 already at the moment of the signature of the GA (or added later, through an amendment; *see Article 55*).

⚠ There is **no** procedure for **approval without amendment**.

3. Additional eligibility condition: Costs of the linked third party

The linked third parties may declare *their costs* (in their financial statements; *see Article 20.3*), if the eligibility conditions set out in Article 6.3 are fulfilled *(e.g. actually incurred by the linked third party, necessary for the action, incurred during the duration of the action, etc.).*

⚠ These costs must be **recorded in the accounts of the linked third party**.

Linked third parties may declare costs for all cost categories (as provided for in Article 5), including indirect costs (at the 25% flat rate).

Each linked third party declares its own costs. The costs of the linked third party must not be included in the beneficiary's financial statements.

⚠ The obligations in Article 14.1.1 additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs concerned *(see Article 6.3 and 6.6).*

Each linked third party has its own financial statements, but these statements must be *submitted by its beneficiary* via the electronic exchange system (since linked third parties do not have access; *see Article 20*).

For this purpose, linked third parties must send their signed financial statements on paper to their beneficiary. The beneficiary must keep the originals *(see Article 18.1.2 last option).*

⚠ Each linked third party has to provide its own certificate on the financial statements *(see Article 20.4).*

The threshold of EUR 325 000 applies to each third party (independently of the EU contribution of its beneficiary).

For the same reasons as above, the beneficiary must keep the original of the certificate *(see Article 18.1.2 last option).*

4. Additional eligibility condition: Controls on the linked third parties (by the Commission/Agency, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the linked third parties *(see Article 22)*, and in particular to audit their costs and proper implementation of action tasks.

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the linked third party *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

ARTICLE 15 — FINANCIAL SUPPORT TO THIRD PARTIES

15.1 Rules for providing financial support to third parties

[OPTION to be used if foreseen in the work programme: *15.1.1 The beneficiaries must provide financial support in accordance with the conditions set out in Annex 1.*

At a minimum, these conditions must include:

(a) the maximum amount of financial support for each third party.

The maximum amount may not exceed EUR 60 000 for each third party, unless it is necessary to achieve the objectives of the action as described in Annex 1;

(b) the criteria for calculating the exact amount of the financial support;

(c) the different types of activity that qualify for financial support, on the basis of a closed list;

(d) the persons or categories of persons that may receive financial support, and

(e) the criteria for giving financial support.

The beneficiaries must ensure that the Commission [and the Agency], the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards the third parties receiving financial support.

*15.1.2 The beneficiaries must ensure that their obligations under Articles 35, 36, 38 and 46 also apply to the third parties receiving financial support.**]***

[OPTION: *not applicable**]***

1. Financial support to third parties

Horizon 2020 actions under the General MGA may involve financial support to third parties as part of the action activities. In this case, the beneficiaries must pass on the EU funding to one (or more) recipients that are not party to the GA ('**cascade funding**').

This may be done via a financial donation to natural persons *(e.g. allowance, scholarship, fellowship)* or legal persons *(e.g. non-repayable financial assistance to local NGOs)*, seed money to start-ups or microcredit, or other forms. Support in kind *(e.g. transfer of material for free)* by the beneficiary to a third party is **not** considered financial support.

Examples:

An innovation project in the area of sustainable agriculture and forestry includes financial support for end-users (farmers) testing the technology developed within the action.

One of the work packages in Annex 1 includes funding for awarding three research scholarships in the field of the action.

⚠ In this case, the beneficiaries' activity consists in providing financial support, while it is the third parties (recipients) that actually implement research and/or innovation projects.)

Linked third parties may award financial support to third parties under the same conditions as the beneficiaries.

ⓘ *For financial support given in the form of prizes, see Article 15.2.*

⚠ You may use this option only if it is foreseen in your GA (and in the Work Programme/call).

2. Additional eligibility condition: Conditions for support set out in Annex 1 — Maximum amount of the financial support — Types of activities — Categories of persons — Criteria for financial support

The beneficiaries must comply with the conditions for the support that are set out in Annex 1, and in particular:

- the maximum amount per third party (as a general rule must not exceed EUR 60 000 per third party)

  This is a limit *per* third party; several third parties could receive up to EUR 60 000 each *(e.g. 3 grants of EUR 50 000 each).*

  ⚠ In exceptional cases, a higher amount can be set out in Annex 1, if the work programme explicitly allows it and the proposal (and Annex 1) explain why this is necessary for the objectives of the action.

- the criteria for determining the exact amount of financial support *(e.g. EUR 2 000 per hectare; EUR 30 000 per student for a two-year scholarship)*

- a clear and exhaustive list of the types of activities that qualify for financial support for third parties *(e.g. financial support for third parties allowed for technology-testing activities)*

- the persons or category(ies) of persons that may receive it *(e.g. farmers; PhD students)*

- the criteria for giving financial support*(e.g. physical characteristics of the agricultural plots which make them suitable for the purpose of the action).*

⚠ All these conditions must already be described in your proposal (see the Proposal Templates).

⚠ The obligations in Article 15.1.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs concerned *(see Article 6.2.D.3 and 6.6).*

3. Additional eligibility condition: Controls on the recipients by the Commission/Agency, ECA and OLAF — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the recipients *(see Article 22).*

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the recipients *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

4. Other obligation: Extension of obligations under the GA to recipients

The beneficiaries are responsible for the proper use of the funding by the recipients and must ensure that they comply with certain obligations under the GA.

Obligations that must be extended to recipients:

- avoid conflicts of interest *(see Article 35)*
- maintain confidentiality *(see Article 36)*
- promote the action and give visibility to the EU funding *(see Article 38)*
- are liable for damages *(see Article 46)*.

Best practice: The beneficiaries are advised to impose contractual arrangements on the third parties (which include control measures and/or reducing the financial support). The beneficiaries remain fully responsible towards the Commission regarding the implementation of the action.

15.2 Financial support in the form of prizes

[OPTION to be used if foreseen in the work programme: *15.2.1 The beneficiaries must provide prizes in accordance with the conditions described in Annex 1.*

At a minimum, these conditions must include:

(a) the conditions for participation;

(b) the award criteria;

(c) the amount of the prize, and

(d) the payment arrangements.

The beneficiaries must ensure that the Commission [and the Agency], the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards the third parties receiving a prize.

*15.2.2 The beneficiaries must ensure that their obligations under Articles 35, 36, 38 and 46 also apply to the third parties receiving a prize.**]***

[OPTION: *not applicable**]***

15.3 Consequences of non-compliance

[*If a beneficiary breaches any of its obligations under Articles 15.1.1 or 15.2.1, the costs related to the financial support or prize will be ineligible (see Article 6) and will be rejected (see Article 42).*

If a beneficiary breaches any of its obligations under Articles 15.1.2 or 15.2.2, the grant may be reduced (see Article 43).

*Such breaches may also lead to any of the other measures described in Chapter 6.**]***

[OPTION: *not applicable**]***

1. Financial support to third parties (via prizes)

The actions under the General MGA may also involve financial support via prizes.

Example: *Inducement prize announced at the beginning of the action for identifying a (new) approach to dealing with a technical implementation problem to be tackled at the end of the action.*

⚠ You may use this option only if it is foreseen in your GA (and in the Work Programme/call).

2. Additional eligibility condition: Conditions for support set out in Annex 1 — Conditions for participation — Award criteria — Amount of the prize — Payment arrangements

Just like for financial support via grants, the beneficiaries must comply with the conditions for the support that are set out in Annex 1 and in particular:

- the conditions for participation and the conditions for early termination of the contest, if any *(e.g. eligibility and exclusion criteria; deadline for submission of entries; possibility of hearings)*
- the award criteria for assessing the quality of entries in light of the objectives and expected results

  ⚠ The criteria must be objective.
- the amount of the prize *(e.g. EUR 70 000)*
- the payment arrangements (usually one instalment).

⚠ The obligations in Article 15.2.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs concerned *(see Article 6.2.D.3 and 6.6)*.

3. Additional eligibility condition: Controls on the recipients (by the Commission/Agency, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the recipients of a prize, to verify that the conditions for the award of the prize have been respected *(see Article 22)*.

They must also ensure that the Commission/Agency has the right to make evaluations of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that this obligation is accepted by the recipients.

4. Other obligation: Extension of obligations under the GA to recipients

The beneficiaries are responsible for the award of the prize to the recipients and must ensure that they comply with certain obligations under the GA.

Obligations that must be extended to recipients:

- Avoiding conflicts of interest *(see Article 35)*
- Maintaining confidentiality *(see Article 36)*
- Promoting the action and give visibility to the EU funding *(see Article 38)*
- Liability for damages *(see Article 46)*.

ARTICLE 16 — PROVISION OF TRANS-NATIONAL OR VIRTUAL ACCESS TO RESEARCH INFRASTRUCTURE

16.1 Rules for providing trans-national access to research infrastructure

*[OPTION **trans-national access to research infrastructure:** 16.1.1 '**Access providers**'[26] must provide access to research infrastructure or installations[27] in accordance with the following conditions:*

*(a) **access which must be provided**:*

The access must be free-of-charge, trans-national access to research infrastructure or installations for selected user-groups.

This access must include the logistical, technological and scientific support and the specific training that is usually provided to external researchers using the infrastructure.

*(b) **categories of users that may have access**:*

*Trans-national access must be provided to selected '**user-groups**', i.e. teams of one or more researchers (users) led by a '**user group leader**'.*

The user group leader and the majority of the users must work in a country other than the country(ies) where the installation is located.

This rule does not apply:

- *if access is provided by an International organisation, the Joint Research Centre (JRC), an ERIC or similar legal entities;*
- *in case of remote access to a set of installations located in different countries offering the same type of service.*

Only user groups that will disseminate the results they have generated under the action may benefit from the access, unless the users are working for SMEs.

*Access for **user groups with a majority of users not working in a EU or associated country** is limited to 20% of the total amount of units of access provided under the grant, unless a higher percentage is foreseen in Annex 1;*

*(c) **procedure** and criteria **for selecting** user groups:*

The user groups must request access by submitting (in writing) a description of the work that they wish to carry out and the names, nationalities and home institutions of the users.

The user groups must be selected by a selection panel set up by the access providers.

The selection panel must be composed of international experts in the field, at least half of them independent from the beneficiaries, unless otherwise specified in Annex 1.

The selection panel must assess all proposals received and recommend a short-list of the user groups that should benefit from access.

The selection panel must base its selection on scientific merit, taking into account that priority should be given to user groups composed of users who:

- *have not previously used the installation and*
- *are working in countries where no equivalent research infrastructure exist.*

It will apply the principles of transparency, fairness and impartiality.

***[OPTION:** In addition, the beneficiaries must comply with the following additional rules for the selection of user groups: […]]*[28]

(d) other conditions:

The access provider must request written approval from the [Commission][Agency] (see Article 52) for the selection of user groups requiring visits to the installation(s) exceeding 3 months, unless such visits are foreseen in Annex 1.

16.1.2 In addition, the access provider must:

- *advertise widely, including on a dedicated website, the access offered under the Agreement;*
- *promote equal opportunities in advertising the access and take into account the gender dimension when defining the support provided to users;*
- *ensure that users comply with the terms and conditions of the Agreement;*
- *ensure that its obligations under Articles 35, 36, 38 and 46 also apply to the users.*

[OPTION:** not applicable**]

1. Trans-national access to research infrastructure

Actions under the Research Infrastructures Part of Horizon 2020, may (in addition, to their normal RIA, IA or CSA activities) provide for trans-national (or virtual; *see below*) access to research infrastructure[39] and installations[40] for scientific communities ('provision of access activity').

Such Research Infrastructures Part actions are funded under the following topics:

- 'integrating activities' (INFRAIA-1-2014-2015: Integrating and opening existing national and regional research infrastructures of European interest)
- 'individual support'(INFRADEV-3-2015: Individual implementation and operation of ESFRI projects)
- 'cluster support' (INFRADEV-4-2014-2015: Implementation and operation of cross-cutting services and solutions for clusters of ESFRI and other relevant research infrastructure initiatives).

For 'integrating activities', access to research infrastructure is a mandatory component, while it is optional for the other two topics. 'Cluster support' actions currently only include pilot provision of trans-national access, no virtual access *(see the Main Work Programme 2014-2015)*.

⚠ You may use this option only if it is foreseen in your GA.

Grants for this type of action usually **cover** — for the provision of access activity — the following **types of costs**:

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39 *For the definition, see Article 2(6) of the H2020 Framework Programme Regulation No (EU) No 1291/2013 and the footnote in Article 6.2.D.4 of the MGA:* '**Research infrastructures**' are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructure such as data and computing systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructure may be 'single-sited', 'virtual' or 'distributed'.

40 *For the definition, see the footnote in Article 16 of the MGA.*

– 'access costs' (i.e. the installation's operating costs and costs related to logistical, technological and scientific support for users, including ad-hoc user training and the preparatory and closing activities needed to use the installation)

– users' travel and subsistence costs

– costs of advertising the trans-national access offered under the action

– costs related to the selection procedure *(e.g. the selection panel members' travel and subsistence costs, logistical costs of meetings, fees, etc.)*

– costs of preparing the detailed access activity information that must be included in the periodic technical reports *(see Article 20.3)*.

Capital investments (i.e. equipment costs for renting, leasing, purchasing depreciable equipment, infrastructure or other assets) will not be reimbursed (for the provision of access activity; *see Article 6.2.D.2*).

The basic **cost eligibility rules** are set out in Article 6.

⚠ In addition, Article 16.1.1 and 16.2 specify additional eligibility conditions. If the beneficiary does not comply with these rules, the Commission may reject the costs concerned *(see Article 6.2.A-F and 6.6)*.

'Access costs' for trans-national access may be **declared as** unit costs, actual costs or — under certain conditions — as a combination of the two *(see Articles 5.2(f) and 6.2.F)*, while the other costs listed above must be declared as actual costs *(see Articles 5.2(d) and 6.2.D)*.

⚠ If access costs are declared as unit cost, they must be declared under the budget category 'specific categories of costs' *(see Article 5.2(f) and 6.2.F)*. Otherwise they must be declared under the other budget categories *(see Articles 5.2(a-e) and 6.2.A-E)*.

Trans-national access must be **measured** (in 'units of access').

The units of access for the various installations that provide trans-national access under the grant must be specified in Annex 1 to the GA.

Examples (units of access): *per beam-hour for a synchrotron; per night for a telescope; per number of frozen embryos for a mouse repository; per week of access for a historical archive; per campaign-day for a research vessel.*

⚠ For trans-national access, the GA will always specify a unit of access, even when access costs are not reimbursed on the basis of a unit cost (i.e. not declared under the budget category 'specific categories of costs', but as actual costs under the other budget categories or as a combination of both).

The Beneficiaries must **keep** appropriate **records** and supporting documentation to justify the number of units of access for which they declare costs *(see Article 18)*, including:

– users' names, nationalities and home institutions

– the nature of access and

– the number of units of access provided.

In addition, they must include (just like for for virtual access) detailed information on the provision of access activity in the **periodic technical reports** *(see Article 20.3)*.

⚠ For trans-national access, this must include the exact amount of access provided.

2. Additional condition for eligibility: Access which must be provided

Trans-national access can be either:

- **in person** ('hands-on'), provided to selected users that visit the installation or
- **remote**, through the provision to selected users of remote scientific services.

Examples of remote access: *provision of reference materials or samples (e.g. shipping of a virus strain); performing a remote sample analysis or sample deposition; remote access to a high-performance computing facility.*

⚠ Remote trans-national access requires competitive selection of the users to be served under the GA as usually it applies to resources that are not unlimited *(e.g. computing hours on a supercomputer or remote analysis of a sample)*. It is thus different from virtual access, which applies to resources that can be simultaneously used by an unlimited number of users *(e.g. a dataset available on the internet)*.

Trans-national access must be given to selected user groups (free-of-charge).

3. Additional condition for eligibility: Categories of users that may have access — User groups with a majority of users not working in an EU or associated country

For trans-national access, user groups in which all or most users work in **third countries** may only have access for up to 20% of the total number of units of access provided under the grant.

The consortium should itself define if this 20% limit is uniformly applied to the different installations or if the above mentioned user groups may use some installations more than others. It should do this in the consortium agreement.

4. Additional condition for eligibility: Selection procedure with a selection panel

For trans-national access, access providers must set up a common **selection panel** that regularly evaluates the applications for access and recommends a shortlist of the user groups that would benefit from access.

⚠ If justified, an access provider may use several different selection sub-panels.

Example: *different thematic selection sub-panels could be set up for a set of analytical facilities serving multidisciplinary communities.*

5. Additional eligibility condition: Controls on the users by the Commission/Agency, ECA and OLAF — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission/Agency, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) have the right to carry out checks, reviews, audits and investigations on the users *(see Article 22)*, and in particular to audit proper implementation of action tasks.

They must also ensure that the Commission/Agency has the right to make an evaluation of the impact of the action under Article 23.

⚠ It is the beneficiaries' responsibility to ensure that this obligation is accepted by the users *(for example, if they refuse access and the Commission/Agency cannot verify the eligibility of the costs, it will reject them).*

16.2 Rules for providing virtual access to research infrastructure

[OPTION virtual access to research infrastructure: *'**Access providers**'[29] must provide access to research infrastructure or installations[30] in accordance with the following conditions:*

*(a) **access which must be provided**:*

The access must be free of charge, virtual access to research infrastructure or installations.

'Virtual access' means open and free access through communication networks to resources needed for research, without selecting or identifying the researchers to whom access is provided;

(b) other conditions:

*The access provider must have the virtual **access services assessed periodically by a board** composed **of international experts** in the field, at least half of whom must be independent from the beneficiaries, unless otherwise specified in Annex 1.**]***

[OPTION:** not applicable**]

16.3 Consequences of non-compliance

***[**If a beneficiary breaches any of its obligations under Articles 16.1.1 and 16.2, the costs of access will be ineligible (see Article 6) and will be rejected (see Article 42).*

If a beneficiary breaches any of its obligations under Articles 16.1.2, the grant may be reduced (see Article 43).

*Such breaches may also lead to any of the other measures described in Chapter 6.**]***

[OPTION:** not applicable**]

[26] **'Access provider'** means a beneficiary or linked third party that is in charge of providing access to one or more research infrastructure or installations, or part of them, as described in Annex 1.

[27] **'Installation'** means a part or a service of a research infrastructure that could be used independently from the rest. A research infrastructure consists of one or more installations.

[28] If the authorising officer considers necessary to give priority to certain categories of users.

1. Virtual access to research infrastructure

Actions under the Research Infrastructures Part of Horizon 2020, may also provide for virtual access to research infrastructure.

⚠ The EU will only support virtual services that are widely used by the community of European researchers.

Grants for this type of actions usually **cover** — for the provision of access activity — the following **types of costs**:

– operating costs of the installation during the course of the action

– costs related to technological and scientific support for users' access *(e.g. a helpdesk)*

– costs of advertising virtual access offered under the action

– costs related to the assessment carried out by the board of international experts *(e.g. costs of organising a board meeting)*

– costs of preparing the detailed access activity information that must be included in the periodic technical reports *(see Article 20.3)* and the assessment report *(see below point 6)*.

Capital investments (i.e. costs of renting, leasing, purchasing depreciable equipment, infrastructure or other assets) will not be reimbursed (for the provision of access activity; *see Article 6.2.D.2*).

⚠ There are no 'access costs' for virtual access.

Virtual access can in principle not be measured; therefore the GA does not specify a unit of access for virtual access provision.

The beneficiaries must include detailed information on the provision of access activity in the **periodic technical reports**, in the form of statistics on all users in the reporting period compiled through web analytical tools *(see Article 20.3)*.

2. Additional condition for eligibility: Access which must be provided

Virtual access applies to widely-used research resources that are openly and freely available **through communication networks**.

Example: *access to an open database available on the internet*.

Access must be open to all users; users are not selected or even identified.

3. Additional condition for eligibility: Periodic assessment by a board of international experts

For virtual access, the access services must be regularly assessed by an **external board** of international experts.

At least two assessments are usually carried out during the course of an action.

⚠ The assessment reports must be included in the list of **deliverables** in the proposal (and will then be included in Annex 1; *see the Proposal templates*).

SECTION 2 RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION

ARTICLE 17 — GENERAL OBLIGATION TO INFORM

17.1 General oobligation to provide information upon request

The beneficiaries must provide — during implementation of the action or afterwards — any **information requested** in order to verify proper implementation of the action and compliance with the obligations under the Agreement (see Article 41.2).

17.2 Obligation to keep information up to date and to inform about events and circumstances likely to affect the Agreement

Each beneficiary must keep information stored in the **'Beneficiary Register'** (in the electronic exchange system; see Article 52) up to date, in particular, its name, address, legal representatives, legal form and organisation type.

Each beneficiary must immediately inform the coordinator — which must immediately inform the *[Commission][Agency]* and the other beneficiaries — of any of the following:

(a) **events** which are likely to affect significantly or delay the implementation of the action or the EU's financial interests, in particular:

(i) changes in its legal, financial, technical, organisational or ownership situation *[or those of its linked third parties and*

(ii) changes in the name, address, legal form, organisation type of its linked third parties;]

(b) **circumstances** affecting:

(i) the decision to award the grant or

(ii) compliance with requirements under the Agreement.

17.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Requests for information

In addition to the specific information obligations set out in other parts of the GA *(e.g. Articles 22.1.2, 22.1.3 and 23)*, the Commission/Agency may at any point request a beneficiary to provide any information it needs to verify that the beneficiary:

- properly implemented the tasks described in Annex 1
- complied with its obligations under the GA.

The Commission/Agency may request information for any purpose *(e.g. monitoring the action, assessing reports and requests for payment, checks, reviews, audits or investigations or evaluation of the action's impact)*.

It may request any type of information it needs. The level of detail will depend on the purpose of the request.

⚠ The Commission/Agency may need to request personal data *(see Article 39)*, in particular in order to verify that costs declared for specific people are eligible.

The Commission may request information **at any time**, either during the action's implementation or afterwards.

Examples:

In an ex-post financial audit that starts 18 months after the balance is paid, the Commission/Agency may request any information it needs during the procedure. The audit may continue beyond the two years after the balance is paid.

The Commission may request information from the beneficiaries in order to evaluate the action's impact (Article 23) up to five years after the balance is paid.

The beneficiaries must comply with any additional exploitation obligations set out in Annex 1, for up to four years after the action ends (see Article 3). They are therefore obliged to provide any information the Commission/Agency requests to verify that the action was correctly implemented and that the beneficiaries complied with their obligations under the GA.

The beneficiary concerned must provide accurate, precise and complete information, in the format and within the deadline requested *(see Article 22)*.

⚠ It is the coordinator who usually provides the information requested, unless the GA specifies direct communication with the other beneficiaries *(see Articles 20, 22, 23, 30, 41, 55)*.

If the coordinator does not legally exist after the action ends (i.e. if it went bankrupt), beneficiaries may provide the information requested directly to the Commission/Agency.

Until the balance is paid, all information must be sent **via the electronic exchange system** (i.e. the 'My Area' section of the Participant Portal). Afterwards, formal notifications must be sent in writing by registered post with proof of delivery *(see Article 52)*.

2. Information in the Beneficiary Register

Each beneficiary is obliged to keep its information in the 'Beneficiary Register'[41] up-to-date, including after the end of the grant.

This includes its:

- name
- address
- legal representatives
- legal form (*e.g. private limited liability company, public law body, S.A., S.L.*)
- organisation type (*e.g. SME, secondary or higher education establishment, etc.*).

The system automatically informs the coordinator whenever a beneficiary updates its information.

[41] Available at http://ec.europa.eu/research/participants/portal/desktop/en/organisations/register.html

⚠ Since information may be sent or requested after the action and GA end (*e.g. formal notifications, requests for information, etc.*), it is in the beneficiary's interest to regularly update its data, even after the balance is paid.

ⓘ For more information on beneficiary registration, validation and data updates, see the Horizon 2020 Online Manual.

3. Information about events likely to affect or delay the action or affect the EU's financial interests

Each beneficiary must immediately inform the coordinator if an event is likely to significantly affect or delay the action's implementation or affect the EU's financial interests.

Examples (situations likely to significantly affect or delay the action's implementation or affect the EU's financial interests): *a beneficiary is under financial stress and chooses to liquidate; a beneficiary is bought by another legal entity; a beneficiary plans to move its laboratory from a Member State to a non-EU country*

The beneficiaries must also inform the coordinator about any changes concerning their linked third parties.

For events linked to changes that also require an update of the Beneficiary Register *(see above)*, the beneficiary must **update** the 'Beneficiary Register' *and* **inform the coordinator**.

The beneficiary must inform the coordinator offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)* and not via the electronic exchange system.

In any case, it is advisable that the beneficiary informs the coordinator in writing (not only orally).

After receiving the information from the beneficiary, the coordinator must immediately inform:

– the Commission/Agency, via the electronic exchange system

– the other beneficiaries, through the usual communication channels (in writing and offline).

⚠ The beneficiaries must prevent delays in implementing the action, or reduce them to the extent possible.

4. Information about circumstances affecting the decision to award the grant or compliance with requirements under the GA

Each beneficiary must immediately inform the coordinator about any situation that:

– could have affected the decision to award the grant if it had been known by the evaluators at the time of evaluation or

- could affect the fulfilment of obligations under the GA.

Example (situation that could have affected the decision to award the grant or compliance with requirements under the GA):

A consortium has three beneficiaries. One of them has a laboratory with specialised equipment and personnel, including a team of internationally-renowned experts in the same field as the project. The quality of the work to be carried out by this laboratory was taken into account by the evaluators when the grant was awarded. During the action's implementation, the beneficiary sells the laboratory to an external company, losing a good part of the relevant expertise, and as a result has to outsource part of the work.

ARTICLE 18 — KEEPING RECORDS — SUPPORTING DOCUMENTATION

18.1 Obligation to keep records and other supporting documentation

The beneficiaries must — for a period of *[**OPTION by default:** five][**OPTION for low value grants**[31]**:** three]* years after the payment of the balance — keep **records and other supporting documentation** in order to prove the proper implementation of the action and the costs they declare as eligible.

They must make them available upon request (see Article 17) or in the context of checks, reviews, audits or investigations (see Article 22).

If there are on-going checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement (including the extension of findings; see Article 22), the beneficiaries must keep the records and other supporting documentation until the end of these procedures.

The beneficiaries must keep the **original documents.** Digital and digitalised documents are considered originals if they are authorised by the applicable national law. The *[Commission][Agency]* may accept non-original documents if it considers that they offer a comparable level of assurance.

18.1.1 Records and other supporting documentation on the scientific and technical implementation

The beneficiaries must keep records and other supporting documentation on scientific and technical implementation of the action in line with the accepted standards in the respective field.

18.1.2 Records and other documentation to support the costs declared

The beneficiaries must keep the records and documentation supporting the costs declared, in particular the following:

(a) **for actual costs**: adequate records and other supporting documentation to prove the costs declared, such as contracts, subcontracts, invoices and accounting records. In addition, the beneficiaries' usual cost accounting practices and internal control procedures must enable direct reconciliation between the amounts declared, the amounts recorded in their accounts and the amounts stated in the supporting documentation;

(b) **for unit costs**: adequate records and other supporting documentation to prove the number of units declared. ***[OPTION for trans-national access to research infrastructure:** This documentation must include records of the names, nationalities, and home institutions of users, as well as the nature and quantity of access provided to them.**]*** Beneficiaries do not need to identify the actual eligible costs covered or to keep or provide supporting documentation (such as accounting statements) to prove the amount per unit.

In addition, **for direct personnel costs declared as unit costs calculated in accordance with the beneficiary's usual cost accounting practices**, the beneficiaries must keep adequate records and documentation to prove that the cost accounting practices used comply with the conditions set out in Article 6.2, Point A.

The beneficiaries *[and linked third parties]* may submit to the *[Commission][Agency]*, for approval, a certificate (drawn up in accordance with Annex 6) stating that their usual cost accounting practices comply with these conditions ('**certificate on the methodology**'). If the certificate is approved, costs declared in line with this methodology will not be challenged subsequently, unless the beneficiaries have concealed information for the purpose of the approval.

(c) **for flat-rate costs**: adequate records and other supporting documentation to prove the eligibility of the costs to which the flat-rate is applied. The beneficiaries do not need to identify the costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared at a flat-rate.

(d) ***[OPTION if lump sum foreseen in Article 5.2**: **for lump sum costs**: adequate records and other supporting documentation to prove that the corresponding tasks or part of the action as described in Annex 1 were implemented properly. The beneficiaries do not need to identify the actual eligible costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared as a lump sum.**]***

In addition, **for personnel costs** (declared as actual costs or on the basis of unit costs), the beneficiaries must keep time records for the number of hours declared. The time records must be in writing and approved by the persons working on the action and their supervisors, at least monthly. In the absence of reliable time records of the hours worked on the action, the *[Commission][Agency]* may accept alternative evidence supporting the number of hours declared, if it considers that it offers an adequate level of assurance.

As an exception**,** for **persons working exclusively on the action**, there is no need to keep time records, if the beneficiary signs a **declaration** confirming that the persons concerned have worked exclusively on the action.

[OPTION to be added if Article 14 applies**: For costs declared by linked third parties (see Article 14), it is the beneficiary that must keep the originals of the financial statements and the certificates on the financial statements of the linked third parties.**]

18.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, costs insufficiently substantiated will be ineligible (see Article 6) and will be rejected (see Article 42), and the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

[31] For the definition, see Article 185 of Rules of Application: **'low value grants'** are lower or equal to EUR 60 000.

1. Records and other supporting documentation

The beneficiaries (and linked third parties; *see point 10*) must keep appropriate and sufficient evidence to **prove** the proper implementation of the action and other obligation and eligibility of all the costs declared.

'Sufficiency' relates to the quantity of evidence; 'appropriateness' relates to its quality. Evidence is considered sufficient and appropriate if it is persuasive enough for the auditors, who assess it according to generally accepted audit standards.[42]

All evidence must be verifiable, auditable and available.

It must therefore be correctly archived for at least five years after the balance is paid (three years for grants up to EUR 60 000). If the beneficiaries throw supporting documents away during this period, they risk that the grant is reduced, costs are declared ineligible or rejected, or recoveries are more difficult.

If there are ongoing procedures such as audits, investigations or litigations, the evidence must be kept until these end, even if this is longer than five (or three) years.

⚠ The rules in the GA do not affect national laws on keeping documents.

2. Original documents

The beneficiaries must **keep original documents**.

The Commission will accept any document considered an original under national law.

[42] International Standard on Auditing ISA 500 'Audit Evidence'.

Examples:

The Commission will accept authenticated copies or digitally-signed documents, if national law accepts these as originals.

The Commission will accept the destruction of hard copies of documents and their digitalisation, if this is acceptable under national law.

In principle, documents should be kept in the format in which they were received or created.

This means that:

- documents received or created in paper form should be kept in paper form
- documents received or created electronically should be kept in their electronic format.

⚠ Hard copies of original electronic documents are not required.

3. Records for actual costs

For actual costs, the beneficiaries must:

- keep detailed records and other supporting documents to prove the eligibility of the costs declared
- use cost accounting practices and internal control procedures that make it possible to verify that the amounts declared, amounts recorded in the accounts and amounts recorded in supporting documentation match up.

Best practice: The information included in the financial statements for each budget category (i.e. personnel costs, other direct costs, indirect costs) must be broken down into details and must match the amounts recorded in the accounts and in supporting documentation.

Examples:

Costs declared as 'personnel costs' must be detailed per employee carrying out work for the action (individual hourly rate multiplied by the actual hours worked for the action). They must match the accounting records (i.e. general ledger transactions, annual financial statements) and supporting documentation (i.e. labour contracts, collective labour agreements, applicable national law on taxes, labour and social security contributions, payslips, time records, bank statements showing salary payments, etc.).

For 'other direct costs', the beneficiary must keep a breakdown of costs declared by type (i.e. travel costs and related subsistence allowances, depreciation, costs of other goods and services etc.) It should provide details of individual transactions for each type of cost. For depreciation, it must provide details per individual equipment used for the action. Declared costs must match accounting records (i.e. general ledger transactions, annual financial statements) and supporting documentation (i.e. purchase orders, delivery notes, invoices, contracts, bank statements, asset usage logbook, depreciation policy, etc.).

4. Records for unit costs set by the Commission

For unit costs set by the Commission, the beneficiaries must keep detailed records and other supporting documents to prove the number of units declared.

It is not necessary to keep records on the actual costs incurred.

The Commission has the right to access the accounting records, but it will not reject any costs recorded as lower than the costs declared based on unit costs (except if the number of units

declared is incorrect). If the Commission detects an irregularity or fraud in the action's implementation, it may reduce the grant.

5. Records for unit costs calculated in accordance with the beneficiary's usual cost accounting practices

For unit costs calculated in accordance with the beneficiary's usual cost accounting practices ('**average personnel costs**'), the beneficiaries must show that the cost accounting practices used comply with the conditions set out in Article 6.2.

To do this, they must keep detailed records and other supporting documents to:

- show that the personnel costs used to calculate the unit cost (hourly rate) match the actual personnel costs as recorded in the statutory accounts

  Examples: *accounting records, financial statement extracts, labour contracts, collective labour agreements, applicable national tax law, labour and social security contributions, pay slips, bank statements showing salary payments, classification of employees based on experience, qualifications, salary, department, etc.*

  Manual interventions into the accounting data must be traceable and documented.

- verify that the unit cost (hourly rate) is free of ineligible cost components

  Examples: *records that show that the hourly rate does not include an indirect cost component (that should be covered by the 25% flat rate); records that show that the hourly rate does not include travel costs (that should be claimed under 'other direct costs').*

- assess the acceptability of budgeted and estimated elements

  Example: *records that show adjustments corresponding to the consumer price index which, according to the beneficiary's usual remuneration policy, serves as the basis for annual salary increases.*

- verify the number of productive hours used to calculate the unit cost (hourly rate).

It is not necessary to keep records on the actual personnel costs incurred per person.

6. Certificate on the methodology (CoMUC)

What? To get additional assurance, a beneficiary (or linked third party) may request that the Commission/Agency confirms that its cost accounting practices comply with the conditions set out in Article 6.2, by approving a certificate on its methodology (CoMUC).

Approval concerns the cost accounting practices described and certified in the certificate on the methodology. This means that if the Commission/Agency approves the CoMUC, it will not challenge the personnel unit costs (hourly rates) declared by the beneficiary in subsequent audits.

⚠ The Commission/Agency will challenge these costs if it suspects that information was concealed or fraud or corruption was used to obtain approval. It will also challenge the costs, if the beneficiary calculated its personnel costs using cost accounting practices different from the ones described in the certificate.

Approval is valid for all personnel costs declared according to these cost accounting practices, including costs declared before the Commission's/Agency's approval (if the beneficiary/ can show that they were declared according to the approved practices).

Best practice: Beneficiaries should nevertheless keep detailed records and other supporting documents (to prove that their methodology complied with the rules, if necessary).

Approval is for all Horizon 2020 grants (i.e. for the beneficiary's usual cost accounting practices) and is not linked or limited to a specific grant.

⚠ Certificates of the methodology issued for FP7 beneficiaries are not valid for Horizon 2020 actions.

When? Beneficiaries may submit their requests for approval at **any time** — before or during the course of the grant.

If the beneficiary **changes its cost accounting practices**, it must obtain a new certificate and submit a new request for approval to the Commission/Agency.

If the beneficiary declares personnel costs according to the changed cost accounting practices before the new certificate is approved, it accepts to bear the risk that the changed practices are not compliant anymore and that the costs may be declared ineligible.

How? The beneficiary must submit its certificate on the methodology to the Commission/Agency (via the following functional mailbox: EC-H2020-UNIT-COST-METHODOLOGY-CERTIFICATION@ec.europa.eu). The certificate should be drawn up by an independent auditor. If the beneficiary is a public body, the certificate should be drawn up by an independent public officer using the template in Annex 6.

The Commission will assess if the methodology described and certified is in compliance with the GA *(see Article 6.2.A)*.

ⓘ For more information on the certification procedure, see the Horizon 2020 Online Manual.

7. Records for flat-rate costs

For flat-rate costs, the beneficiaries must:

- keep detailed records and other supporting documents to prove that the costs to which the flat rate applies are eligible.

Example: *For the flat rate of 25% of indirect costs, the auditors will verify (and the beneficiaries must be able to show) that:*

a) the actual direct costs are eligible, using the detailed records and supporting documents explained above;

b) the following costs were excluded: subcontracting costs, the costs of resources made available by third parties not used on the beneficiary's premises and financial support to third parties from the pool of actual direct eligible costs to which the flat rate applies.

8. Records for lump-sum costs

For lump-sum costs, the beneficiaries must:

- keep detailed records and other supporting documents to prove that the action tasks described in Annex 1 have been carried out in accordance with the GA.

Beneficiaries do not need to keep records on the actual costs incurred.

9. Records for personnel costs — Hours worked for the action

For **people working exclusively for the action** (100% of their working time), the beneficiaries must:

- sign one **declaration** per reporting period, to confirm that the people concerned worked exclusively for the action during the whole reporting period.

  This declaration must be dated and countersigned for acceptance by the person concerned.

  A template [hyperlink] is provided on the Participant Portal.

  Best practice: If there is a doubt about exclusivity, beneficiaries should keep a record of actual hours worked *(e.g. timesheets)*.

For **people who do not work exclusively for the action**, the beneficiaries must:

- show the actual hours worked, with reliable **time records** (*i.e. timesheets*), either on paper or in a computer-based time recording system.

  Time records must be dated and signed at least monthly by the person working for the action and his/her supervisor.

  A template [hyperlink] is provided on the Participant Portal.

  Time records should include:

  – the title and number of the action, as specified in the GA

  – the beneficiary's full name, as specified in the GA

  – the full name, date and signature of the person working for the action

  – the number of hours per day declared for the action

  – the supervisor's full name and signature

  – a reference to the action tasks or work package described in Annex 1, to easily verify that the work carried out matches the work assigned

  – a description of the activities carried out, to understand and show what work was carried out.

  ⚠ Information included in timesheets must match records of annual and sick leave taken, and work-related travel.

If time records are not reliable, the Commission/Agency may exceptionally accept '**alternative evidence**' if this proves the number of hours worked on the action with a similar (or at least satisfactory) level of assurance (assessed against generally-accepted audit standards).

Examples of possible alternative evidence (non-exhaustive list): *travel documents proving participation in a project meeting (boarding pass, obliterated travel ticket, hotel invoice, etc.); agenda and minutes of the meeting; attendance lists; working papers; laboratory log books; professional/personal diaries; documents related to presentations; scientific publications; correspondence such as letters, notes, memos, emails; etc.*

The auditors will use the following three criteria to assess how credible the alternative evidence is:

1. Clear identification of the person concerned
2. Clear link to the project under scrutiny
3. Possibility to quantify time spent on project-related tasks.

Alternative evidence will only be accepted if these three criteria are met.

Example (acceptable alternative evidence):

A researcher submits the following email as alternative evidence: 'I hereby send you the results of the analysis of project XYZ that I have been working on for the last two weeks.'
Criterion 1 is met – the sender of the email is the person concerned;
Criterion 2 is met – the project is identified as XYZ;
Criterion 3 is met – the time is quantified: two weeks.

Example (not acceptable alternative evidence):

A beneficiary submits the following email as alternative evidence: 'I hereby send you the results of the analysis recently carried out by my team.'
Criterion 1 is not met – it is unclear who the person concerned is; the team members and their contributions are unknown;
Criterion 2 is not met: the project name is not mentioned;
Criterion 3 is not met – the time is not quantified.

⚠ If the beneficiary cannot justify the number of hours or costs declared by using appropriate and sufficient evidence, the costs concerned may be rejected (and other measures described in Chapter 6 may be applied as well).

⚠ If the beneficiary does not have reliable time records and uses alternative evidence to justify actual hours worked for the action, s/he risks not being able to adequately justify the full amount of costs declared. This may lead to only a partial acceptance of these costs (and a rejection for the rest).

10. Records of (linked) third parties

The beneficiaries must ensure that linked third parties comply with the same obligations in terms of keeping appropriate and sufficient evidence.

Examples:

Linked third parties that carry out work themselves must document all their costs in the same way the beneficiaries do. However, it is the beneficiary who must keep the original financial statements and the certificates on financial statements of the linked third parties.

Specific case:

Financial statements and certificates on the financial statements (CFS) — It is the beneficiary that must keep the originals of the financial statements and the certificates on the financial statements of the linked third parties.

The beneficiaries must also ensure that they keep appropriate and sufficient evidence related to third parties that made in-kind contributions and to subcontractors.

Examples:

The beneficiaries must keep evidence of third parties' actual direct costs if there are in-kind contributions, either free-of-charge or against payment. Alternatively, they may ensure that the third parties keep the evidence.

The beneficiaries must keep evidence showing that subcontractors fulfilled their obligations in terms of the visibility of EU funding. Alternatively, they may ensure that the subcontractors keep this evidence.

ARTICLE 19 — SUBMISSION OF DELIVERABLES

19.1 Obligation to submit deliverables

The coordinator must submit the '**deliverables**' identified in Annex 1, in accordance with the timing and conditions set out in it.

19.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

1. Deliverables

What & When?

The coordinator must submit the deliverables identified in Annex 1, in accordance with the timing and conditions set out in that Annex.

'Deliverables' are additional outputs *(e.g. information, special report, a technical diagram brochure, list, a software milestone or other building block of the project)* that must be produced at a given moment during the action (normally not at the same time as the periodic/final reports).

('Milestones' are, by contrast, control points in the project that help to chart progress. They may correspond to the completion of a key deliverable, allowing the next phase of the work to begin or be needed at intermediary points)

The deliverables that must be produced are listed in a specific section of Annex 1 to the GA ('list of deliverables').

Example: *For Energy Challenge actions involving additional energy efficiency measures, the beneficiaries must deliver a 'handover certificate' at the same time as their periodic reports. This certificate must prove the actual specifications of the buildings constructed or refurbished, their surface area and address. It must be signed by a member of the consortium.*

How?

The coordinator must submit them through the electronic exchange system (i.e. the 'My Area' section of the Participant Portal; *see Article 52*), unless Annex 1 specifies another way.

Specific case:

'**Classified deliverables**' may only be submitted to the Commission/Agency via means (electronic or not) that have been approved *(see Article 37).*

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The coordinator must submit to the *[Commission][Agency]* (see Article 52) technical and financial reports, including requests for payment.

The reports must be drawn up using the forms and templates provided by the *[Commission][Agency]* in the electronic exchange system (see Article 52).

20.2 Reporting periods

The action is divided into the following '**reporting periods**':

- RP1: from month 1 to month [X]
[*- RP2: from month [X+1] to month [Y]*
- RP3: from month [Y+1] to month [Z]
[same for other RPs]
*- RPN: from month [N+1]to [the last month of the project].****]***

20.3 Periodic reports — Requests for interim payments

The coordinator must submit a periodic report within 60 days following the end of each reporting period.

The **periodic report** must include the following:

– a '**periodic technical report**' containing:

(i) an **explanation of the work carried out** by the beneficiaries;

(ii) an **overview of the progress** towards the objectives of the action, including milestones and deliverables identified in Annex 1.

This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out.

The report must also detail the exploitation and dissemination of the results and — if required in Annex 1 — an updated '**plan for the exploitation and dissemination of the results**'*[;][.]*

[OPTION for providing access to trans-national access to research infrastructure: *The report must detail the access activity, indicating the members of the selection panel, the selection procedure, the exact amount of access provided to the user groups, the description of their work, and information on the users (including names, nationality and home institutions).****] [OPTION for providing access to virtual services:*** *The reports must detail the access activity, with statistics on the virtual access provided in the period, including quantity, geographical distribution of users and, whenever possible, information/statistics on scientific outcomes (publications, patents, etc.) acknowledging the use of the infrastructure****];***

(iii) a **summary** for publication by the *[Commission][Agency]*;

(iv) the answers to the '**questionnaire**', covering issues related to the action implementation and the economic and societal impact, notably in the context of the Horizon 2020 key performance indicators and the Horizon 2020 monitoring requirements;

– a '**periodic financial report**' containing:

(ii) an '**individual financial statement**' (see Annex 4) from each beneficiary *[and from each linked third party]*, for the reporting period concerned.

The individual financial statement must detail the eligible costs (actual costs, unit costs and flat-rate costs *[and lump sum costs]*; see Article 6) for each budget category (see Annex 2).

The beneficiaries *[and linked third parties]* must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the *[Commission][Agency]*.

If an individual financial statement is not submitted for a reporting period, it may be included in the periodic financial report for the next reporting period.

The individual financial statements of the last reporting period must also detail the **receipts of the action** (see Article 5.3.3).

Each beneficiary *[and each linked third party]* must **certify** that:

- the information provided is full, reliable and true;
- the costs declared are eligible (see Article 6);
- the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22), and
- for the last reporting period: that all the receipts have been declared (see Article 5.3.3);

(iii) an **explanation of the use of resources** and the information on subcontracting (see Article 13) and in-kind contributions provided by third parties (see Articles 11 and 12) from each beneficiary *[and from each linked third party]*, for the reporting period concerned;

(iv) ***[OPTION if the JRC is a beneficiary:*** *information on the amount of each interim payment and payment of the balance to be paid by the Commission to the Joint Research Centre (JRC);****][OPTION:*** *not applicable;****]***

(v) a '**periodic summary financial statement**' (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements for the reporting period concerned and including — except for the last reporting period — the **request for interim payment**.

20.4 Final report — Request for payment of the balance

In addition to the periodic report for the last reporting period, the coordinator must submit the final report within 60 days following the end of the last reporting period.

The **final report** must include the following:

(a) a '**final technical report**' with a **summary for publication** containing:

(i) an overview of the results and their exploitation and dissemination;

(ii) the conclusions on the action, and

(iii) the socio-economic impact of the action;

(b) a '**final financial report**' containing:

(i) a '**final summary financial statement**' (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements for all reporting periods and including the **request for payment of the balance** and

(ii) a '**certificate on the financial statements'** (drawn up in accordance with Annex 5) for each beneficiary *[and for each linked third party]*, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2, Point A).

20.5 Information on cumulative expenditure incurred

[OPTION for big grants with reporting periods beyond 18 months[32]: *In addition to the reporting requirements set out above (Article 20.1 to 20.3), the coordinator must inform the [Commission][Agency] by [31 December][30 November] each year of the cumulative expenditure incurred by the beneficiaries from the start date of the action.*

*This information is required for the [Commission's][Agency's] accounting purposes and will not be used to calculate the final grant amount.**]***

[OPTION: *not applicable**]***

20.6 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

Beneficiaries *[and linked third parties]* with accounting established in a currency other than the euro must convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union*, calculated over the corresponding reporting period.

If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, it must be converted at the average of the monthly accounting rates published on the Commission's website, calculated over the corresponding reporting period.

Beneficiaries *[and linked third parties]* with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

20.7 Language of reports

All reports (technical and financial reports, including financial statements) must be submitted in the language of the Agreement.

20.8 Consequences of non-compliance — Suspension of the payment deadline — Termination

If the reports submitted do not comply with this Article, the *[Commission][Agency]* may suspend the payment deadline (see Article 47) and apply any of the other measures described in Chapter 6.

If the coordinator breaches its obligation to submit the reports and if it fails to comply with this obligation within 30 days following a written reminder sent by the *[Commission][Agency]*, the Agreement may be terminated (see Article 50).

[32] To be added in the case of grants of mare than EUR 5 million for which a pre-financing is paid and the reporting periods for interim payments or payments of the balance exceed eighteen months.

1. Reports

When & What?

The coordinator must submit both:

- a '**periodic report**' after the end of each reporting period (including the last one) and
- a '**final report**' at the end of the action.

Each report should be seen as a single package, composed of several parts, i.e.:

- a (periodic or final) **technical report**

  The periodic technical report includes an explanation of work carried out, an overview of progress, a publishable summary and a questionnaire.

  The final technical report is a publishable summary of the entire action (describing the overview of the results and their exploitation and dissemination, the conclusions on the action and its socio-economic impact).

- a (periodic or final) **financial report**.

  The periodic financial report includes the individual financial statements, an explanation of the use of resources and the periodic summary financial statement).

  The final financial report basically consists of the final summary financial statement that is automatically created by the system. In some cases (and for some beneficiaries/linked third parties) it must be accompanied by a certificate on the financial statements (one certificate per beneficiary/linked third party).

  The financial reports also contain the requests for payment (necessary for any payment other than the pre-financing payment).

The periodic report for the *last* reporting period covers only the last period, while the final report must give an overview of the action's results over its entire duration

The reports (and their documents) must be distinguished from 'deliverables' (that are part of Annex 1 and covered by Article 19) and 'milestones' (that may be part of Annex 1 but are normally neither covered by Article 19 nor by Article 20).

How?

Each (periodic or final) report must be **prepared** by the **coordinator** and the **beneficiaries together**, by filling out the forms **directly in the electronic exchange system**, i.e. 'My Area' section of the Participant Portal*; see Article 52*).

List of documents for the periodic reports:

- explanation of the work carried out
- overview of the progress
- updated plan for the exploitation and dissemination of results (if necessary)
- summary for publication

- questionnaire (i.e. the structured information requested)
- individual financial statements for each beneficiary and linked party
- explanation on the use of resources
- information on amounts to be paid to the Joint Research Centre (JRC) (if necessary).

List of documents for the final report:

- final summary for publication
- certificates on the financial statements (CFS) (if necessary).

Generally, the documents can be **drafted together** (i.e. by several users from different beneficiaries). Some forms are continuously open and can be updated at any moment *(e.g. questionnaire, publishable summary).* Some are linked, so that they must be filled out together *(e.g. the financial statement and the explanation on the use of resources: for each cost declared in the financial statement, a box will pop up asking the beneficiary to give an explanation of the cost, link it to the relevant work package(s) and justify the expense if necessary).*

Individual financial statements must be filled out by each beneficiary (individually), and then signed and formally submitted to the coordinator (via the electronic exchange system).

This includes the coordinator, which must also submit its individual financial statement.

For **linked third parties**, the financial statements must be filled out and submitted by their beneficiary (they do not see their grants in the electronic exchange system and therefore have no access to them). Before submission, the beneficiary completes the data for the linked third party, prints it and sends it to the linked third party which must sign it *on paper* and then send it back to the beneficiary (by registered post with proof of delivery). The beneficiary must keep the original in its files and must ensure that the data encoded in the electronic exchange system are identical to the signed paper version.

⚠ If a beneficiary **cannot submit** its individual **financial statement on time**, the report can be submitted without this financial statement. The costs will be considered 'zero' for this reporting period, but the beneficiary can declare its costs with the next financial report (for the next reporting period).

The coordinator will be asked explicit confirmation of the non-submission, when submitting the report.

If a beneficiary fails to submit its financial statement for the *last* reporting period, the Commission/Agency may suspend the payment deadline *(see Article 47).*

CFSs must be submitted (by the coordinator) as scanned copy (PDF) to the financial statement for the last reporting period of the beneficiary concerned. The beneficiary must keep the signed original in its files.

Once completed, the (periodic or final) report must be **submitted** by the coordinator (CoCo) (with all its parts, as a single package; '**single submission**').

When a report is submitted, the other beneficiaries are automatically informed by the system.

⚠ If the Commission/Agency considers the report **incomplete** or **not in compliance** with the conditions of this Article, it will suspend the payment deadline *(see Article 47)*.

In this case, the Commission/Agency will send back the report to the coordinator (through the electronic exchange system), as a single package, together with a notification letter that explains the reasons and requests modifications and/or clarification(s) ('**single suspension**'). The coordinator (CoCo) must then re-submit the corrected report, as a single package, within the deadline specified ('**single re-submission**').

The re-submission re-starts the payment deadline (remaining time, taking account of the time used before suspension).

ⓘ *For more information on the submission procedure, see the Horizon 2020 Online Manual.*

ⓘ *For information on the eligibility of costs incurred for reporting, see Article 6.2.D.3.*

2. Reporting periods

Each action is divided into reporting periods.

The length of the reporting periods is set out in the GA. As a general rule, reporting periods last 18 months.

The number of reporting periods is also set out in the GA, and depends on the action duration. Normally it is determined as follows:

Duration in months	Max. number of periods
1 to 18	1
19 to 36	2
37 to 54	3
55 to 72	4
73 to 90	5

3. Periodic technical report: Explanation of the work carried out — Overview of the progress — Summary for publication — Questionnaire

The **explanation of the work carried out** and the **overview of the progress** should show how the action is being implemented and what has already been achieved (as compared to the objectives, milestones and deliverables described in Annex 1).

The coordinator must check if all deliverables due for the period have been submitted. If work planned was not carried out, you must explain why.

The overview of the progress must also describe how achieved results are exploited and disseminated and include an updated '**plan for the exploitation and dissemination of the results**' (if such a plan is foreseen in Annex 1).

⚠ Do not report using information that is in 'classified deliverables' *(see Article 37)*. Technical reports should not contain any information that is 'EU classified' under the rules on

security of information in the Commission internal Rules of Procedure *(see also Guide for classification[hyperlink]).*

ⓘ For more information on information security, see the Horizon 2020 Online Manual.

The **summary** must give a brief description of the action, presenting its objectives and the results achieved (in an 'easy to read' way, understandable for a non-specialist audience).

The summary must be **fit for publication**, so that the Commission/Agency can publish it on its website right away.

If needed, the Commission/Agency may make changes to the summary and publish it (after having given the coordinator the opportunity to comment).

⚠ The coordinator must ensure that material submitted for publication does not include any confidential or 'EU classified' information.

The **questionnaire** must be filled out to provide the Commission/Agency with regular up-to-date information for monitoring the action (and ultimately the Horizon 2020 Framework Programme).

The questionnaire consists in structured information on:

- performance indicators (defined in Annex II to the Horizon 2020 Specific Programme)
- information to monitor the implementation of Horizon 2020 on cross–cutting issues (described in Annex III to the Specific Programme) and to assess the progress of Horizon 2020 against the objectives defined vis-à-vis societal challenges (Annex I to the Specific Programme).

It is designed in a modular way, consisting as much as possible of structured questions, by topic *(e.g. publications, patents, innovation, etc.).*

⚠ Forms for the different parts of the reports are available in the electronic exchange system.

ⓘ For information on the submission procedure, see point 1.

4. Periodic financial report: Individual financial statements — Explanation of the use of resource — Summary financial statement

The **individual financial statements** (see Annex 4) must contain all costs that:

- were incurred by the beneficiary/linked third parties during the reporting period and
- fulfil the eligibility conditions set out in Article 6.

You can also declare costs you incurred during a previous reporting period, if you haven't yet declared them.

⚠ Each beneficiary/linked third party should declare all their costs, even if they are above the estimated budget in Annex 2 ('cost overruns'). The EU contribution will be capped at the maximum grant amount, but cost overruns may turn out useful, if the Commission/Agency should reject some of the costs as ineligible.

The costs of *linked third parties* must not be included in the beneficiary's financial statements. Linked third parties must fill out their *own* financial statements.

For the last reporting period, beneficiaries have to declare their receipts for the action *(see Article 5.3.3)*.

The **explanation of the use of resources** must be consistent with the costs declared in the financial statement per beneficiary.

The **summary financial statement** is created automatically by the system (consolidating the data from all individual financial statements for all beneficiaries and linked third parties, for the reporting period).

Forms for the different parts of the reports are available in the electronic exchange system.

ⓘ *For information on the submission procedure, see point 1.*

5. Final technical report: Summary for publication

The final technical report is a **summary for publication** that should present an overview of the results, their exploitation and dissemination, the action's conclusions and its socio-economic impact.

The final summary must cover the *whole* action

Like the summaries for the periodic reports, the final summary must be written in an 'easy to read' way and be understandable for a non-specialist audience.

⚠ The coordinator must ensure that material submitted for publication does not include any confidential or 'EU classified' information.

You should include:

- an up-to-date link to the action's website
- project logos, diagrams, photographs and videos illustrating the work of the action (if available)
- the final version of the 'plan for the exploitation and dissemination of the results' (if such a plan is foreseen in Annex 1).

You may also include a list of all beneficiaries, with contact names (if you want this to be published).

6. Final financial report: Final summary financial statement — Certificates on the financial statements (CFS)

The **final summary financial statement** is automatically created by the system (consolidating the data from all individual financial statements for all beneficiaries and linked third parties, for all reporting periods).

The final summary financial statement will be the basis for calculating the payment of the balance *(see Article 21.4)*.

For some beneficiaries/linked third parties, a **certificate on the financial statement (CFS)** must be provided.

Such a certificate is needed, if the beneficiary/linked third party requests a total financial contribution of EUR 325 000 (or more), as reimbursement of actual costs and personnel costs

on the basis of unit costs calculated according to its usual accounting practices (i.e. 'average personnel costs').

⚠ This means that costs based on lump sums, flat-rates *(e.g. indirect costs)* or unit costs (other than those for personnel costs calculated according to the beneficiary's usual cost accounting practices) are not counted for the EUR 325 000 threshold (and do not need to be covered by the certificate).

Example:

A is a beneficiary in a H2020 action which declared the following total eligible costs for the action:

- *average personnel costs* = *EUR 250 000*
- *subcontracting costs* = *EUR 40 000*
- *depreciation costs of equipment used to carry out the action* = *EUR 60 000*
- *indirect costs (25 % flat rate)* = *EUR 77 500*
- *total eligible costs claimed by A* = *EUR 427 500*

The reimbursement rate is 100%.

As the amount of eligible actual costs and average personnel costs incurred by A (and hence the corresponding EU contribution) is higher than EUR 325 000, A must submit a CFS for the following costs:

Type of cost	*Direct personnel costs*	*Subcontracting costs*	*Other direct costs*	*Indirect costs*	*Total costs covered by the CFS*
Costs covered by the CFS	*250 000*	*40 000*	*60 000*	*0*	*350 000*

A linked third party must only submit a CFS if it individually (without its beneficiary) reaches the EUR 325 000 threshold.

CFS below the EUR 325 000 threshold will be rejected.

Beneficiaries/linked third parties may submit either **one CFS per reporting period or** a **single CFS for the whole action**.

⚠ In both cases, the CFS may only be submitted with the *final* financial report. The Commission/Agency will not accept any CFS submitted at any other moment (and corresponding costs for the CFS will not be considered eligible, because not necessary).

The CFS must be issued by an **external auditor**, using the template in Annex 5.

Specific cases:

For **public bodies**, it must be an independent public officer, with formal competence to audit the beneficiary/linked third party.

For **international organisations**, it can be an internal or external auditor that is appointed in accordance with the internal financial regulations and procedures of the organisation.

Only qualified auditors may issue a CFS.

'Qualified' means qualified in accordance with national legislation implementing Directive 2006/43/EC[43] (or any EU legislation that replaces this Directive).

Specific cases:

Beneficiaries/linked third parties **established in third countries** must comply with national regulations in the field.

Auditors qualified in the EU may provide certificates for beneficiaries established in third countries, if they are familiar with the relevant national regulations (national accounting rules) and comply with them when preparing the certification.

The auditor must certify that the costs declared in the financial statement are accurately recorded in the beneficiary's accounting system and eligible and that all receipts have been declared.

If the auditor cannot confirm (for any reason), s/he must explain this in detail in the certificate. The Commission/Agency will consider the explanation in light of the facts provided by the auditor, and decide on steps to take.

7. Information on cumulative expenditure incurred

This option will be inserted in the GA for grants of more than EUR 5 million, for which pre-financing is paid and where the reporting period for interim payments or payment of the balance exceeds 18 months.

8. Currency for financial statements and conversion into euro

Beneficiaries (and linked third parties) must always use euros, to report costs in their financial statements.

The rules on conversion (of costs incurred in other currencies into euros) are as follows:

- for beneficiaries/linked third parties **with accounting records in euros**: conversion of costs according to their usual accounting practices
- for beneficiaries/linked third parties **with accounting records in a currency other than the euro:**
  - for costs incurred in the currency of their accounting records conversion of costs by one of the following:
    - daily euro exchange rate is published in the in the C series of the *Official Journal of the European Union* for the currency in question: using the average of the daily exchange rates published over the corresponding reporting period.

[43] 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 (OJ L 157, 9.6.2006, p. 87).

To calculate this rate, you may use the editable charts on the ECB website[44].

Procedure for calculating the rate on the ECB website:

Step 1 — Go to the ECB website.

Step 2 — Click on the chart corresponding to your currency.

Step 3 — Choose the start and end date of the period for which the average daily exchange rate is calculated (i.e. the reporting period) by using the sliding tool in the second table.

Step 4 — The average appears above the first table.

Example: *A Romanian university with accounting in New Romanian Leu (RON) is the beneficiary of a GA with one reporting period, from 24.1.2013 to 23.1.2014. The costs incurred in RON during this period are RON 500 000. The university will convert its costs into euros at the average rate of RON 4.4274 for EUR 1 (established following the steps mentioned above). The university will report costs of EUR 112 933, 10 (RON 500 000 / RON 4.4274 * EUR 1).*

– if no daily euro exchange rate is published : using the average of the monthly accounting rates over the corresponding reporting period, using the currency converter on the Commission's website[45].

Example: *A Moldovan university with accounting in Moldovan Lei (MDL) is the beneficiary of a GA with one reporting period, from 24.01.2013 to 23.01.2014. The costs incurred in MDL during this period are MDL 500 000. The university will calculate the average of the 13 monthly exchange rates (January 2013 until January 2014) published on the Commission's website. This average rate is MDL 16.7531 for EUR 1. The university will report costs of EUR 29 845, 22 (MDL 500 000 / MDL 16.7531 * EUR 1).*

– for **costs incurred in a currency other than EUR and the one used in their accounting records:** conversion in accordance with the applicable national law and their usual accounting practices.

– for costs incurred in EUR, beneficiaries **with accounting records in a currency other than the euro** must declare the amount in EUR; no conversion has to be made.

⚠ This means that a beneficiary with accounting in a currency other than EUR will act differently according to the currency in which it incurs the costs (the currency in which the contract/invoice is established).

Examples:

1. *If the UK beneficiary buys the equipment in the USA (costs incurred in US dollars), it will convert the price of this equipment into pounds (the currency in which its accounts are established) according to its usual accounting practices. When reporting the costs to the Commission/Agency, the UK beneficiary must convert the cost of the equipment from pounds into euros at the average of the daily exchange rate as explained above.*

2. *If the UK beneficiary buys the equipment in UK pounds (it will record those equipment costs incurred in pounds in its accounts kept in pounds). When reporting the costs to the*

[44] Available at http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html

[45] Available at http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

Commission/Agency, the UK beneficiary must convert the cost of the equipment from pounds into euros at the average of the daily exchange rate as explained above.

3. *If the UK beneficiary buys the equipment in Germany in EUR (e.g. EUR 10 000) it will report these costs incurred in EUR (i.e. 10 000) to the Commission/Agency without converting them first from EUR to pounds and then back to EUR.*

9. Language of reports

The reports must be drafted in the language of the GA (indicated at the end of the GA, next to the signatures of the parties).

10. Suspension of the payment deadline — Termination

If the coordinator breaches its obligation to submit the reports, the Commission/Agency may decide to:

- suspend the payment deadline *(see Article 47)*
- terminate the GA if the coordinator continues to breach its obligations after a written reminder *(see Article 50)*.

  ⚠ This may also lead to a recovery of payments already made.

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the coordinator:

- one **pre-financing payment;**
- one or more **interim payments**, on the basis of the request(s) for interim payment (see Article 20), and
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20).

21.2 Pre-financing payment — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiaries with a float.

It remains the property of the EU until the payment of the balance.

The amount of the pre-financing payment will be EUR [**insert amount** (insert amount in words)].

The *[Commission][Agency]* will — except if Article 48 applies — make the pre-financing payment to the coordinator within 30 days from the starting date of the action (see Article 3) or from the entry into force of the Agreement (see Article 58), whichever is the latest.

An amount of EUR [**insert amount** (insert amount in words)], corresponding to 5% of the maximum grant amount (see Article 5.1), is retained by the *[Commission][Agency]* from the pre-financing payment and transferred into the '**Guarantee Fund**'

[OPTION if the JRC is a beneficiary:** Moreover, the part of the pre-financing payment related to the Joint Research Centre (JRC) ([**insert amount** (insert amount in words)] is not paid to the coordinator, but kept by the [Commission][Agency] for the JRC.**]

21.3 Interim payments — Amount — Calculation

Interim payments reimburse the eligible costs incurred for the implementation of the action during the corresponding reporting periods.

The *[Commission][Agency]* will pay to the coordinator the amount due as interim payment within 90 days from receiving the periodic report (see Article 20.3), except if Articles 47 or 48 apply.

Payment is subject to the approval of the periodic report. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

The **amount due as interim payment** is calculated by the *[Commission][Agency]* in the following steps:

Step 1 — Application of the reimbursement rates

Step 2 — Limit to 90 % of the maximum grant amount

21.3.1 Step 1 — Application of the reimbursement rates

The reimbursement rate(s) (see Article 5.2) are applied to the eligible costs (actual costs, unit costs and flat-rate costs *[and lump sum costs]*; see Article 6) declared by the beneficiaries *[and the linked third parties]* (see Article 20) and approved by the *[Commission][Agency]* (see above) for the concerned reporting period.

21.3.2 Step 2 — Limit to 90% of the maximum grant amount

The total amount of pre-financing and interim payments must not exceed 90% of the maximum grant amount set out in Article 5.1. The maximum amount for the interim payment will be calculated as follows:

{90% of the maximum grant amount (see Article 5.1)

minus

{pre-financing and previous interim payments}**}**.

21.4 Payment of the balance — Amount — Calculation — Release of the amount retained for the Guarantee Fund

The payment of the balance reimburses the remaining part of the eligible costs incurred by the beneficiaries for the implementation of the action.

If the total amount of earlier payments is greater than the final grant amount (see Article 5.3), the payment of the balance takes the form of a recovery (see Article 44).

If the total amount of earlier payments is lower than the final grant amount, the *[Commission][Agency]* will pay the balance within 90 days from receiving the final report (see Article 20.4), except if Articles 47 or 48 apply.

Payment is subject to the approval of the final report. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

The **amount due as the balance** is calculated by the *[Commission][Agency]* by deducting the total amount of pre-financing and interim payments (if any) already made, from the final grant amount determined in accordance with Article 5.3:

{final grant amount (see Article 5.3)

minus

{pre-financing and interim payments (if any) made}**}**.

At the payment of the balance, the amount retained for the Guarantee Fund (see above) will be released and:

- if the balance is positive: the amount released will be paid in full to the coordinator together with the amount due as the balance;
- if the balance is negative (payment of the balance taking the form of recovery): it will be deducted from the amount released (see Article 44.1.2). If the resulting amount:
    - is positive, it will be paid to the coordinator
    - is negative, it will be recovered.

The amount to be paid may however be offset — without the beneficiary's consent — against any other amount owed to a beneficiary by the Commission or an executive agency (from the EU or Euratom budget), up to the maximum EU contribution indicated, for that beneficiary, in the estimated budget (see Annex 2).

21.5 Notification of amounts due

When making payments, the *[Commission][Agency]* will formally notify to the coordinator the amount due, specifying whether it concerns an interim payment or the payment of the balance.

For the payment of the balance, the notification will also specify the final grant amount.

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 43 and 44.

21.6 Currency for payments

The *[Commission][Agency]* will make all payments in euro.

21.7 Payments to the coordinator — Distribution to the beneficiaries

Payments will be made to the coordinator.

Payments to the coordinator will discharge the *[Commission][Agency]* from its payment obligation.

The coordinator must distribute the payments between the beneficiaries without unjustified delay.

Pre-financing may however be distributed only:

(a) if the minimum number of beneficiaries set out in the call for proposals has acceded to the Agreement (see Article 56) and

(b) to beneficiaries that have acceded to the Agreement (see Article 56).

21.8 Bank account for payments

All payments will be made to the following bank account:

Name of bank: […]
Address of branch: […]
Full name of the account holder: […]
Full account number (including bank codes): […]
[IBAN code: […]][33]

21.9 Costs of payment transfers

The cost of the payment transfers is borne as follows:

- the *[Commission][Agency]* bears the cost of transfers charged by its bank;
- the beneficiary bears the cost of transfers charged by its bank;
- the party causing a repetition of a transfer bears all costs of the repeated transfer.

21.10 Date of payment

Payments by the *[Commission][Agency]* are considered to have been carried out on the date when they are debited to its account.

21.11 Consequences of non-compliance

21.11.1 If the *[Commission][Agency]* does not pay within the payment deadlines (see above), the beneficiaries are entitled to **late-payment interest** at the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros ('reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the *Official Journal of the European Union*.

If the late-payment interest is lower than or equal to EUR 200, it will be paid to the coordinator only upon request submitted within two months of receiving the late payment.

Late-payment interest is not due if all beneficiaries are EU Member States (including regional and local government authorities or other public bodies acting on behalf of a Member State for the purpose of this Agreement).

Suspension of the payment deadline or payments (see Articles 47 and 48) will not be considered as late payment.

Late-payment interest covers the period running from the day following the due date for payment (see above), up to and including the date of payment.

Late-payment interest is not considered for the purposes of calculating the final grant amount.

21.11.2 If the coordinator breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or the participation of the coordinator may be terminated (see Article 50).

Such breaches may also lead to any of the other measures described in Chapter 6.

[33] BIC or SWIFT code applies to for countries if the IBAN code does not apply.

1. Payments

The Commission/Agency will make the following payments to the coordinator:

- a pre-financing payment at the beginning of the action (to provide beneficiaries with cash to start working on the project and continue until the first interim payment)

  ⚠ Pre-financing will not be paid before:

  - the GA is signed (even if the action starts **prior** to that)
  - the work has started.

  Example:

  A GA is signed by the coordinator on 30 December 2014 and by the Commission on 5 January 2015. The starting date of the action would normally be 1 February 2015, but the consortium has requested a fixed start date of 1 September 2014 in its proposal, as the action is a continuation of a previous FP7 project.

  After due consideration, the fixed start date is approved. The pre-financing must be paid by 5 February 2015 (i.e. 30 days from the entry into force of the GA).

- interim payment(s) to cover eligible costs incurred in the reporting periods (as many interim payments as number of reporting periods)
- the payment of the balance after the end of the action.

The payments are made **to the coordinator**; the beneficiaries are not paid individually.

The coordinator must distribute the amounts received to the beneficiaries — without delay *(see Article 21.7*).

⚠ The consortium agreement may set up, for instance, specific periods for the distribution of payments or that the distribution will be carried out in instalments (and these will not be considered 'unjustified delays', if the arrangements set out in the consortium agreement are complied with).

If the coordinator doesn't distribute the amounts received, this is in principle an issue to be resolved within the consortium. It is only at termination of the participation of the coordinator that the Guarantee Fund may exceptionally intervene *(see Article 50).*

The amount distributed by the coordinator to each beneficiary may differ from the EU contribution justified by each of them; the consortium may have agreements that provide for a distribution of the funding which is not in line with the costs claimed.

The Commission/Agency will be informed of the distribution of the payments by the coordinator:

– if it specifically requests this

– in the event of recovery at the payment of the balance *(see Article 44)*

– if the participation of one or more beneficiary is terminated *(see Article 50).*

The Commission/Agency will **notify** the coordinator of the amount due, explaining which costs have been accepted and which have been rejected (if applicable).

ⓘ *For more information on the procedures for rejection of costs, reduction of the grant and recoveries, see Articles 42, 43 and 44.*

2. Amount of pre-financing payment

There is no standard amount or percentage for the pre-financing payment; the amount is fixed in each GA.

Normally it will be (depending on the availability of budget credits) up to 100 % of the average EU funding per period (i.e. maximum grant amount / number of periods) for actions with at least two reporting periods (it will be in any case less for actions with only one reporting period, as 100 % would mean the totality of the EU grant for the action).

⚠ At the moment of the pre-financing payment, an amount equivalent to 5 % of the maximum grant amount is deducted from the payment and transferred to the **Guarantee Fund**.

Example:

Maximum grant amount: EUR 1 000 000 with 100 % reimbursement rate
Pre-financing: EUR 333 334 of which:
EUR 283 334 transferred to the consortium (coordinator)
EUR 50 000 kept by the Commission for the Guarantee Fund.

For the Commission's Joint Research Centre (JRC), the Commission/Agency keeps the share of the pre-financing (based on the estimated budget of the Annex 2 in proportion of JRC weight in the total grant) and does not pay it out to the coordinator.

Example:

Four beneficiaries: A, B, C and JRC, with a maximum grant amount of EUR 1 000 000.

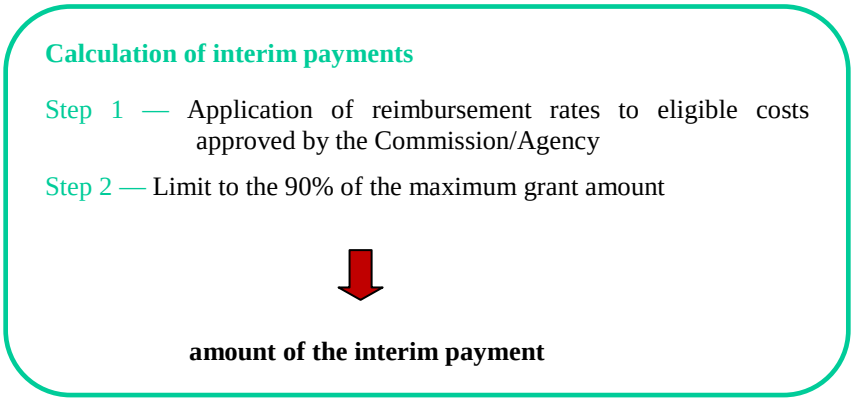
Estimated budget by beneficiary (Annex 2): A: EUR 300 000; B: EUR 250 000; C: EUR 300 000; JRC: EUR 150 000
Pre-financing: EUR 400 000, of which EUR 50 000 (5% of maximum grant amount) kept for the Guarantee Fund and EUR 350 000 transferred to the consortium.
JRC share of grant: 15% (150000/1 000 000)
JRC share of pre-financing (kept by the Commission/Agency): 15% of 350 000 = EUR 52 500
Pre-financing payment to coordinator for beneficiaries A, B, C: EUR 350 000 — EUR 52 500 = EUR 297 500

Pre-financing funds remain **EU property** until they are 'cleared' against eligible costs accepted by the Commission/Agency.

3. Amount of interim payments

The amount of the interim payments will be calculated by the Commission/Agency (on the basis of the costs declared in the financial statement).

Procedure for calculating interim payments:



Step 1 — Rejection of ineligible costs and application of the reimbursement rate(s)

Ineligible costs (i.e. costs that do not comply with one or more cost eligibility criteria; *see Article 6*) will be **rejected** (i.e. not approved).

If, for innovation actions, there are different **reimbursement rates** for different beneficiaries, the Commission/Agency will apply the reimbursement rate for each beneficiary to the costs it has approved for that beneficiary.

Step 2 — The interim payment is limited to 90% of the maximum grant amount minus the pre-financing

Example:

Grant with three beneficiaries (A, B and C) and three reporting periods.
Maximum grant amount: EUR 1 000 000 and 100% reimbursement rate.
Pre-financing of EUR 333 334.
Costs declared by the consortium at end of the first reporting period: EUR 500 000 (direct costs) + EUR 125 000 (25% flat rate for indirect costs) = € 625 000.

After checking the reports, the Commission finds that EUR 20 000 of the direct costs claimed by beneficiary A and EUR 12 000 of those claimed by beneficiary B are not eligible and therefore rejects them. (The Commission rejects EUR 32 000 direct costs + EUR 8 000 flat rate for indirect costs = EUR 40 000).

Total costs accepted by the Commission at the end of the first period: EUR 585 000

Step 1 : application of reimbursement rate: 100% = EUR 585 000

Step2: 90% limit of the maximum grant amount for pre-financing and interim payments = EUR 900 000

1st interim payment to the coordinator is EUR (900 000 – 333 334) = 566 666.

Total accepted eligible costs for 2nd interim period: EUR 162 500

2nd interim payment: EUR 0 (the 90% limit has already been reached in the first period).

4. Amount of the payment of the balance

The amount of the payment of the balance depends on the overall financial situation of the action, after calculation of the final grant amount *(see Article 5.3)*:

– if the final grant amount is *higher* than the payments already made, the balance will take the form of a **payment**

– if the final grant amount is *lower* than the payments made, the balance will take the form of a **recovery**.

Examples:

Maximum grant amount: EUR 1 000 000 with 100% reimbursement rate and three reporting periods.
Pre-financing of EUR 400 000 (of which EUR 50 000 kept from the pre-financing for the Guarantee Fund).
Limit for pre-financing and interim payments: 90% of the maximum grant amount: EUR 900 000.
Total eligible costs accepted for 1st interim period: EUR 537 500;
1st interim payment: EUR 500 000 (the 90% limit is reached).
Total eligible costs accepted for 2nd interim period: EUR 162 500.
2nd interim payment: EUR 0 (the 90% limit has already been reached in the first period).

Case 1: *Total eligible costs claimed and accepted for the last reporting period: EUR 50 000.*
Final grant amount: EUR 750 000.
*Payment of the balance takes the form of a **recovery** as the payments made by the Commission are (EUR 900 000 – EUR 750 000) = EUR 150 000 higher than the final grant amount.*
The amount of EUR 150 000 will be recovered as follows:
- *EUR 50 000 from the Guarantee Fund and*
- *EUR 100 000 from the coordinator (see procedure in Article 44.1.2).*

Case 2: *Total eligible costs accepted for the last reporting period: EUR 312 500.*
Total eligible costs accepted for the action: EUR 537 500 + EUR 162 500 + EUR 312 500 = EUR 1 012 500.
Final grant amount: EUR 1 000 000 (maximum grant amount)
Balance to be paid: EUR 1 000 000 (final grant amount) EUR 900 000 (payments already made, of which EUR 50 000 transferred from the first pre-financing to the Guarantee Fund) = EUR 100 000.
*Payment of the balance amounts to EUR 100 000 and will be **paid** to the coordinator as follows:*
- *EUR 50 000 directly by the Commission; and*
- *EUR 50 000 corresponding to the amount retained for the Guarantee Fund and returned to the consortium.*

Case 3: *Total eligible costs accepted for the last reporting period: EUR 187 500*
Total eligible costs accepted for the action: EUR 537 500 + EUR 162 500 + EUR 187 500 = EUR 887 500.
*Payment of the balance takes the form of a **recovery** as the payments made by the Commission are (EUR 900 000 – EUR 887 500) = EUR 12 500 higher than the final grant amount.*
- *The Commission/Agency will recover (deduct) this amount of EUR 12 500 from the amount retained for the Guarantee Fund.*
- *The remaining EUR 37 500 retained for the Guarantee Fund will be returned to the consortium and paid to the coordinator.*

ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS

22.1 Checks, reviews and audits by the Commission *[and the Agency]*

22.1.1 Right to carry out checks

The Commission *[or the Agency]* will — during the implementation of the action or afterwards — check the proper implementation of the action and compliance with the obligations under the Agreement, including assessing deliverables and reports.

For this purpose the Commission *[or the Agency]* may be assisted by external persons or bodies.

The Commission *[or the Agency]* may also request additional information in accordance with Article 17. The Commission *[or the Agency]* may request beneficiaries to provide such information to it directly.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

1. Checks by the Commission/Agency

The Commission/Agency may — at any moment and without any time-limit — check any aspect relating to the grant.

Examples:

1. *After receiving the reports (see Article 20), the Commission checks the different documents (explanation of the work carried out, overview of the progress, explanation of the use of resources, etc.), for consistency with the description and work plan of the action.*

2. *The Commission/Agency regularly performs plagiarism checks on documents submitted by consortia. It uses an IT tool to do this. If it finds plagiarism, the Commission must inform the consortium/coordinator/beneficiary concerned (see also Article 34).*

3. *After receiving information about misconducts concerning a certain beneficiary that participates in H2020 actions, the Commission checks all the grant agreements in order to see if it needs to take action.*

4. *After the end of the action, the Commission receives a complaint by one of the beneficiaries that another beneficiary does not respect its intellectual property obligations and decides to look into this allegation.*

The Commission/Agency may ask the coordinator or directly the beneficiaries for any additional information it needs to carry out a check (see Article 17). All requested information must be provided within the given deadline.

Example: *The beneficiaries did not clearly explain the allocation and use of resources in their periodic report. The Commission asks for more information by a certain date (and suspends the payment deadline).*

It may also extend to third parties involved in the action (which is why beneficiaries must ensure that the Commission/Agency can exercise its rights towards contractors, subcontractors, linked third parties or third parties providing in-kind contributions, by including appropriate clauses in their contracts with them; *see Articles 10-14*).

⚠ If the check shows ineligible costs or the violation of other obligations under the GA, it may lead to the rejection of costs or a reduction of the grant and, if necessary, recovery *(see Articles 42, 43 and 44)*. If a more in-depth examination is required, the Commission may start a review or audit.

The Commission/Agency may carry out checks remotely, based on documents it received beforehand. It can do so using its own staff or with the assistance of external expert(s) or bodies.

 If the Commission/Agency is assisted by external expert(s) or bodies, it does not need to send their name(s) for approval to the beneficiaries before appointing them. The Commission/Agency will ensure that there is no conflict of interest by asking the expert(s) to sign a declaration.

22.1.2 Right to carry out reviews

The Commission *[or the Agency]* may — during the implementation of the action or afterwards — carry out reviews on the proper implementation of the action (including assessment of deliverables and reports), compliance with the obligations under the Agreement and continued scientific or technological relevance of the action.

Reviews may be started **up to two years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the review is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The Commission *[or the Agency]* may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). The Commission *[or the Agency]* may request beneficiaries to provide such information to it directly.

The coordinator or beneficiary concerned may be requested to participate in **meetings,** including with external experts.

For **on-the-spot** reviews, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the review findings, a '**review report'** will be drawn up.

The Commission *[or the Agency]* will formally notify the review report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations ('**contradictory review procedure**').

Reviews (including review reports) are in the language of the Agreement.

1. Reviews by the Commission/Agency

The Commission/Agency may — at any moment and up until 2 years after the payment of the balance — carry out a review.

Reviews normally concern mainly the technical implementation of the action (i.e. its scientific and technological implementation), but may also cover financial and budgetary aspects or compliance with other obligations under the GA.

They consist in an in-depth examination (often done with the help of independent experts) of the progress of the action, and in particular:

- the degree to which the work plan has been carried out and whether all deliverables were completed

- whether the objectives are still relevant and provide scientific or industrial breakthrough potential
- how resources were planned and used in relation to the achieved progress, and if their use respected the principles of economy, efficiency and effectiveness
- the management procedures and methods of the action
- the beneficiaries' contributions and integration within the action
- the expected potential scientific, technological, economic, competitive and social impact, and plans for using and disseminating results.

For some types of actions, they may be done regularly *(e.g. for the periodic reports related to a payment, to help the Commission/Agency to properly assess the action implementation and the work carried out by the beneficiaries).*

They may also extend to third parties involved in the action (which is why beneficiaries must ensure that the Commission/Agency can exercise its rights towards contractors, subcontractors, linked third parties or third parties providing in-kind contributions, by including appropriate clauses in their contracts with them; *see Articles 10-14*).

⚠ If the review shows improper implementation of the action, ineligible costs or the violation of other obligations under the GA, it may lead to suspension, termination, rejection of costs, reduction of the grant and, if necessary, recovery *(see Articles 42- 44, 47-50).*

If carried out during the implementation of the action, a review may also recommend reorientations to the action.

2. Procedure

The review will be initiated by a letter sent to the coordinator (via the electronic exchange system, *see Article 52*).

The letter will also mention the **names** of the **independent experts** that have been appointed (if any). The consortium may object to an expert, but only on the grounds of commercial confidentiality.

The review may include **on-the-spot visits** or '**review meeting**' (on Commission/Agency premises or anywhere relevant for the action).

If there is a meeting, you will be invited (via the coordinator, via the electronic exchange system) and the invitation will indicate the documents that will be discussed, normally:

- Annex 1 (the contractual description of the action against which the assessment will be made)
- for periodic reviews: the periodic report(s) (technical and financial) for the period(s) under review (including documents related to financial/budgetary issues)
- deliverables that were due
- for final reviews: the final report and all periodic reports.

The results of the review will be recorded in a '**review report**'.

The draft review report will be sent to the coordinator for comments within 30 days (‘**contradictory review procedure**’).

22.1.3 Right to carry out audits

The Commission *[or the Agency]* may — during the implementation of the action or afterwards — carry out audits on the proper implementation of the action and compliance with the obligations under the Agreement.

Audits may be started **up to two years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the audit is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The Commission *[or the Agency]* may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement. The Commission *[or the Agency]* may request beneficiaries to provide such information to it directly

For **on-the-spot** audits, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the audit findings, a ‘**draft audit report**’ will be drawn up.

The Commission *[or the Agency]* will formally notify the draft audit report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations (‘**contradictory audit procedure**’). This period may be extended by the Commission *[or the Agency]* in justified cases.

The ‘**final audit report**’ will take into account observations by the coordinator or beneficiary concerned. The report will be formally notified to it.

Audits (including audit reports) are in the language of the Agreement.

The Commission *[or the Agency]* may also access the beneficiaries’ statutory records for the periodical assessment of unit costs or flat-rate amounts *[or lump sums]*.

1. Audits by the Commission/Agency

The Commission/Agency may — at any moment and up until 2 years after the payment of the balance — carry out an audit.

Audits normally concern mainly the financial implementation of the action by a beneficiary (i.e. financial and budgetary implementation), but may also cover technical aspects or compliance with other obligations under the GA.

Specific case:

The Commission may audit the accounting records of beneficiaries, to obtain general information about actual costs for cost items that are reimbursed as unit costs, flat-rate or lump sums (for statistical purposes or to gather data to assess the adequacy of its unit cost, flat rate or lump sum). Such audits will however normally have no direct consequences for the beneficiaries that were audited; even if the actual costs turn out to be lower, this will not lead to a rejection of costs.

They consist in an in-depth examination (by professional auditors and according to the generally accepted audit standards) of the implementation of the action by the beneficiary.

They may also extend to **third parties** involved in the action and third parties receiving financial support or a prize (which is why beneficiaries must ensure that the Commission/Agency can exercise its rights towards contractors, subcontractors, linked third parties or third parties providing in-kind contributions, by including appropriate clauses in their contracts with them; *see Articles 10-15*).

Examples:

*1. The Commission/Agency will audit **linked third parties**, as if they were beneficiaries. The audit will be carried out on the premises of the third party and all communication concerning the audit will be carried out directly with the linked third party (e.g. audit initiation letter, contradictory audit procedure). However, since the financial consequences would normally have to be borne by the linked third party's beneficiary (see Article 44), the Commission/Agency will also notify the beneficiary about the launching the audit, as well as about a summary of its conclusions.*

*2. The Commission/Agency may audit **third parties providing in-kind contributions** (free-of-charge or against payment), in the context of an audit of a beneficiary, in order to see if the costs claimed for the in-kind contribution are eligible. The audit procedure will therefore be with the beneficiary. The beneficiary is responsible for ensuring that the auditors have access to all necessary documents and to the third party's premises, if necessary.*

*3. The Commission/Agency may audit **contractors** or **subcontractors**, in the context of an audit of a beneficiary, in order to see if contracts/subcontracts were awarded in compliance with the requirements of the H2020 GA (ensuring best value for money or if appropriate the lowest price, absence of conflict of interest) and that the payments made under the contract/subcontract were in line with the GA (e.g. amounts paid to the contractor/subcontractor match those declared by the beneficiary). The audit procedure will therefore be with the beneficiary. The beneficiary is responsible for ensuring that the auditors have access to all necessary documents and to carry out checks on the contractor/subcontractor's premises, if necessary. .*

⚠ *For this category of third parties, audits will not aim to assess the contractors'/subcontractors' costs, because the remuneration they get is a set price, not a reimbursement of costs (except in cases of fraud).*

*4. The Commission/Agency may audit **recipients of financial support** or **prizes**, in the context of an audit of a beneficiary, in order to see whether the eligibility conditions for the costs declared by the beneficiary are met. The audit procedure will therefore be with the beneficiary. The beneficiary is responsible for ensuring that the auditors have access to all necessary documents and to the recipient's premises, if necessary.*

⚠ *For recipients of financial support or prizes, audits normally will not aim to assess the costs incurred by the recipients (since they are not relevant for the eligibility of the beneficiary's costs), except if Annex 1 to the GA provides that the financial support must be given as reimbursement of the actual costs of the third parties. .*

⚠ If the audit shows, ineligible costs, improper implementation of the action or the violation of other obligations under the GA, it may lead to suspension, termination, rejection of costs, reduction of the grant and, if necessary, recovery *(see Articles 42-44, 47-50)*.

In some cases, findings may result in the acceptance of previously rejected costs (if the beneficiary declared them).

2. Procedure

The audit will be initiated by a letter sent to the beneficiary concerned.

⚠ The Commission/Agency will transmit this letter (and the other communications relating to an audit as formal notifications, through the electronic exchange system or by registered post with proof of delivery; *see Article 52*).

If the Commission/Agency uses an external audit firm, this letter will mention its **name**.

The beneficiary may **object** to an external auditor on grounds of commercial confidentiality (and explain the reasons for this). If justified the Commission/Agency may decide to appoint another external auditor (or, in exceptional circumstances, to carry out the audit with its own auditors).

The audit usually involves a **desk review** of the documents requested from the beneficiary and an **on-the-spot visit (**i.e. on the beneficiary's premises or on the site on which the action is being implemented). (There may however also be audits that consist only in a desk review.)

The auditors will request access to a wide range of records and documentation *(e.g. payslips, labour contracts, complete statutory accounts, etc)* and will indicate how and when it must be provided (and in which format).

ⓘ *For more information on records and supporting documentation for the different cost forms, see Article 18.*

The beneficiary must provide the auditors with all requested information, records and supporting documents (in the format and within the deadline specified).

> ***Example:*** *A hard copy list of records from the general ledger (accounting document) disclosing hundreds or thousands of transactions is impossible to process manually, therefore the auditors will normally require an electronic version.*

⚠ Objections based on data protection or confidentiality will not be accepted.

Once an audit has started, the beneficiary must keep all the records and supporting documents until the audit procedure and its follow-up (including procedure of extension of findings, rejection of costs, reduction of the grant, recovery and litigation) is completed.

For on-the-spot audits, the beneficiary must allow access to its premises and ensure that all records and supporting documentation are readily available. This avoids any unnecessary delays in retrieving original documents from the archives (and thus minimises the risk of the rejection of costs).

> ***Example:*** *If the beneficiary archives the paper copies of the original supporting documentation not on its premises, the documentation must be retrieved and sent there in time for the audit fieldwork.*

This includes granting access to research facilities and interviewing the researchers that worked on the action.

⚠ Failure to provide the requested information (in the requested format and within the specified deadline) will lead to the rejection of costs (and possibly other measures, such as recovery, suspension of payments, termination, administrative and financial penalties, etc).

Where the records and documentation contain personal data, the Commission/Agency will process it in compliance with Regulation No 45/2001 and the beneficiary must inform the persons concerned about this processing *(see Article 39)*.

Moreover, all confidential data will be processed in accordance with Article 36.

The results of the audit will be recorded in an '**audit report**'.

The draft audit report will be sent to the beneficiary concerned for comments within 30 days ('**contradictory review procedure**').

22.2 Investigations by the European Anti-Fraud Office (OLAF)

Under Regulations No 883/2013 [1]and No 2185/96[1] (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether, concerning the action funded under the Agreement, there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

1. Investigations by OLAF

OLAF is the EU's anti-fraud office, responsible for investigating fraud against the EU budget.

If the Commission/Agency suspects that a beneficiary or third party involved in an action committed fraud or other illegal acts, it will inform OLAF, who may decide to investigate.

OLAF will send the conclusions of the investigation to the Commission, who will then decide how to proceed.

An OLAF investigation may lead to suspension, termination, rejection of costs, reduction of the grant and recovery *(see Articles 42- 44, 47-50)* but also to criminal prosecution before the national authorities.

22.3 Checks and audits by the European Court of Auditors (ECA)

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012[1], the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

The ECA has the right of access for the purpose of checks and audits.

1. Checks and audits by the European Court of Auditors (ECA)

The European Court of Auditors (ECA) is the (entirely independent) external auditing body for all European institutions. As such, it may carry out audits on all recipients of EU funds (including beneficiaries, third parties involved in the action and recipients of financial support or prizes).

Depending on the outcome, the results of such an audit may be notified to the beneficiary.

⚠ If the Commission/Agency intends to reject costs on the basis of the findings of the Court of Auditors, it will inform the beneficiary and give it the possibility to make observations.

22.4 Checks, reviews, audits and investigations for international organisations

***[OPTION for international organisations**: In conformity with its financial regulations, the European Union, including the European Anti-Fraud Office (OLAF) and the European Court of Auditors (ECA), may undertake, including on the spot, checks, reviews audits and investigations.*

*This Article will be applied in accordance with any specific agreement concluded in this respect by the international organisation and the European Union.**]***

[OPTION:** not applicable**]

22.5 Consequences of findings in checks, reviews, audits and investigations — Extension of findings

22.5.1 Findings in this grant

Findings in checks, reviews, audits or investigations carried out in the context of this grant may lead to the rejection of ineligible costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44) or to any of the other measures described in Chapter 6.

Rejection of costs or reduction of the grant after the payment of the balance will lead to a revised final grant amount (see Article 5.4).

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 (see Article 55).

Checks, reviews, audits or investigations that find systemic or recurrent errors, irregularities, fraud or breach of obligations may also lead to consequences in other EU or Euratom grants awarded under similar conditions ('**extension of findings from this grant to other grants**').

Moreover, findings arising from an OLAF investigation may lead to criminal prosecution under national law.

22.5.2 Findings in other grants

The Commission *[or the Agency]* may extend findings from other grants to this grant ('**extension of findings from other grants to this grant**'), if:

(a) the beneficiary concerned is found, in other EU or Euratom grants awarded under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant and

(b) those findings are formally notified to the beneficiary concerned — together with the list of grants affected by the findings — no later than two years after the payment of the balance of this grant.

The extension of findings may lead to the rejection of costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44), suspension of payments (see Article 48), suspension of the action implementation (see Article 49) or termination (see Article 50).

22.5.3 Procedure

The Commission *[or the Agency]* will formally notify the beneficiary concerned the systemic or recurrent errors, together with the list of grants affected by the findings.

22.5.3.1 If the findings concern **eligibility of costs**: the formal notification will include:

(a) an invitation to submit observations on the list of grants affected by the findings;

(b) the request to submit **revised financial statements** for all grants affected;

(c) the correction rate for extrapolation established by the Commission *[or the Agency]* on the basis of the systemic or recurrent errors, to calculate the amounts to be rejected if the beneficiary concerned:

(i) considers that the submission of revised financial statements is not possible or practicable or

(ii) does not submit revised financial statements.

The beneficiary concerned has 90 days from receiving notification to submit observations, revised financial statements or to propose a duly substantiated **alternative correction method**. This period may be extended by the Commission *[or the Agency]* in justified cases.

The Commission *[or the Agency]* will determine the amounts to be rejected on the basis of the revised financial statements, subject to their approval.

If the Commission *[or the Agency]* does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial statements, it will formally notify the beneficiary concerned the application of the initially notified correction rate for extrapolation.

If the Commission *[or the Agency]* accepts the alternative correction method proposed by the beneficiary concerned, it will formally notify the application of the accepted alternative correction method.

22.5.3.2 If the **findings concern improper implementation or a breach of another obligation:** the formal notification will include:

(a) an invitation to submit observations on the list of grants affected by the findings and

(b) the flat-rate the Commission *[or the Agency]* intends to apply according to the principle of proportionality.

The beneficiary concerned has 90 days from receiving notification to submit observations or to propose a duly substantiated alternative flat-rate.

If the Commission *[or the Agency]* does not receive any observations or does not accept the observations or the proposed alternative flat-rate, it will formally notify the beneficiary concerned the application of the initially notified flat-rate.

If the Commission [*or the Agency*] accepts the alternative flat-rate proposed by the beneficiary concerned, it will formally notify the application of the accepted alternative flat-rate.

22.6 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, any insufficiently substantiated costs will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION

23.1 Right to evaluate the impact of the action

The Commission *[or the Agency]* may carry out interim and final evaluations of the impact of the action measured against the objective of the *[EU][Euratom]* programme.

Evaluations may be started during implementation of the action and up to ***[OPTION by default:*** *five]**[OPTION for low value grants:*** *three]* years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the coordinator or beneficiaries.

The Commission *[or the Agency]* may make these evaluations directly (using its own staff) or indirectly (using external bodies or persons it has authorised to do so).

The coordinator or beneficiaries must provide any information relevant to evaluate the impact of the action, including information in electronic format.

23.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the Commission *[or the Agency]* may apply the measures described in Chapter 6.

1. Evaluations

The Commission/Agency may carry out interim and final evaluations of the actions for the monitoring and evaluation of the Horizon 2020 Framework Programme implementation.

⚠ These evaluations will thus have **no effect** on the grant.

They are based on the performance indicators and issues specified in Annexes II and III to the Horizon 2020 Specific Programme. These performance indicators vary according to the specific programme's objectives. Performance indicators may be refined during the implementation of Horizon 2020.

Example:

Progress on the Specific Objective 'Leadership in enabling and industrial technologies' is evaluated on the basis of the three following indicators:

- *patent applications and patents awarded in the different enabling and industrial technologies,*
- *share of participating firms introducing innovations new to the company or the market (covering the period of the project plus three years),*
- *number of joint public-private publications.*

The necessary information will normally be taken from the questionnaire (that must be filled out as part of the periodic reports). However, the Commission/Agency may also address specific information requests to the coordinator (or the other beneficiaries).

SECTION 3 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND AND RESULTS

SUBSECTION 1 GENERAL

ARTICLE 23a — MANAGEMENT OF INTELLECTUAL PROPERTY

23a.1 Obligation to take measures to implement the Commission Recommendation on the management of intellectual property in knowledge transfer activities

Beneficiaries that are universities or other public research organisations must take measures to implement the principles set out in Points 1 and 2 of the **Code of Practice** annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities[37].

This does not change the obligations set out in Subsections 2 and 3 of this Section.

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

23a.2 Consequences of non-compliance

If a beneficiary breaches its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

[37] Commission Recommendation C(2008) 1329 of 10.4.2008 on the management of intellectual property in knowledge transfer activities and the Code of Practice for universities and other public research institutions attached to this recommendation.

1. Code of Practice

Beneficiaries that are universities or other public research organisations must take measures to implement the principles set out the Code of Practice[46] annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities.

This Code consists of a set of general principles aiming to improve IP management and knowledge transfer by public research organisations (by promoting exploitation and dissemination of research results).

⚠ This is a **best effort obligation**: If not already done so, these beneficiaries must ensure that they consider the principles set out in Point 1 (Principles for an internal intellectual property policy) and Point 2 (Principles for a knowledge transfer policy) of the Code of Practice in the design and implementation of their IP management and knowledge transfer policies.

[46] Available at http://europa.eu/legislation_summaries/research_innovation/general_framework/ri0007_en.htm.

SUBSECTION 2 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND

ARTICLE 24 — AGREEMENT ON BACKGROUND

The beneficiaries must identify and agree (in writing) on the background for the action ('**agreement on background**').

'**Background**' means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:

(a) is held by the beneficiaries before they acceded to the Agreement, and

(b) is needed to implement the action or exploit the results.

1. Agreement on background

The beneficiaries must identify and agree on what constitutes **background for their action** (in order to be able to give access to it).

'Background' means any tangible or intangible input — from data to know-how, information or rights — that exists before the GA is signed and that is needed to implement the action or to exploit its results.

Examples: *prototypes; cell lines; patents; database rights*

For intellectual property rights, it suffices that the application was filed before the GA is signed. ('Intellectual property' being understood in the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, signed at Stockholm on 14 July 1967[47]).

Background is not limited to input owned, but potentially extends to anything the beneficiaries lawfully hold *(e.g. through a licence with the right to sub-licence)*. It also extends to input held by other parts of the beneficiary's organisation.

Example: *if a university department participates in the action, background could potentially be anything held by the university (unless the department has its own legal personality and is the beneficiary)*

Best practice: Although not obligatory, beneficiaries are highly advised to agree on background **before the GA is signed**, to ensure that they have access rights to what is needed for implementing the action (and then exploiting its results).

The agreement may take **any form** *(e.g. positive list, negative list)*. It may be a separate agreement or may be part of the consortium agreement *(see Article 41)*.

Example: *Beneficiaries may agree to exclude specific background. 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 exploitation, the impact of such an exclusion on the action, particularly regarding an exclusion which does not have a temporary character, should be examined by the beneficiaries.*

⚠ Don't forget to inform the other beneficiaries — before signing the GA — if access to your background is subject to legal restrictions or limits *(see Article 25)*.

[47] Available at http://www.wipo.int/treaties/en/convention/trtdocs_wo029.html.

ARTICLE 25 — ACCESS RIGHTS TO BACKGROUND

25.1 Exercise of access rights — Waiving of access rights — No sub-licensing

To exercise access rights, this must first be requested in writing ('**request for access'**).

'**Access rights**' means rights to use results or background under the terms and conditions laid down in this Agreement.

Waivers of access rights are not valid unless in writing.

Unless agreed otherwise, access rights do not include the right to sub-license.

25.2 Access rights for other beneficiaries, for implementing their own tasks under the action

The beneficiaries must give each other access — on a royalty-free basis — to background needed to implement their own tasks under the action, unless the beneficiary that holds the background has — before acceding to the Agreement —:

(a) informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel), or

(b) agreed with the other beneficiaries that access would not be on a royalty-free basis.

25.3 Access rights for other beneficiaries, for exploiting their own results

The beneficiaries must give each other access — under fair and reasonable conditions — to background needed for exploiting their own results, unless the beneficiary that holds the background has — before acceding to the Agreement — informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel).

'**Fair and reasonable conditions**' means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

25.4 Access rights for affiliated entities

Unless otherwise agreed in the consortium agreement, access to background must also be given — under fair and reasonable conditions (see above; Article 25.3) and unless it is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel) — to affiliated entities[38] established in an EU Member State or '**associated country**'[39], if this is needed to exploit the results generated by the beneficiaries to which they are affiliated.

Unless agreed otherwise (see above; Article 25.1), the affiliated entity concerned must make the request directly to the beneficiary that holds the background.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

[38] For the definition, see footnote 24.

[39] For the definition, see Article 2.1(3) Rules for Participation Regulation No 1290/2013: '**associated country**' means a non EU-country (third country) which is party to an international agreement with the Union, as identified in Article 7 of the Horizon 2020 Regulation (EU) No 1291/2013).

25.5 Access rights for third parties

[OPTION for access to research infrastructures: *The access provider must — unless it is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel) — give access to the users to the background of the access provider needed to implement the action.*

*The access provider must inform the users as soon as possible of any restriction which might substantially affect the granting of access rights.**]***

[OPTION: *not applicable**]***

25.6 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Access to background

The rules on access to background (including conditions and scope of access) are generally the same as for results *(see Article 31)*.

However, for background there is **no** (or a more limited) obligation to give **access**, if there are **restrictions** or **limits** (legal or otherwise) regarding the background and the beneficiary owning or holding the background has informed the others — before acceding to the GA (or immediately when additional background is agreed on after signature of the GA).

Example: *A pre-existing agreement (e.g. an exclusive licence) which precludes the granting of access rights*

⚠ Don't forget that — when contracting on background with third parties — you must at all times ensure that you can still comply with your access obligations under the GA.

Moreover, the **conditions for access** are slightly different. Access must be given:

– for the implementation of action tasks: royalty-free

  However, if agreed by the beneficiaries before the GA is signed, for background other conditions may apply.

  Example: *A beneficiary owns a novel technology needed by other beneficiaries for implementing their tasks under the action and the other beneficiaries do not bring the same level of background. In such a case the other beneficiary might agree to grant access to other technologies in his possession.*

– for the exploitation of results: under fair and reasonable conditions

  ⓘ *For more information on fair and reasonable conditions, see Article 31.*

Also, there are no **specific access rights** for EU institutions, Member States, Euratom, joint undertakings or third parties, except for the option for royalty-free access for users of research infrastructures in actions with trans-national or virtual access to research infrastructure *(see Article 31)*.

SUBSECTION 3 RIGHTS AND OBLIGATIONS RELATED TO RESULTS

ARTICLE 26 — OWNERSHIP OF RESULTS

26.1 Ownership by the beneficiary that generates the results

Results are owned by the beneficiary that generates them.

'**Results**' means any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

26.2 Joint ownership by several beneficiaries

Two or more beneficiaries own results jointly if:

(a) they have jointly generated them and

(b) it is not possible to:

(i) establish the respective contribution of each beneficiary, or

(ii) separate them for the purpose of applying for, obtaining or maintaining their protection (see Article 27).

The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership ('**joint ownership agreement**'), to ensure compliance with their obligations under this Agreement.

Unless otherwise agreed in the joint ownership agreement, each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned results (without any right to sub-license), if the other joint owners are given:

(a) at least 45 days advance notice and

(b) fair and reasonable compensation.

Once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for instance, transfer to a single owner (see Article 30) with access rights for the others).

26.3 Rights of third parties (including personnel)

If third parties (including personnel) may claim rights to the results, the beneficiary concerned must ensure that it complies with its obligations under the Agreement.

If a third party generates results, the beneficiary concerned must obtain all necessary rights (transfer, licences or other) from the third party, in order to be able to respect its obligations as if those results were generated by the beneficiary itself.

If obtaining the rights is impossible, the beneficiary must refrain from using the third party to generate the results.

26.4 *[EU][Euratom][Agency]* ownership, to protect results

26.4.1 *[The EU][Euratom][The Agency]* may — with the consent of the beneficiary concerned — assume ownership of results to protect them, if a beneficiary intends — up to four years after the period set out in Article 3 — to disseminate its results without protecting them, except in any of the following cases:

(a) the lack of protection is because protecting the results is not possible, reasonable or justified (given the circumstances);

(b) the lack of protection is because there is a lack of potential for commercial or industrial exploitation, or

(c) the beneficiary intends to transfer the results to another beneficiary or third party established in an EU Member State or associated country, which will protect them.

Before the results are disseminated and unless any of the cases above under Points (a), (b) or (c) applies, the beneficiary must formally notify the *[Commission][Agency]* and at the same time inform it of any reasons for refusing consent. The beneficiary may refuse consent only if it can show that its legitimate interests would suffer significant harm.

If the *[Commission][Agency]* decides to assume ownership, it will formally notify the beneficiary concerned within 45 days of receiving notification.

No dissemination relating to these results may take place before the end of this period or, if the *[Commission][Agency]* takes a positive decision, until it has taken the necessary steps to protect the results.

26.4.2 *[The EU][Euratom][The Agency]* may — with the consent of the beneficiary concerned — assume ownership of results to protect them, if a beneficiary intends — up to four years after the period set out in Article 3 — to stop protecting them or not to seek an extension of protection, except in any of the following cases:

(a) the protection is stopped because of a lack of potential for commercial or industrial exploitation;

(b) an extension would not be justified given the circumstances.

A beneficiary that intends to stop protecting results or not seek an extension must — unless any of the cases above under Points (a) or (b) applies — formally notify the *[Commission][Agency]* at least 60 days before the protection lapses or its extension is no longer possible and at the same time inform it of any reasons for refusing consent. The beneficiary may refuse consent only if it can show that its legitimate interests would suffer significant harm.

If the *[Commission][Agency]* decides to assume ownership, it will formally notify the beneficiary concerned within 45 days of receiving notification.

26.5 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to the any of the other measures described in Chapter 6.

1. Ownership of results

Results belong normally to the **beneficiary** that **produced** them.

> ‘Results’ means the action’s tangible outputs *(e.g. prototypes, micro-organisms)* and intangible outputs *(e.g. know-how, formulas)*, as well as related rights (*e.g. patent rights and database rights*). Results do not include the outputs of activities not described in Annex 1, produced before the action starts, during its course or after it ends.

Best practice: To avoid or resolve ownership disputes, beneficiaries are advised to keep documents such as laboratory notebooks to show how and when they produced the results.

Specific cases:

Automatic joint ownership — If beneficiaries have jointly generated results and it is not possible to establish their respective contribution (or to separate them for protection), the beneficiaries automatically become joint owners.

In this case, the beneficiaries concerned must — as much in advance as possible before the jointly-owned results are produced — conclude a **joint ownership agreement** (in writing).

This agreement should cover in particular:

- specific conditions for granting licenses (if they are different from those already set out in the GA)
- criteria or principles for 'fair and reasonable compensation' to be provided to the other joint owners, if a non-exclusive license is granted to a third party (if appropriate)

  ⚠ Don't fix a *ceiling* for fair and reasonable compensation before the action starts, unless you can precisely determine the results you expect to produce.
- how disputes will be settled *(e.g. via a mediator, applicable law, etc).*

Best practice: To make it easier to negotiate a joint-ownership agreement, the beneficiaries are advised to include general principles on joint ownership already in the consortium agreement.

⚠ The joint ownership agreement will usually require further fine-tuning after the jointly-owned results are produced, in particular with regard to:

- how the ownership is divided *(e.g. equally or not)*
- if and how the joint results will be protected, including issues related to the cost of protection (*e.g. patent filing and examination fees, renewal fees, prior state-of-the-art searches, infringement actions, etc.)*, or to the sharing of revenues or profits
- how the joint results will be exploited and disseminated.

The joint owners automatically have the right under the GA to grant non-exclusive **licenses** to third parties against fair and reasonable compensation (⚠ without prior authorisation from the other joint owners), unless otherwise agreed in the joint ownership agreement.

The joint owner that intends to grant the licence must give the other joint owners at least **45 days advance notice** (together with sufficient information, to check if the proposed compensation is fair and reasonable). Such licenses may not include sub-licensing. Joint owners are free to agree on different arrangements in their joint-ownership agreement.

⚠ The joint ownership status may **change**:

– it may need to be reviewed later on, when protecting the results.

Example:

Whether or not a patent is jointly owned depends on the exact scope of work carried out by each of the joint owners, as well as on the claims and the inventive step condition that must be fulfilled.

A patent application might include both a new process called A (developed jointly by organisations X and Y) and an improvement called B (developed by Y only). This patent application would clearly be jointly owned by organisations X and Y.

However, if it turns out that process A is not patentable, the patent will only be granted for improvement B (developed by Y only) and will belong exclusively to Y.

– joint owners may abandon joint ownership only after the jointly-owned results have been produced (⚠ new in Horizon 2020).

Example: *Once the results have been produced, the joint owners may transfer ownership to a single owner and agree on more favourable access rights (or on any other fair counterpart)*

Joint ownership by agreement — Outside the cases described above, the beneficiaries may also become joint owners if they specifically agree on it.

Example: *A beneficiary may decide that a part of its results will be owned jointly with its parent company or another third party. However, this requires a (partial) transfer of ownership, which is subject to the GA's rules on transferring ownership.*

EU/Euratom/Agency ownership to protect results — If valuable results are not protected *(e.g. if the official prosecution or renewal fees for a patent application are not paid*), the Commission/Agency may — under certain circumstances — assume ownership of the results.

2. Third parties with rights on results

The beneficiaries must ensure that any agreements with third parties who could claim rights to the action's results *(e.g. employees, subcontractors, linked third parties etc.)* contain provisions that allow them to respect their obligations under the GA *(e.g. transferring ownership to the beneficiary, grant the beneficiary access rights with a right to sub-license, etc).*

Examples (third parties that may claim rights): *academic institutions in countries that have a kind of 'professor's privilege' system (according to which researchers may have some rights to the results of university research); employees or students who carry out work for the action; beneficiaries for which linked third parties carry out a significant part of the work.*

Specific cases:

Joint research units (JRUs) — Where the internal arrangements of a JRU, state that any results produced by one member are owned jointly by all members, these other members are third parties that can claim rights on the results. In this case, the JRU member that is the beneficiary must ensure that it can fulfil its contractual obligations under the GA *(e.g. with regard to other beneficiaries' access rights).*

Best practice: Beneficiaries that are members of a JRU should inform the other beneficiaries as soon as possible, to give them time to make, if needed, appropriate arrangements in the consortium agreement.

ⓘ *For information on JRUs, see Article 14.*

ARTICLE 27 — PROTECTION OF RESULTS — VISIBILITY OF EU FUNDING

27.1 General obligation to protect the results

Each beneficiary must examine the possibility of protecting its results and must adequately protect them — for an appropriate period and with appropriate territorial coverage — if:

(a) the results can reasonably be expected to be commercially or industrially exploited and

(b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own legitimate interests and the legitimate interests (especially commercial) of the other beneficiaries.

27.2 *[EU][Euratom][Agency]* ownership, to protect the results

If a beneficiary intends not to protect its results, to stop protecting them or not seek an extension of protection, *[the EU][Euratom][the Agency]* may — under certain conditions (see Article 26.4) — assume ownership to ensure their (continued) protection.

27.3 Information on EU funding

Applications for protection of results (including patent applications) filed by or on behalf of a beneficiary must — unless the *[Commission][Agency]* requests or agrees otherwise or unless it is impossible — include the following:

> 'The project leading to this application has received funding from the *[European Union's Horizon 2020 research and innovation programme][Euratom research and training programme 2014-2018]* under grant agreement No [number]'.

27.4 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such a breach may also lead to any of the other measures described in Chapter 6.

1. Protection of results

The beneficiaries must — for any results that can reasonably be expected to be commercially or industrially exploited —:

– examine the possibility of protecting them and

– if possible, reasonable and justified, protect them

even if this requires further research and development or private investment.

Example (no protection necessary): *if protection is 'impossible under Union or national law or not justified (in view of the (potential) commercial or industrial exploitation, the action's objective and other relevant elements, such as potential markets and countries in which competitors are located, whether additionally protecting a part of certain technology would bring significantly broader protection or not, etc.*

Best practice: Beneficiaries should consider seeking expert advice to help them decide whether and how to protect results.

⚠ This obligation also applies to beneficiaries not receiving EU funding *(see Article 9)*

The beneficiaries are in principle free to choose any available **form** of protection.

Examples of classic forms of protection:

– Patent

– Trademark

– Industrial design

– Copyright

– Trade-secret

– Confidentiality

The choice of the most suitable form should be made on the basis of the specificities of the action and the type of result (i.e. the form which offers the most adequate and effective protection). Although important for commercial and industrial exploitation, IP protection is not mandatory.

Examples (choice according to the type of result):

For an invention: e.g. patent, confidential information.

For the design of a technology: e.g. industrial design, copyright.

For a website: e.g. industrial design, copyright, trademark, confidential information.

⚠ In some cases, it may be advisable to protect the invention by keeping it confidential, or to postpone the filing of a patent (or other IPR) application.

Example: *Keeping an invention temporarily confidential could allow further development of the invention while avoiding the negative consequences associated with premature filing (earlier priority and filing dates, early publication, possible rejection due to lack of support or industrial applicability, etc.).*

ⓘ *For information on the eligibility of costs related to protection, see Article 6.2.D.3.*

When deciding on protection, the beneficiaries must also consider the **other beneficiaries**' legitimate **interests**.

Any other beneficiary invoking legitimate interests must show how the decision would significantly harm it (especially commercially).

Example (harm): *The protection would lead to the disclosure of valuable background that is held by the other beneficiary (as a trade secret or flagged as confidential).*

Best practice: Although a beneficiary is not required to consult the other beneficiaries before deciding whether to protect a specific result it owns, beneficiaries can foresee arrangements (either in the consortium agreement or in separate agreements), to ensure that decisions on protection take due account of the interests of all beneficiaries concerned.

Protection should last for an appropriate **period** and have appropriate **territorial coverage** (in view of potential) commercial or industrial exploitation and other elements *(e.g. potential markets and countries in which potential competitors are located).*

⚠ Patent applications should identify the **rightful inventors**. Errors (or fraud) in identifying inventors may lead to the invalidation of patents.

Example (not rightful inventor): *an entity systematically designates a head of department as one of the inventors, although it is not true.*

2. Visibility of EU funding

Applications for protection must include a reference to EU funding, as specified in the GA.

⚠ **No** information on EU funding is needed, if it is (technically or legally) impossible to include such a reference

ⓘ *For more information on visibility of EU funding, see Article 38.*

ARTICLE 28 — EXPLOITATION OF RESULTS

28.1 General obligation to exploit the results

Each beneficiary must — up to four years after the period set out in Article 3 — take measures aiming to ensure '**exploitation**' of its results (either directly or indirectly, in particular through transfer or licensing; see Article 30) by:

(a) using them in further research activities (outside the action);

(b) developing, creating or marketing a product or process;

(c) creating and providing a service, or

(d) using them in standardisation activities.

[OPTION for additional exploitation obligations if foreseen in the work programme:** In addition, the beneficiaries must — up to four years after the period set out in Article 3 — comply with the additional exploitation obligations set out in Annex 1.**]

This does not change the security obligations in Article 37, which still apply.

28.2 Results that could contribute to European or international standards — Information on EU funding

[OPTION for results that could contribute to standards if foreseen in the work programme:** If results could reasonably be expected to contribute to European or international standards, the beneficiary concerned must — up to four years after the period set out in Article 3 — inform the [Commission][Agency].**]

If results are incorporated in a standard, the beneficiary concerned must — unless the *[Commission][Agency]* requests or agrees otherwise or unless it is impossible — ask the standardisation body to include the following statement in (information related to) the standard:

'Results incorporated in this standard received funding from the *[European Union's Horizon 2020 research and innovation programme][Euratom research and training programme 2014-2018]* under grant agreement No [Number]'.

28.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced in accordance with Article 43.

Such a breach may also lead to any of the other measures described in Chapter 6.

1. Exploitation of results

The beneficiaries must take measures aiming to ensure exploitation of their results.

⚠ This is a **best effort obligation**: The beneficiaries must be proactive and take specific measures to ensure that their results are used (to the extent possible and justified).

> ***Example:*** *Exploitation is justified from an economic point of view (commercially) or from a standardisation perspective (for use in standardisation activities).*

Where possible, the measures should be consistent with the impact expected from the action and the '**plan for the exploitation and dissemination of the results**'.

They may aim for exploitation by the beneficiary itself (*e.g. for further research or for commercial or industrial exploitation in its own activities*) or by others (other beneficiaries or third parties, *e.g. through licensing or by transferring the ownership of results*).

If the GA provides for **additional exploitation obligations**, these must also be fulfilled. (⚠ Such additional exploitation obligations will already be mentioned in the Work Programme.)

⚠ This obligation only applies to beneficiaries receiving EU funding.

If the results can reasonably be expected to contribute to European or international standards, the beneficiaries must also communicate them to the Commission/Agency.

Example: *The results are produced in an area in which standards play an important role (such as in mobile communication, diagnostics or immunological diseases).*

⚠ This obligation applies only if it is foreseen in your GA.

ARTICLE 29 — DISSEMINATION OF RESULTS — OPEN ACCESS — VISIBILITY OF EU FUNDING

29.1 General obligation to disseminate results

Unless it goes against their legitimate interests, each beneficiary must — as soon as possible — '**disseminate**' its results by disclosing them to the public by appropriate means (other than those resulting from protecting or exploiting the results), including in scientific publications (in any medium).

[OPTION for additional dissemination obligations if foreseen in the work programme:** In addition, the beneficiaries must comply with the additional dissemination obligations set out in Annex 1.**]

[OPTION for additional dissemination obligations for interoperability if foreseen in the work programme:** Moreover, the beneficiaries must — up to four years after the period set out in Article 3 — disseminate any technical specifications of the results that are needed for interoperability.**]

[OPTION for additional dissemination obligations for cross-border interoperability if foreseen in the work programme:** Moreover, the beneficiaries must — up to four years after the period set out in Article 3 — disseminate the deliverables relating to cross-border interoperability (see Annex 1) and any results needed for cross-border interoperability (in particular common technical specifications and software components).**]

This does not change the **obligation to protect results** in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

A beneficiary that intends to disseminate its results must give advance notice to the other beneficiaries of — unless agreed otherwise — at least 45 days, together with sufficient information on the results it will disseminate.

Any other beneficiary may object within — unless agreed otherwise — 30 days of receiving notification, if it can show that its legitimate interests in relation to the results or background would be significantly harmed. In such cases, the dissemination may not take place unless appropriate steps are taken to safeguard these legitimate interests.

If a beneficiary intends not to protect its results, it may — under certain conditions (see Article 26.4.1) — need to formally notify the *[Commission][Agency]* before dissemination takes place.

29.2 Open access to scientific publications

Each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

(a) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications;

Moreover, the beneficiary must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.

(b) ensure open access to the deposited publication — via the repository — at the latest:

(i) on publication, if an electronic version is available for free via the publisher, or

(ii) within six months of publication (twelve months for publications in the social sciences and humanities) in any other case.

(c) ensure open access — via the repository — to the bibliographic metadata that identify the deposited publication.

The bibliographic metadata must be in a standard format and must include all of the following:

- the terms *['European Union (EU)' and 'Horizon 2020']['Euratom' and Euratom research and training programme 2014-2018']*;
- the name of the action, acronym and grant number;
- the publication date, and length of embargo period if applicable, and
- a persistent identifier.

29.3 Open access to research data

***[OPTION for actions participating in the open Research Data Pilot**: Regarding the digital research data generated in the action ('**data**'), the beneficiaries must:*

(a) deposit in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate — free of charge for any user — the following:

(i) the data, including associated metadata, needed to validate the results presented in scientific publications as soon as possible;

*(ii) other data, including associated metadata, as specified and within the deadlines laid down in the '**data management plan**' (see Annex 1);*

(b) provide information — via the repository — about tools and instruments at the disposal of the beneficiaries and necessary for validating the results (and — where possible — provide the tools and instruments themselves).

This does not change the obligation to protect results in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

*As an exception, the beneficiaries do not have to ensure open access to specific parts of their research data if the achievement of the action's main objective, as described in Annex 1, would be jeopardised by making those specific parts of the research data openly accessible. In this case, the data management plan must contain the reasons for not giving access.**]***

[**OPTION: not applicable**]

29.4 Information on EU funding — Obligation and right to use the EU emblem

Unless the *[Commission][Agency]* requests or agrees otherwise or unless it is impossible, any dissemination of results (in any form, including electronic) must:

(a) display the EU emblem and

(b) include the following text:

'This project has received funding from the *[European Union's Horizon 2020 research and innovation programme][Euratom research and training programme 2014-2018]* under grant agreement No [Number]'.

When displayed together with another logo, the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the EU emblem without first obtaining approval from the *[Commission][Agency]*.

This does not however give them the right to exclusive use.

Moreover, they may not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

29.5 Disclaimer excluding *[Commission][Agency]* responsibility

Any dissemination of results must indicate that it reflects only the author's view and that the *[Commission][Agency]* is not responsible for any use that may be made of the information it contains.

29.6 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such a breach may also lead to any of the other measures described in Chapter 6.

1. Dissemination of results

The beneficiaries must — as soon as possible (but not before a decision on their possible protection) — disseminate their results (i.e. make them public).

Disclosing of results of activities raising security issues requires prior approval from the Commission/Agency *(see Article 37)*.

Results that are disclosed too early (i.e. before the decision on their protection) run the risk being invalidated.

Example: *If a result is disclosed (in writing (including by e-mail) or orally (e.g. at a conference) prior to filing for protection — even to a single person who is not bound by secrecy or confidentiality obligations (typically someone from an organisation outside the consortium).*

No dissemination at all may take place, if:

- the results need to be protected as a trade secret (i.e. confidential know-how) or
- dissemination conflicts with any other obligations under the GA (*e.g. personal data protection, security-related obligations, etc).*

The beneficiaries may choose **how** they would like to disseminate their results.

Classic forms of dissemination:

- Website
- Presentation at a scientific conference
- Peer reviewed publication

The dissemination measures should however be consistent with the 'plan for the exploitation and dissemination of the results' and proportionate to the impact expected from the action.

If the GA provides for additional dissemination obligations, these must also be fulfilled. Such additional dissemination obligations will already be mentioned in the Work Programme.

When deciding on dissemination, the beneficiaries must also consider the **other beneficiaries'** legitimate **interests**.

The beneficiary that intends to disseminate must give the other beneficiaries at least **45 days advance notice** (together with sufficient information on the dissemination).

Any other beneficiary may **object** to dissemination, if it can show that it would suffer significant harm (in relation to background or results). In this case, the results may not be disseminated, unless appropriate steps are taken to safeguard the interests at stake.

Examples (significant harm): *Disseminating the results would lead to disclosure of valuable background held by another beneficiary as a trade secret or would make protecting another beneficiary's results more difficult. Appropriate steps could include: omitting certain data or postponing dissemination until the results are protected.*

Best practice: Beneficiaries are advised to foresee arrangements (either in the consortium agreement or in separate agreements), to ensure that decisions on dissemination take due account of the interests of all beneficiaries concerned (and yet allow for publication of results without unreasonable delay).

2. Visibility of EU funding

Any dissemination of results (in any form) must include a reference to EU funding, as specified in the GA.

ⓘ For more information on visibility of EU funding, see Article 38.

ARTICLE 30 — TRANSFER AND LICENSING OF RESULTS

30.1 Transfer of ownership

Each beneficiary may transfer ownership of its results.

It must however ensure that its obligations under Articles 26.2, 26.4, 27, 28, 29, 30 and 31 also apply to the new owner and that this owner has the obligation to pass them on in any subsequent transfer.

This does not change the security obligations in Article 37, which still apply.

Unless agreed otherwise (in writing) for specifically-identified third parties or unless impossible under applicable EU and national laws on mergers and acquisitions, a beneficiary that intends to transfer ownership of results must give at least 45 days advance notice to the other beneficiaries that still have (or still may request) access rights to the results. This notification must include sufficient information on the new owner to enable any beneficiary concerned to assess the effects on its access rights.

Unless agreed otherwise (in writing), any other beneficiary may object within 30 days of receiving notification, if it can show that the transfer would adversely affect its access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.

30.2 Granting licences

Each beneficiary may grant licences to its results (or otherwise give the right to exploit them), if:

(a) this does not impede the access rights under Article 31 and

(b) ***[OPTION if additional exploitation obligations in Annex 1:*** *the beneficiary complies with its additional exploitation obligations (see Article 28.1 and Annex 1)****] [OPTION:*** *not applicable****]***.

In addition to Points (a) and (b), exclusive licences for results may be granted only if all the other beneficiaries concerned have waived their access rights (see Article 31.1).

This does not change the dissemination obligations in Article 29 or security obligations in Article 37, which still apply.

30.3 *[Commission][Agency]* right to object to transfers or licensing

[OPTION for EU grants: *The [Commission][Agency] may — up to four years after the period set out in Article 3 — object to a transfer of ownership or the exclusive licensing of results, if:*

(a) it is to a third party established in a non-EU country not associated to Horizon 2020 and

(b) the [Commission][Agency] considers that the transfer or licence is not in line with EU interests regarding competitiveness or is inconsistent with ethical principles or security considerations.

A beneficiary that intends to transfer ownership or grant an exclusive licence must formally notify the [Commission][Agency] before the intended transfer or licensing takes place and:

- *identify the specific results concerned;*
- *describe in detail the new owner or licensee and the planned or potential exploitation of the results, and*
- *include a reasoned assessment of the likely impact of the transfer or licence on EU competitiveness and its consistency with ethical principles and security considerations.*

The [Commission][Agency] may request additional information.

If the [Commission][Agency] decides to object to a transfer or exclusive licence, it must formally notify the beneficiary concerned within 60 days of receiving notification (or any additional information it has requested).

No transfer or licensing may take place in the following cases:

- *pending the [Commission][Agency] decision, within the period set out above;*
- *if the [Commission][Agency] objects;*
- *until the conditions are complied with, if the [Commission][Agency] objection comes with conditions.**]***

***[OPTION for Euratom grants:** The Commission may **[OPTION:**— up to four years after the period set out in Article 3 —**]** object to a transfer of ownership or the exclusive or non-exclusive licensing of results, if:*

(a) it is to a third party established in a non-EU country not associated to the Euratom research and training programme 2014-2018, and

(b) the Commission considers that the transfer or licence is not in line with the EU interests regarding competitiveness or is inconsistent with ethical principles or security considerations.

Security considerations include the defence interests of the Member States under Article 24 of the Euratom Treaty.

A beneficiary that intends to transfer ownership or grant a licence must formally notify the Commission before the intended transfer or licensing takes place and:

- *identify the specific results concerned;*
- *describe in detail the results, the new owner or licensee and the planned or potential exploitation of the results, and*
- *include a reasoned assessment of the likely impact of the transfer or licence on EU competitiveness and its consistency with ethical principles and security considerations.*

The Commission may request additional information.

If the Commission decides to object to a transfer or licence, it will formally notify the beneficiary concerned within 60 days of receiving notification (or any additional information requested).

No transfer or licensing may take place in the following cases:

- *pending the Commission decision, within the period set out above;*
- *if the Commission objects;*
- *until the conditions are complied with, if the Commission objection comes with conditions **]***

[OPTION:** not applicable**]

30.4 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such a breach may also lead to any of the other measures described in Chapter 6.

1. Transfers of ownership

The beneficiaries may transfer ownership of their results.

⚠ Security-related obligations *(see Article 37)* may prohibit a transfer or require certain conditions to be fulfilled before it takes place.

The beneficiaries must however ensure that their **obligations** (regarding the results) apply to the **new owner** and that this new owner would pass them on in any subsequent transfer *(e.g. by including this in their arrangements with the new owner).*

Obligations that must be extended to new owners:

The beneficiary must ensure that the new owners comply with the following obligations:

- joint ownership-related obligations *(see Article 26.2)*
- EU/Euratom/Agency's right to assume ownership, to protect results *(see Article 26.4)*
- protection of results and visibility of EU funding *(see Article 27)*
- exploitation of results and visibility of EU funding *(see Article 28)*
- dissemination of results, open access and visibility of EU funding (see Article 29)
- transfer and licensing of results *(see Article 30)*
- access rights to result *(see Article 31).*

When transferring ownership, they must also consider the **other beneficiaries'** legitimate **interests**.

The beneficiary that intends to make the transfer must give the other beneficiaries (that still have or still may request access rights) at least **45 days advance notice** (together with sufficient information to allow them to properly assess the extent to which their access rights may be affected).

Any other beneficiary (with such access rights) may **object** to the transfer, if it can show that it would adversely affect its access rights. In this case, the transfer may not take place, until the beneficiaries concerned reach an agreement.

⚠ The mere fact that the results concerned are transferred to a competitor is not in itself a valid reason for an objection. The beneficiary concerned must *demonstrate* the adverse effects on the exercise of its access rights.

Example (adverse effect): *Beneficiary A intends to transfer ownership of a new process it created during the course of an action to a competitor of beneficiary B. If beneficiary B shows that its access rights would be adversely affected by such a transfer (for instance, because the competitor has a proven track record of systematically legally challenging beneficiary B's claims), the transfer may not take place until the two beneficiaries reach an agreement.*

Specific cases:

Mergers & acquisitions (M&A) — If a transfer of ownership is not explicit (through an 'intended' transfer) but part of a take-over or merger of two companies, confidentiality constraints normally prevail (under M&A rules). Therefore, it may be necessary to inform the other beneficiaries only *after* the merger/acquisition took place (instead of before).

Specifically-identified third parties — The beneficiaries may (by prior written agreement) waive their right to object to transfers of ownership to a *specifically-identified* third party *(e.g. the mother company or an affiliate of one of them).* In this case, there is no need to inform the other beneficiaries of such transfers in advance (and the other beneficiaries do not have the right to object).

⚠ Before agreeing to such a 'global' authorisation, you should carefully consider the situation (and in particular the identity of the third party concerned), to determine if your access rights would be affected.

Example: *For large industrial groups, it is sometimes clear from the beginning that all results produced will be transferred to another entity of the group, without being detrimental to the other beneficiaries (who agreed to the global authorisation).*

In security-related actions, transfers to third parties should only be decided on a case-by-case basis and should be handled with the greatest caution.

If the Commission/Agency has the right to object to transfers *(see point 3)*, a transfer to a specifically-identified third party established in a third country not associated with Horizon 2020 must be formally **notified to** the Commission/Agency (via the electronic exchange system; *see Article 52*) — and the Commission/Agency may object.

Joint research units (JRUs) — Where the internal arrangements of a JRU state that any results produced by one member are owned jointly by all members, the JRU member that is the beneficiary must ensure that it complies with the obligations under the GA on transfers (placing results under joint ownership of the JRU is a form of transfer).

Common legal structures — 'Common legal structures (CLS)' (i.e. entities representing several other legal entities, *e.g. European Economic Interest Groupings (EEIG) or associations*) that are beneficiaries of an action may want to transfer ownership to one (or more) of their members. This is not prohibited; however the normal rules on transfers apply *(e.g. access rights have to remain available).*

Best practice: Beneficiaries that are members of a common legal structure are strongly advised to agree on specific arrangements with the other members of the CLS, in particular relating to ownership and access rights.

2. Granting licences

The beneficiaries may grant licences to their results.

They must however ensure that **access rights** can be exercised and that any additional exploitation obligations are complied with.

⚠ **Exclusive licences** *(e.g. for commercial exploitation)* may be granted only if all other beneficiaries have waived their access rights *(see Article 31).*

3. Commission/Agency right to object to transfers or exclusive licensing

If this option is included in your GA, the Commission/Agency may **object** to transfers or exclusive licences to third parties established in a non-EU country not associated to Horizon 2020, on the following grounds:

- the planned transfer or licence is not in line with EU **competitiveness interests**

  Example: *if the transfer or licence would create a major competitive disadvantage for European companies or could make the results commercially unavailable on fair and reasonable conditions in the EU*

- the planned transfer or licence is not consistent with **ethical principles**

  Example: *if the transfer or license could cause the results to be used in a way that is not in accordance with the fundamental ethical rules and principles recognised at EU and international level*

- the planned transfer or licence is not consistent with **security considerations** (including, for Euratom grants, the Member States' defence interests under Article 24 of the Euratom Treaty).

Example: *if the transfer or licence could make results considered significant from a security standpoint not readily available in the EU, or if security-sensitive results could fall into the hands of third parties that are considered a security risk*

⚠ **No** right to object for transfers or exclusive licences by beneficiaries not receiving EU funding *(see Article 9).*

⚠ For Euratom grants, the Commission has the right to object also to non–exclusive licences.

The Commission/Agency must be formally **notified in advance** (via the electronic exchange system; see Article 52) of any planned transfer or exclusive licence (and, for Euratom grants, also of any non-exclusive licence).

ARTICLE 31 — ACCESS RIGHTS TO RESULTS

31.1 Exercise of access rights — Waiving of access rights — No sub-licensing

The conditions set out in Article 25.1 apply.

The obligations set out in this Article do not change the security obligations in Article 37, which still apply.

31.2 Access rights for other beneficiaries, for implementing their own tasks under the action

The beneficiaries must give each other access — on a royalty-free basis — to results needed for implementing their own tasks under the action.

31.3 Access rights for other beneficiaries, for exploiting their own results

The beneficiaries must give each other — under fair and reasonable conditions (see Article 25.3) — access to results needed for exploiting their own results.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

31.4 Access rights of affiliated entities

Unless agreed otherwise in the consortium agreement, access to results must also be given — under fair and reasonable conditions (Article 25.3) — to affiliated entities established in an EU Member State or associated country, if this is needed for those entities to exploit the results generated by the beneficiaries to which they are affiliated.

Unless agreed otherwise (see above; Article 31.1), the affiliated entity concerned must make any such request directly to the beneficiary that owns the results.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

31.5 Access rights for the EU institutions, bodies, offices or agencies and EU Member States

***[OPTION by default for EU grants**: The beneficiaries must give access to their results — on a royalty-free basis — to EU institutions, bodies, offices or agencies, for developing, implementing or monitoring EU policies or programmes.*

Such access rights are limited to non-commercial and non-competitive use.

This does not change the right to use any material, document or information received from the beneficiaries for communication and publicising activities (see Article 38.2).]

***[OPTION for calls under Specific Objective 'Secure societies — Protecting freedom and security of Europe and its citizens':** The beneficiaries must give access to their results — on a royalty-free basis — to EU institutions, bodies, offices and agencies as well as EU Member States' national authorities, necessary for developing, implementing or monitoring their policies or programmes in this area.*

Such access rights are limited to non-commercial and non-competitive use.

Access is conditional on an agreement to define specific conditions ensuring that:

(a) the access will be used only for the intended purpose and

(b) appropriate confidentiality obligations are in place.

The requesting EU Member State or EU institution, body, office or agency must inform all other EU Member States of such a request.

*This does not change the security obligations in Article 37, which still apply.**]***

***[OPTION for Euratom grants:** The beneficiaries must give access to their results — on a royalty-free basis — to the European Atomic Energy Community (Euratom) and its joint undertakings, for developing, implementing and monitoring Euratom policies and programmes or for compliance with obligations assumed through international cooperation with third countries and international organisations.*

*As an exception to Article 31.1, such access rights include the right to authorise third parties to use the results in public procurement and the right to sublicense and are limited to non-commercial and non-competitive use.**]***

31.6 Access rights for third parties

[OPTION for additional access rights for complementary grants if foreseen in the work programme**: The beneficiaries must give — under the conditions set out in Article 31.2 and 31.3 — access to their results to complementary beneficiaries[40], for the purposes of the complementary grant agreement(s) (see Article 2).**]

[OPTION for additional access rights for interoperability if foreseen in the work programme:** The beneficiaries must give third parties — up to four years after the period set out in Article 3 and [**OPTION:** under fair and reasonable conditions (see Article 25.3)][**OPTION:** on a royalty-free basis] — access to their results needed for interoperability.**]

***[OPTION for additional access rights for cross-border interoperability if foreseen in the work programme:** The beneficiaries must give third parties — up to four years after the period set out in Article 3 and on a royalty-free basis — access to their results needed for interoperability, in particular for implementing the results in EU Member States or associated countries that are not participating in the action.*

*Beneficiaries must give access to software components under an EU public licence (or compatible licences) and must comply with any additional requirements set out in in Annex 1.**]***

[OPTION for access to research infrastructures:** The access provider must give the users access to the results, if needed to implement the action.**]

[OPTION:** not applicable**]

31.7 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Access to results

What & When ?

The beneficiaries must provide access to results, if it is **needed**:

- by another beneficiary, for implementing action tasks or exploiting results
- by an affiliated entity (established in a Member State or associated country), to exploit the results produced by the beneficiary to which it is affiliated (unless otherwise provided for in the consortium agreement).

There is **no definition** of 'needed'. The beneficiary owning the results has to assess (on a case by case basis and taking into account the action's specificities), if the requesting beneficiary needs the access (and may refuse it, if it does not).

Example (results needed for implementation): *if without these results, action tasks could not be implemented, would be significantly delayed or would require significant additional financial or human resources.*

Example (background needed for exploitation): *if without these results, exploiting a result would be technically or legally impossible or if significant additional R&D work would have to be carried out outside of the action to develop an alternative equivalent solution.*

Best practice: To avoid conflicts, beneficiaries are advised to agree *(e.g. in the consortium agreement)* on a **common interpretation** of what is needed.

The other beneficiaries may **waive their access rights**, provided that such a waiver is made in writing.

Best practice: Waivers should be made only on a case-by-case basis, once the results have been correctly identified, and should not be broader than what is actually necessary.

Examples:

If a waiver is made to allow for an exclusive licence, this waiver should not be broader than what is required for the purpose of the licence (regarding application fields, geographical coverage, etc.).

If a waiver is made to allow for an exclusive licence, it may be wise that the beneficiaries agree that the waiver will lapse, if the license is not granted within a certain period or if the results concerned are not exploited by the licensee within a certain period.

How?

Access rights are not automatic; they **must be requested** (in writing).

Best practice: Beneficiaries may use their internal rules to specify how to make such written requests.

It may be requested even from beneficiaries whose participation was terminated before the end of the action, under the same conditions as from active participants.

For affiliated entities (established in a Member State or associated country), access must be requested directly from the beneficiary owning the results. However, the beneficiary owning the results may agree to a different arrangement.

Access to results for exploitation may be requested up to one year after the period set out in Article 3, unless the beneficiaries agreed on another time limit.

The agreement by the beneficiary owning the results (on the request for access) may be in any form (tacit, explicit, in writing or oral).

In case of **refusal**, the requesting beneficiary can better substantiate its request, withdraw it or resort to the conflict resolution procedures foreseen by the consortium (*e.g. in the consortium agreement*).

⚠ Don't forget to notify the Commission/Agency of any conflicts on results that are likely to affect the action implementation *(see Article 17.2.)*.

2. Conditions for access: Royalty free — Fair and reasonable conditions

Access must be given:

– for the implementation of action tasks: royalty-free

– for the exploitation of results: under fair and reasonable conditions

'Fair and reasonable conditions' means appropriate conditions, including possible financial terms (i.e. monetary compensation), non-financial terms or royalty-free conditions, taking into account the specific terms of the granted access.

'Fair and reasonable conditions' includes also royalty-free conditions (⚠ new in Horizon 2020).

Examples (monetary compensation): *a lump sum, a royalty percentage, or a combination of both.*

Examples (non-financial terms): *a requirement to grant access to technology it has, or to agree on cooperation in a different field or in a future project.*

Best practice: Beneficiaries must agree on what constitutes fair and reasonable conditions, preferably in writing.

ⓘ *For information on the eligibility of the royalty fees paid for access, see Article 6.2.D.3*

3. Scope of access: Sublicencing/Licensing — Additional access rights — More favourable terms — Additional conditions

The access rights set out in the GA **cover** only the **access needed**.

⚠ Access rights do not automatically give the right to **sub-licence** to the requesting beneficiary (since this would imply that access rights to results could be extended — without consent — to virtually any company in the world, including the beneficiary's competitors).

Sub-licensing is only allowed if the beneficiary owning the results agrees — although such agreement should not be unduly refused, if the sublicensing is necessary. In this case the sub-licensing does not have to be royalty-free (even if the access rights concerned are) and can itself be made subject to specific conditions.

Examples:

A university may need the right to sub-license access to results to third parties, to make it possible to derive value from its own results.

In large industrial groups it is quite common that research is conducted by one affiliate and exploitation by one or several other affiliates. Access rights enjoyed by the 'research affiliate' but not by the 'exploitation affiliate(s)' would raise problems for them.

Best practice: The beneficiaries are advised to agree on the terms and conditions of the sub-licensing generally and in writing (at the level of the consortium agreement or separately).

Examples: *In such an agreement, they could foresee that sub-licensing could apply to the results (or part of them), but not to the background; sub-licensing could apply to affiliates of (some of) the beneficiaries, but not to other third parties.*

The beneficiaries remain free to grant **licenses** (including quasi-exclusive licenses) to their own results, as long as they can guarantee that all the access rights can be exercised. They can even grant an exclusive licence, if the other beneficiaries have waived their access rights.

Beneficiaries are free to grant **additional access** rights to results, beyond the rights foreseen in the GA.

Examples: *Additional access rights for third parties (e.g. affiliated entities not established in an EU Member State or associated country).*

Best practice: Such additional provisions may be included in the consortium agreement or in a separate agreement.

Access may also be granted on **more favourable** terms *(e.g. include the right to sub-licence)* or be made subject to **additional conditions** *(e.g. appropriate confidentiality obligations, obligations related to existing license agreements).*

Example:

The beneficiary owning the results agrees that another beneficiary may sublicense its access rights to results to its affiliated entity.

Best practice: Beneficiaries are advised — for legal certainty purposes — to specify these terms or conditions in writing.

Once obtained, access rights may be exercised as long as agreed by the concerned beneficiaries *(e.g. until the patent expires).*

4. Specific access rights for EU institutions, bodies, offices or agencies and EU Member States

The General MGA provides for several options for specific access rights for EU institutions, bodies, offices or agencies and/or EU Member States, for policy purposes.

⚠ These obligations apply only if they are foreseen in your GA.

5. Specific access rights for Euratom and its joint undertakings

The option gives Euratom and its joint undertakings (such as Fusion for Energy) royalty-free access, for:

- developing, implementing and monitoring Euratom policies and programmes
- complying with Euratom's obligations under international research and cooperation agreements in the field of nuclear energy.

These access rights include the right to sub-license *(e.g. to third parties involved in such an international agreements)* or to give the results for use in public procurement, as long as they are only used for non-commercial and non-competitive purposes.

Example:

Euratom is part of the ITER agreement and is committed to disseminating information on technological solutions developed in the context of ITER projects, and to sharing them on a non-discriminatory basis with other ITER members and ITER itself. It does this by giving ITER and ITER members royalty-free licences, including the right to sub-license, for the intellectual property produced, so that they can publicly sponsor fusion and research programmes.

6. Specific access rights for third parties

The General MGA also provides for several options for specific access rights for third parties, i.e.:

- for beneficiaries of complementary grants (depending on the case, royalty-free or under fair and reasonable conditions)

– for third parties that need it for (cross-border) interoperability (depending on the case, royalty-free or under fair and reasonable conditions)

– for users of a research infrastructure in actions with trans-national or virtual access to research infrastructure under Article 16 (royalty-free).

⚠ In this case, the access rights are limited to the research work of the user that is supported under the grant (i.e. what he needs for his research work while he uses the research infrastructure).

⚠ These obligations apply only if they are foreseen in your GA.

SECTION 4 OTHER RIGHTS AND OBLIGATIONS

ARTICLE 32 — RECRUITMENT AND WORKING CONDITIONS FOR RESEARCHERS

32.1 Obligation to take measures to implement the European Charter for Researchers and Code of Conduct for the Recruitment of Researchers

The beneficiary must take all measures to implement the principles set out in the Commission Recommendation on the **European Charter** for Researchers and the **Code of Conduct** for the Recruitment of Researchers [41], in particular regarding:

- **working conditions**;
- **transparent recruitment processes based on merit**, and
- **career development**.

The beneficiary must ensure that researchers and third parties involved in the action are aware of them.

32.2 Consequences of non-compliance

If the beneficiary breaches its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

[41] Commission Recommendation (EC) No 251/2005 of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (OJ L 75, 22.03.2005, p. 67).

1. European Charter and Code of Conduct for Researchers

The beneficiaries must take all measures to implement the principles set out in the European Charter for Researchers[48] and the Code of Conduct for their Recruitment.[49]

The **Charter** provides a framework for researchers' activities and career management, and includes obligations for researchers, employers and funders. The **Code of Conduct** provides for transparency to the recruitment and selection process, ensuring the equal treatment of all applicants. It includes obligations for employers and funders.

⚠ This is a **best effort obligation**: The beneficiaries must be proactive and take specific steps to address conflicts between their policies and practices and the principles set out in the Charter and Code of Conduct.

ⓘ *For guidance in this process, see the 'Human Resources Strategy for Researchers' tool*[50] *developed by the Commission.*

⚠ Keep appropriate documentation about the steps taken and measures put in place *(see Article 18).*

The Commission/Agency will verify compliance with this obligation, when monitoring the action implementation and in case of checks, reviews, audits and investigations *(see Article 22).*

2. Recruitment, working conditions and career development — Rights for the researchers

[48] Available at http://ec.europa.eu/euraxess/index.cfm/rights/europeanCharter
[49] Available at http://ec.europa.eu/euraxess/index.cfm/rights/codeOfConduct
[50] Available at http://ec.europa.eu/euraxess/index.cfm/rights/strategy4Researcher

The beneficiaries must in particular implement the General Principles and Requirements of the Charter[51] and of the Code of Conduct[52] that relate to recruitment, working conditions and career development.

List of principles (relating to working conditions):

- Recruitment
- Transparency
- Judging merit
- Selection
- Variations in the chronological order of CVs
- Recognition of mobility experience
- Recognition of qualifications
- Seniority
- Postdoctoral appointments

According to these principles, beneficiaries should have a **clear policy for recruiting and selecting researchers**, which is publicly available and ensures that:

- all research vacancies and funding opportunities are publically advertised *(e.g. via the EURAXESS Jobs Portal[53])*
- vacancies and funding opportunities are also published in English
- vacancy announcements include a clear job description
- vacancy announcements include the requirements for the position or the funding opportunity, and the selection criteria;
- there is an appropriate time period left between publication and the deadline for applications
- there are clear rules for the composition of the selection panels *(e.g. number and role of members, inclusion of experts from other (foreign) institutions, gender balance)*
- adequate feedback is given to applicants
- there is a complaint mechanism
- the selection criteria adequately value mobility, qualifications and experience, including qualifications and experience obtained in non-standard or informal ways.

⚠ These principles also apply to selection procedures that do not lead to formal employment relationship (*e.g. award of research fellowships).*

51 Available at http://ec.europa.eu/euraxess/index.cfm/rights/europeanCharter
52 Available at http://ec.europa.eu/euraxess/index.cfm/rights/codeOfConduct
53 Available at http://ec.europa.eu/euraxess/jobs

List of principles (relating to working conditions):

- Research freedom
- Accountability
- Non-discrimination
- Working conditions
- Research environment
- Funding and salaries (in particular, adequate social security)
- Stability and permanence of employment
- Gender balance
- Intellectual Property Rights
- Complaints/appeals and
- Participation in decision-making bodies.

List of principles (relating to career development):

- Career development
- Access to research training and continuous development (independently of the researcher's status)
- Value of mobility
- Access to career advice
- Supervision
- Evaluation/appraisal systems.

ARTICLE 33 — GENDER EQUALITY

33.1 Obligation to aim for gender equality

The beneficiaries must take all measures to promote **equal opportunities** between men and women in the implementation of the action. They must aim, to the extent possible, for a gender balance at all levels of personnel assigned to the action, including at supervisory and managerial level.

33.2 Consequences of non-compliance

If a beneficiary breaches its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

1. Gender equality — Equal opportunities

The beneficiaries must aim — to the extent possible — for a gender balance at all levels of personnel assigned to the action, including at the supervisory and managerial levels.

⚠ This is a **best effort obligation**: The beneficiaries must:

- aim for the balanced participation of women and men in their research teams
- be proactive in ensuring gender balance among the individuals who are primarily responsible for carrying out the work (in accordance with the categories defined in the monitoring system).

Examples (measures to promote equal opportunities): *transparency of recruitment and advancement processes, including gender-sensitive language in vacancies and job-descriptions; plans and conditions for career advancement; transparent wage classification and grading of jobs; development of leadership opportunities; gender planning and budgeting; gender impact assessment of new policies; climate surveys of institutions; adoption of family-friendly policies; promotion of mobility and dual-career couples.*

⚠ If a beneficiary cannot achieve the balanced participation of women and men in its team despite active recruitment efforts, it must explain the reasons for this in the first periodic technical report and in the final report *(see Articles 20.3 and 20.4)*.

The Commission/Agency will verify compliance with this obligation, when monitoring the action implementation and in case of checks, reviews, audits and investigations *(see Article 22)*.

ⓘ *For more information on gender equality, see the H2020 Online Manual.*

ARTICLE 34 — ETHICS

34.1 General obligation to comply with ethical principles

The beneficiaries must carry out the action in compliance with:

(a) ethical principles (including the highest standards of research integrity — as set out, for instance, in the European Code of Conduct for Research Integrity[42] — and including, in particular, avoiding fabrication, falsification, plagiarism or other research misconduct) and

(b) applicable international, EU and national law.

Funding will not be granted for **activities carried out outside the EU** if they are prohibited in all Member States.

The beneficiaries must ensure that the activities under the action have an **exclusive focus on civil applications**.

The beneficiaries must ensure that the activities under the action do not:

(a) aim at human cloning for reproductive purposes;

(b) intend to modify the genetic heritage of human beings which could make such changes heritable (with the exception of research relating to cancer treatment of the gonads, which may be financed), or

(c) intend to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer.

34.2 Activities raising ethical issues

Activities raising ethical issues must comply with the '**ethics requirements**' set out in Annex 1.

Before the beginning of an activity raising an ethical issue, the coordinator must submit (see Article 52) to the *[Commission][Agency]* copy of:

(a) any ethics committee opinion required under national law and

(b) any notification or authorisation for activities raising ethical issues required under national law.

If these documents are not in English, the coordinator must also submit an English summary of the submitted opinions, notifications and authorisations (containing, if available, the conclusions of the committee or authority concerned).

If these documents are specifically requested for the action, the request must contain an explicit reference to the action title. The coordinator must submit a declaration by each beneficiary concerned that all the submitted documents cover the action tasks.

34.3 Activities involving human embryos or human embryonic stem cells

[OPTION for activities potentially involving research on human embryos or human embryonic stem cells: ***Activities involving research on human embryos or human embryonic stem cells*** *may be carried out only if:*

- *they are set out in Annex 1 or*
- *the coordinator has obtained explicit approval (in writing) from the [Commission][Agency] (see Article 52).**]***

[OPTION*: not applicable**]***

34.4 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary may be terminated (see Article 50).

Such breaches may also lead to any of the other measures described in Chapter 6.

[42] The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011. http://www.esf.org/fileadmin/Public_documents/Publications/Code_Conduct_ResearchIntegrity.pdf

1. Ethical principles

The beneficiaries must carry out the action:

- in compliance with ethical principles and
- respecting applicable international, EU and national law.

Main ethical principles:

- Respecting human dignity and integrity
- Ensuring honesty and transparency towards research subjects and notably getting free and informed consent (as well as assent whenever relevant)
- Protecting vulnerable persons
- Ensuring privacy and confidentiality
- Promoting justice and inclusiveness
- Minimising harm and maximising benefit
- Sharing the benefits with disadvantaged populations, especially if the research is being carried out in developing countries
- Maximising animal welfare, in particular by ensuring replacement, reduction and refinement ('3Rs') in animal research
- Respecting and protecting the environment and future generations
- Following the highest standards of research integrity (i.e. avoiding any kind of fabrication, falsification, plagiarism, unjustified double funding or other type of research misconduct).

  ⓘ For more information on the standards of research integrity, see the European Code of Conduct for Research Integrity[54].

The key source texts of **EU and international law** are the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR) and its Supplementary Protocols.

ⓘ For an overview of the main EU and international legal texts, see the Science in Society e-library[55].

[54] Available at http://www.esf.org/fileadmin/Public_documents/Publications/Code_Conduct_ResearchIntegrity.pdf
[55] Available at http://ec.europa.eu/research/science-society/index.cfm?fuseaction=public.topic&id=1407

Compliance to the ethical principles and legislation is ensured by the Commission's '**H2020 ethics appraisal scheme**' (i.e. the global approach on ethics issues), which includes all of the following:

- ethics self-assessment (by the applicants, in their proposal; *see the Proposal templates*)
- two-stage ethics review, with an ethics screening and, if necessary, an ethics assessment (by the Commission/Agency, during the selection procedure)
- if necessary, ethics checks, reviews and audits (during the implementation of the action and up to two years afterwards; *see Article 22*).

ⓘ For help with the ethics self-assessment, see the Ethics self-assessment guide 'How to complete your ethics self-assessment' [hyperlink].

ⓘ For more information on the H2020 ethics appraisal scheme, see the H2020 Online Manual.

2. Activities carried out outside the EU

For activities carried out outside the EU, it is not sufficient that the activity is accepted and complies with the legal obligations of a third country; the activities must also be allowed in at least one Member State.

Best practice: Beneficiaries are advised to obtain the **approval of** a **European ethics committee** (*e.g. the ethics committee of the institution hosting the researcher(s) conducting the concerned activity*).

3. Exclusive focus on civil applications

Activities under the action must have an exclusive focus on civil applications.

This does not mean that peripherally, the research results cannot be useful in a military context. Research related to dual-use products or technologies (usually used for civilian purposes but with possible military applications) is not banned. However, activities *focusing* on military applications will not be funded.

4. Activities raising ethical issues

If the ethics review (carried out by the Commission/Agency during the selection procedure) identifies an ethics issue, the Commission/Agency will define 'ethics requirements' and include them in Annex 1 of the GA (in addition to requirements that the consortium must already fulfil before the GA is signed).

Examples (ethics issues): *involvement of patients, volunteers, children or vulnerable populations; use of human (embryonic) stem cells; implication of developing countries; collecting and processing of personal data; use of animals; risk of environmental impact; risk of malevolent use or misuse of research results*.

In this case, the beneficiaries must comply with the **ethics requirements**.

Examples (ethics requirements): *the obligation to appoint a data protection officer, an independent ethics advisor or ethics advisory board.*

Moreover, the coordinator must submit **copies** of the following, before the activity starts:

- any opinion(s) issued by an ethics committee; and
- any notification(s) or authorisation(s) for activities that raise ethical issues *(e.g. to ethics committees, data protection authorities, dual-use authorities, etc.).*

Best practice: When preparing the documents, beneficiaries are advised to request the **assistance of ethics experts**, research ethics departments/committees and of their organisation's data protection officer (DPO).

For new opinions, authorisations or notifications: the beneficiaries must include the EU action's title in their requests.

For existing opinions, authorisations or notifications: the beneficiaries concerned must confirm that all the documents submitted cover all the tasks to be undertaken in the context of the action.

If the documents are not in English, the coordinator must submit an English summary that allows the efficient and timely review of the proposal.

This summary should contain the conclusions, recommendations and, if applicable, the conditions imposed.

It is expected that the translation will be made by the beneficiaries. If, exceptionally, there should be translation costs, they will be considered eligible *(see Article 6.2.D.3)* — at the rate of non-official translations.

⚠ Do not submit copies of *requests* for opinions or authorisations; the Commission/Agency only needs a copy of the opinion or authorisation.

The Commission/Agency may carry out ethics checks, reviews or audits, to ensure that the beneficiaries have properly implemented the ethics requirements *(see Article 22)*.

5. Activities involving human embryos or human embryonic stem cells

Activities that involve human embryos or human embryonic stem cells can only be funded, if:

- they comply with the terms outlined in the Statement of the Commission related to research activities involving human embryonic stem cells[56] and
- they are set out in Annex 1 or the coordinator has obtained explicit approval by the Commission/Agency.

If they are retained for funding, these activities will be considered as 'activities raising ethical issues' (and must comply with the rules above, including 'ethics requirements' that will be set out in Annex 1; *see point 4*).

[56] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:373:0012:0015:EN:PDF

ARTICLE 35 — CONFLICT OF INTERESTS

35.1 Obligation to avoid a conflict of interests

The beneficiaries must take all measures to prevent any situation where the impartial and objective implementation of the action is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('**conflict of interests**').

They must formally notify to the *[Commission][Agency]* without delay any situation constituting or likely to lead to a conflict of interests and immediately take all the necessary steps to rectify this situation.

The *[Commission][Agency]* may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

35.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary may be terminated (see Article 50).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Conflicts of interests

The beneficiaries (and linked third parties) must ensure that the action is implemented impartially and objectively, as described in the GA. They must do their best to avoid conflicts of interest.

A 'conflict of interests' exists if **shared interests**:

- influenced the contract's/subcontract's selection/award procedure
- influenced the contract's/subcontract's price and this does not correspond to the market price or
- affected the action's performance, as measured by the appropriate quality standards.

These interests may be:

- **economic interests** *(e.g. unjustified and preferential contracts or subcontracts with connected companies (not based on best value for money, technical merit, etc.))*

  Examples:

  A beneficiary subcontracts work to another legal entity at above the market prices because it is a shareholder or has economic interests in this other legal entity.

  A university subcontracts work to a consultancy firm owned by a professor carrying out part of the work for the project in which the university participates.

  A university gives a preferential subcontract to its spin-off company: the contract is not based on the best-value-for-money principle (i.e. the price is higher than the general market price for the same type of service).

- **political or national affinity** *(e.g. beneficiaries or third parties are chosen, or research-related decisions are adopted, based on political considerations, connections or national affinity)*

  Example: *The choice of an action's demonstration site is based on national affinities, not on the site's merits.*

– **family or emotional ties** *(e.g. contracts or subcontracts made with family members for their benefit)*

Example: *A husband works for a beneficiary who subcontracts work to an SME owned by his wife.*

– **other shared interests**.

Examples:

If a beneficiary or third party participates in the action not because of its technical capacity and objective merits, but because it has a close relationship with someone else working for the action, and this affects the action's implementation.

If decisions made in the context of the action are taken not according to objective and impartial criteria, but because of these shared interests.

If entities with close ties create a professional relationship with the intention of being part of the action in order to satisfy other interests, and as a result, the quality of the implementation is (or is likely to be) compromised.

If there is a **(risk of) a conflict of interests**, the beneficiary must **inform** the Commission/Agency (via the electronic exchange system, *see Article 52*), so that steps can be taken to resolve or avoid it.

This may result in the Commission/Agency putting in place certain measures.

ARTICLE 36 — CONFIDENTIALITY

36.1 General obligation to maintain confidentiality

During implementation of the action and for four years after the period set out in Article 3, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed ('**confidential information**').

If a beneficiary requests, the *[Commission][Agency]* may agree to keep such information confidential for an additional period beyond the initial four years.

If information has been identified as confidential only orally, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

Unless otherwise agreed between the parties, they may use confidential information only to implement the Agreement.

The beneficiaries may disclose confidential information to their personnel or third parties involved in the action only if they:

(a) need to know to implement the Agreement and

(b) are bound by an obligation of confidentiality.

This does not change the security obligations in Article 37, which still apply.

The *[Commission][Agency]* may disclose confidential information to its staff, other EU institutions and bodies or third parties, if:

(a) this is necessary to implement the Agreement or safeguard the EU's financial interests and

(b) the recipients of the information are bound by an obligation of confidentiality.

Under the conditions set out in Article 4 of the Rules for Participation Regulation No 1290/2013[43], the Commission must moreover make available information on the results to other EU institutions, bodies, offices or agencies as well as Member States or associated countries.

The confidentiality obligations no longer apply if:

(a) the disclosing party agrees to release the other party;

(b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;

(c) the recipient proves that the information was developed without the use of confidential information;

(d) the information becomes generally and publicly available, without breaching any confidentiality obligation, or

(e) the disclosure of the information is required by EU or national law.

36.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

[43] Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 of December 2013 laying down the rules for the participation and dissemination in Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) (OJ L 347, 20.12.2013, p.81)

1. Confidentiality

The beneficiaries (and also the Commission/Agency) must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed — during the action and for four years afterwards.

> ⚠ This is a **minimum obligation**: Beneficiaries may extend the period and agree to additional confidentiality-related obligations among themselves (for example, for access rights or third parties involved in the action).
>
> A beneficiary may ask the Commission/Agency to extend the period. This request must explain why and clearly identify the confidential information concerned.

The Commission/Agency will exchange confidential information with the European Court of Auditors (ECA), the European Anti-Fraud Office (OLAF) and other Agencies and Horizon 2020 funding bodies, to check double funding, pursue fraud and avoid plagiarism. (This is part of safeguarding the EU's financial interests).

Best practice: Beneficiaries are advised to inform each other (and the Commission/Agency) about any laws that require disclosing confidential information (and to work together to minimise any negative effects).

⚠ Stricter confidentiality obligations apply for information that is that is 'EU-classified' and subject to 'security requirements' in Annex 1 of the GA *(see Article 37)*.

ARTICLE 37 — SECURITY-RELATED OBLIGATIONS

37.1 Activities raising security issues

[OPTION: *Before disclosing results of activities raising security issues to a third party (including affiliated entities), a beneficiary must inform the coordinator — which must request written approval from the [Commission][Agency].****]***

[OPTION: *not applicable****]***

37.2 Classified deliverables

[OPTION: *Activities related to 'classified deliverables' (see Annex 1) must comply with the '****security requirements****' (Security Aspect Letter (SAL) and the Security Classification Guide (SCG)) set out in Annex 1 until they are declassified.*

Action tasks related to classified deliverables may not be subcontracted without prior explicit written approval from the [Commission][Agency].

*The beneficiaries must inform the coordinator — which must immediately inform the [Commission][Agency] — of any changes in the security context and — if necessary —request for Annex 1 to be amended (see Article 55).****]***

[OPTION: *not applicable****]***

37.3 Activities involving dual-use goods or dangerous materials and substances

[OPTION: *Activities involving dual-use goods or dangerous materials and substances must comply with applicable EU, national and international law.*

*Before the beginning of the activity, the coordinator must submit to the [Commission][Agency] (see Article 52) a copy of any export or transfer licences required under EU, national or international law.****]***

[OPTION: *not applicable****]***

37.4 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

*Such breaches may also lead to any of the other measures described in Chapter 6.****]***

[OPTION: *not applicable****]***

1. Activities raising security issues — Classified deliverables

If the security scrutiny (carried out by the Commission/Agency during the selection procedure) finds that the action raises security issues because it deals with information that is 'EU-classified' (under the Commission internal Rules of Procedure), the Commission/Agency will make it subject to '**security requirements**' (set out in a 'Security Aspect Letter (SAL)' and 'Security Classification Guide (SCG)' in Annex 1 of the GA).

In this case, the beneficiaries must comply with the security requirements.

Moreover, they may not subcontract action tasks involving such information or disseminate results linked to such information, without prior approval by the Commission/Agency.

'Classified deliverables' may only be submitted to the Commission/Agency via means (electronic or not) that have been approved *(see Article 19).*

2. Activities involving dual-use goods

Beneficiaries that carry out activities involving dual-use goods must comply with applicable EU, national and international law, and in particular Regulation (EC) No 428/2009[57].

Moreover, the coordinator must submit a **copy** of any export or transfer licence, before the action starts.

[57] Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING

38.1 Communication activities by beneficiaries

38.1.1 General obligation to promote the action and its results

The beneficiaries must promote the action and its results, by providing targeted information to multiple audiences (including the media and the public) in a strategic and effective manner.

This does not change the dissemination obligations in Article 29, the confidentiality obligations in Article 36 or the security obligations in Article 37, all of which still apply.

Before engaging in a communication activity expected to have a major media impact, the beneficiaries must inform the *[Commission][Agency]* (see Article 52).

38.1.2 Information on EU funding — Obligation and right to use the EU emblem

Unless the *[Commission][Agency]* requests or agrees otherwise or unless it is impossible, any communication activity related to the action (including in electronic form, via social media, etc.) and any infrastructure funded by the grant must:

(a) display the EU emblem and

(b) include the following text:

'This project has received funding from the *[European Union's Horizon 2020 research and innovation programme][Euratom research and training programme 2014-2018]* under grant agreement No [number]'.

When displayed together with another logo, the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the EU emblem without first obtaining approval from the *[Commission][Agency]*.

This does not, however, give them the right to exclusive use.

Moreover, they may not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

38.1.3 Disclaimer excluding *[Commission][Agency]* responsibility

Any communication activity related to the action must indicate that it reflects only the author's view and that the *[Commission][Agency]* is not responsible for any use that may be made of the information it contains.

1. Promoting the action and its results

The beneficiaries must promote the action and its results, by providing targeted information to multiple audiences (including the media and the public), in a strategic and effective manner and possibly engaging in a two-way exchange.

 *Ad hoc* efforts or mere dissemination of results are not sufficient. The communication activities[58] must make the research activities known to multiple audiences (in a way that they can be understood by non-specialists) and address the **public policy perspective** of EU research and innovation funding, by considering aspects such as:

- transnational cooperation in a European consortium (i.e. how working together has allowed to achieve more than otherwise possible)

[58] *For the definition of 'communication activities', see the Glossary.*

- scientific excellence
- contributing to competitiveness and to solving societal challenges

❖ impact on everyday lives *(e.g. creation of jobs, development of new technologies, better quality products, more convenience, improved life-style, etc.)*

❖ better use of results and spill-over to policy-makers, industry and the scientific community.

The communication activities must be planned and implemented from the outset (and continue throughout the entire action), with a **comprehensive communication plan** that defines clear objectives (adapted to various relevant target audiences) and sets out a concrete planning for the communication activities (including a description and timing for each activity).

⚠ The communication activities to be undertaken during the action's lifetime must already be part of the proposal (either as a specific work package for communication or by including them in another work package).

The beneficiaries are free to choose the type of communication activities.

Examples: *a press release for the general public at the start of the action; an interview in the local radio station after a major achievement of the action; an event in a shopping mall that shows how the outcomes of the action are relevant to our everyday lives; organising local workshops about the action, targeted at audiences for which the action is of interest; producing a brochure to explain the action's work to school or university students to show how interesting this specific research topic can be.*

The activities must however:

- be effective (i.e. suited to achieving the action's communication goals)
- be proportionate to the scale of the action *(e.g. activities carried out by a large-scale action with beneficiaries coming from several different countries and a large budget must be more ambitious than those of a sole participant of a mono-beneficiary grant)*
- address audiences that go beyond the action's own community (including the media and the public).

⚠ Information given may **not** cover EU-classified information or information relating to 'classified deliverables' *(see Article 37)*.

⚠ Don't forget that any communication activity that is expected to have a '**major media impact**' (i.e. media coverage (online and printed press, broadcast media, social media, etc.) that will go beyond having a local impact and which could have the potential for national and international outreach) must be first **notified** to the Commission/Agency.

⚠ Dissemination of results *(see Article 29)* cannot replace communication activities (or vice-versa). Both obligations must be complied with.

ⓘ *For more information on how to promote your action, see the H2020 Online Manual*

2. Visibility of EU funding

The beneficiaries must ensure the visibility of EU funding for any communication activity related to the action (including in electronic form, via social media, etc.) and on any infrastructure (including equipment or major supplies) funded by the grant, by:

– displaying the EU emblem and

– including the reference to EU funding, as specified in the GA.

For infrastructure (including equipment or major supplies) a sticker (or other equivalent means) should be used.

ⓘ For more information, see the Guide to using the EU emblem[59].

⚠ The beneficiaries must ensure the visibility of EU funding even after the action ends.

[59] Available at http://publications.europa.eu/code/en/en-5000100.htm.

38.2 Communication activities by the *[Commission][Agency]*

38.2.1 Right to use beneficiaries' materials, documents or information

The *[Commission][Agency]* may use, for its communication and publicising activities, information relating to the action, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material that it receives from any beneficiary (including in electronic form).

This does not change the confidentiality obligations in Article 36 and the security obligations in Article 37, all of which still apply.

However, if the *[Commission's][Agency's]* use of these materials, documents or information would risk compromising legitimate interests, the beneficiary concerned may request the *[Commission][Agency]* not to use it (see Article 52).

The right to use a beneficiary's materials, documents and information includes:

(a) **use for its own purposes** (in particular, making them available to persons working for the *[Commission][Agency]* or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);

(b) **distribution to the public** (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);

(c) **editing or redrafting** for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);

(d) **translation**;

(e) giving **access in response to individual requests** under Regulation No 1049/2001[44], without the right to reproduce or exploit;

(f) **storage** in paper, electronic or other form;

(g) **archiving**, in line with applicable document-management rules, and

(h) the right to authorise **third parties** to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties if needed for the communication and publicising activities of the *[Commission][Agency]*.

If the right of use is subject to rights of a third party (including personnel of the beneficiary), the beneficiary must ensure that it complies with its obligations under this Agreement (in particular, by obtaining the necessary approval from the third parties concerned).

Where applicable (and if provided by the beneficiaries), the *[Commission][Agency]* will insert the following information:

> '© — [year] — [name of the copyright owner]. All rights reserved. Licensed to the *[European Union (EU)][Euratom][Agency]* under conditions.'

38.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

[44] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

1. Communication activities by the Commission/Agency

The Commission/Agency may use any (⚠ non-confidential and non- classified) information, documents and materials received from the beneficiaries, for its own communication and publicising activities.

Examples (material); *summaries for publication (submitted as part of the reports), public deliverables and any other material, such as pictures or audio-visual material, provided by beneficiaries*

Examples (communication activities): *using a picture or the publishable summary included in the final report submitted by the action to write a story about a particularly successful action for a Commission publication (e.g. Horizon - The EU Research & Innovation Magazine), or for speeches, etc.*

Examples (publicising activities): *providing on an Commission/Agency website general information about the action such as its name, a project summary, the participating partners, the EU funding, etc.*

If the use would risk compromising legitimate interests, the beneficiary may request that the material is not used. This request must explain why and include the information, documents or material concerned.

If the Commission/Agency needs to edit or redraft the material, it will be careful not to distort any content.

Beneficiaries may ask the Commission/Agency to include a copyright notice *(e.g. by including such a notice in the material).*

⚠ The beneficiaries must make **arrangements** with any **third parties** that could claim rights to the material, in order to legally allow the use by the Commission/Agency.

ARTICLE 39 — PROCESSING OF PERSONAL DATA

39.1 Processing of personal data by the *[Commission][Agency]*

Any personal data under the Agreement will be processed by the *[Commission][Agency]* under Regulation No 45/2001[45] and according to the 'notifications of the processing operations' to the Data Protection Officer (DPO) of the *[Commission][Agency]* (publicly accessible in the DPO register).

Such data will be processed by the **'data controller'** of the *[Commission][Agency]* for the purposes of implementing, managing and monitoring the Agreement (including checks, reviews, audits and investigations; see Article 22).

The persons whose personal data are processed have the **right to access and correct their own personal data**. For this purpose, they must send any queries about the processing of their personal data to the data controller, via the contact point indicated in the 'service specific privacy statement (SSPS)' on the *[Commission's][Agency's]* websites.

They also have the **right to** have recourse at any time **to the European Data Protection Supervisor (EDPS)**.

1. Processing of personal data by the Commission/Agency

The Commission/Agency will process personal data in compliance with Regulation No 45/2001.

Personal data will be processed only for the purpose of implementing, managing and monitoring the GA (including controls on eligible costs, proper implementation of the action and compliance with other obligations).

The level of detail of the data requested will be determined case-by-case and will be limited to what is necessary (for implementing, managing, monitoring and controlling the GA).

The processing of personal data under the GA (manual or electronic) will be first **notified** (by the data controller) to the Commission/Agency 'Data Protection Officer (DPO)'.

This notification will be available in the Register of the DPO[60] (and will describe the processing operations, security safeguards, data transfer, retention period, etc.).

⚠For the processing of sensitive data *(e.g. health data)* and processing for the purpose of administrative penalties and termination, the European Data Protection Supervisor (EDPS) will also be consulted.

ⓘ *For more information, see the data privacy statement ('SSPS')[61] on the Participant Portal.*

2. Right to access and correct personal data

Persons whose data is being processed ('data subjects') can contact the data controller or the DPO (via the contact information in the SSPS) to:

- obtain information about what data is collected and how it is used, usually given via a privacy statement
- see which of their data are being held
- correct any errors in the data, block access to this data, or delete their data

60 Available at http://ec.europa.eu/dpo-register/search.htm.

61 Available at http://ec.europa.eu/research/participants/portal/desktop/en/support/legal_notices.html.

– complain about data collection and use, and claim compensation for any damage.

3. Complaints to the EDPS

Persons whose data is being processed can lodge a complaint with the European Data Protection Supervisor (EDPS) (the independent supervisory authority for data processing by EU institutions).

Best practice: The beneficiaries are advised to first contact the data controller (via the contact information in the SSPS), since s/he might be able to solve the problem quickly.

ⓘ For information on the complaints procedure, see the EDPS website.

39.2 Processing of personal data by the beneficiaries

The beneficiaries must process personal data under the Agreement in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The beneficiaries may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the Agreement.

The beneficiaries must inform the personnel whose personal data are collected and processed by the *[Commission][Agency]*. For this purpose, they must provide them with the service specific privacy statement (SSPS) (see above), before transmitting their data to the *[Commission][Agency]*.

39.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 39.2, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

[45] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 (OJ L 8, 12.01.2001, p. 1).

1. Processing of personal data, by the beneficiaries

The beneficiaries must process personnel data under the GA in accordance with EU and national law on data protection (in particular, Directive 95/46/EC[62] —or any EU legislation that replaces this Directive — and the corresponding national law).

'**Personal data**' means any information, private or professional, which relates to an identified or identifiable natural person (for the full definition, see Article 2(a) of Directive 95/46/EC).

Examples (personal data): *name, address, identification number, e-mail, CV, bank account number, phone number, medical records.*

There are various potential identifiers, including full name, pseudonyms, occupation, address or any combination of these.

⚠ Individuals are not considered 'identifiable', if identifying them requires excessive effort.

Certain categories of data are more 'sensitive' than others, and these may only be processed according to specific rules. [63]

[62] Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Examples (sensitive data): *racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health, sexual orientation, etc.*

'**Processing** of personal data' means any operation (or set of operations) which is performed on personal data, either manually or by automatic means. This includes:

- collection
- recording
- organisation and storage
- adaptation or alteration
- retrieval and consultation
- use
- disclosure by transmission, dissemination or otherwise making available
- alignment or combination
- blocking, deleting or destruction.

Examples: *creating a mailing list or a list of participants; managing a database; accounting records on personnel costs; time-sheets; project planning with names.*

Under these laws, personal data must be processed according to certain principles and conditions that aim to ensure **data quality** and **confidentiality**.[64]

Beneficiaries may give their staff access to the personal data only on a **need to know** basis, for carrying out their functions within the GA.

⚠ This means that the beneficiaries must put in place adequate access controls and retention policies for the various categories of data they hold.

The beneficiaries must also **inform staff** (whose personal data are collected and processed by the Commission/Agency) about this disclosure, by providing them with the SSPS.

Examples:

Before encoding its staff's personal data in the Beneficiary Register or for a project proposal, the beneficiary must provide the staff concerned with the SSPS.

If in an ex-post audit, the Commission requests the names, CVs, time sheets and salaries of the beneficiary's staff (to check the eligibility of personnel costs), the beneficiary must tell the staff concerned and provide them with the SSPS.

⚠ Do not forget that processing of personal data is also an aspect related to ethics and that you may have to provide notifications or authorisations from the national data protection authorities *(see Article 34)*.

ⓘ *For more information on ethics, see the H2020 Online Manual.*

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63 *See Article 8 of Directive 95/46/EC.*

64 *See Articles 6, 16, 17 of Directive 95/46/EC.*

ARTICLE 40 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE *[COMMISSION][AGENCY]*

The beneficiaries may not assign any of their claims for payment against the *[Commission][Agency]* to any third party, except if approved by the *[Commission][Agency]* on the basis of a reasoned, written request by the coordinator (on behalf of the beneficiary concerned).

If the *[Commission][Agency]* has not accepted the assignment or the terms of it are not observed, the assignment will have no effect on it.

In no circumstances will an assignment release the beneficiaries from their obligations towards the *[Commission][Agency]*.

1. Assignment of claims for payment

The beneficiaries may not assign (i.e. transfer, sell or give) claims for payment (for work carried out under the action) to any third party, unless the Commission/Agency has explicitly agreed in writing.

'Assignment' normally means the transfer of rights held by one party to another party.

⚠ However, this Article only concerns assignment of claims for *payment*, (i.e. the claims for payment under Article 21). Transfers of other rights or obligations *(e.g. replacement of a beneficiary by the entity that bought it)* are governed by other provisions *(e.g. amendments; see Article 55).*

Only *actual* (i.e. existing) claims for payment may be assigned. Assignment is not possible for future claims.

The **request for approval** must come from the coordinator, on behalf of the beneficiary concerned. It must be in writing and must explain the reasons for the assignment.

The Commission/Agency will assess the reasons given and approve or reject the request in writing.

Examples (reasonable requests for assignment):

Assignment of a claim for payment for work carried out by a research laboratory sold after the end of the action (but before payment of the balance) by a beneficiary to another legal entity

Assignment for the benefit of creditors in a bankruptcy procedure

⚠ Regardless of any assignment of its rights to payment, the beneficiary **remains bound by** its ***obligations*** under the GA. The Commission/Agency approval to the assignment does not affect the fulfilment of the beneficiary's obligations under the GA; any present and future obligation of the beneficiary remains with the beneficiary.

Example: *The obligation to allow audits by the Commission/Agency*

CHAPTER 5 DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES [— RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES] [— RELATIONSHIP WITH PARTNERS OF A JOINT ACTION]

ARTICLE 41 — DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES *[— RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES] [— RELATIONSHIP WITH PARTNERS OF A JOINT ACTION]*

41.1 Roles and responsibilities towards the *[Commission][Agency]*

The beneficiaries have full responsibility for implementing the action and complying with the Agreement.

The beneficiaries are jointly and severally liable for the **technical implementation** of the action as described in Annex 1. If a beneficiary fails to implement its part of the action, the other beneficiaries become responsible for implementing this part (without being entitled to any additional EU funding for doing so), unless the *[Commission][Agency]* expressly relieves them of this obligation.

The **financial responsibility** of each beneficiary is governed by Articles 44, 45 and 46.

1. Division of roles and responsibilities — Responsibilities towards the Commission/Agency

The beneficiaries have full responsibility for **implementing the action** *(see Article 7)* and for **complying with the GA**.

This means that:

- each beneficiary must ensure that it complies with its obligations under the GA
- each beneficiary must ensure swift and proper implementation of the action (i.e. that there are no delays which can be attributed to it)
- each beneficiary is responsible (vis-à-vis the Commission/Agency) for the tasks performed by its subcontractors and linked third parties
- the Commission/Agency is not responsible for the implementation of the action and has no responsibility for the way in which the action is conducted (or any adverse consequences).

The beneficiaries are **jointly and severally liable for** the **technical implementation** of the action.

This means that the beneficiaries — including any new beneficiary introduced through an amendment — accept that they are together responsible for fully implementing the whole action — even if one of them withdraws.

If one of them withdraws, the remaining members of the consortium must carry out the action as set out in the GA — including the part that the defaulting beneficiary was supposed to carry out — unless, for specific reasons, the Commission/Agency expressly renounces it. They will have to do this without any additional EU contribution (even if — in case of termination — the Guarantee Fund may provide additional funds to compensate the debt of a withdrawing beneficiary not paid back to the remaining members of the consortium).

Example: *Legal entities A, B and C are members of a consortium that signed a GA with the Commission in order to carry out a research action. One year later, beneficiary C goes bankrupt. Beneficiaries A and B (or even only A or B) must carry out the entire action as described in Annex 1.*

The remaining beneficiaries may later take legal action against the defaulting beneficiary, in order to obtain compensation.

Moreover, the GA will have to be amended, in order to redistribute the tasks, terminate the beneficiary's participation, and/or add a new beneficiary *(see Article 50)*.

In case of recovery, each beneficiary's **financial responsibility** is limited to its own debt, including undue amounts paid for costs declared by its linked third parties, except for the amount retained for the Guarantee Fund (for which the financial responsibility c is shared; *see Article 21.4)*.

41.2 Internal division of roles and responsibilities

The internal roles and responsibilities of the beneficiaries are divided as follows:

(a) Each **beneficiary** must:

(i) keep information stored in the Beneficiary Register (in the electronic exchange system) up to date (see Article 17);

(ii) inform the coordinator immediately of any events or circumstances likely to affect significantly or delay the implementation of the action (see Article 17);

(iii) submit to the coordinator in good time:

- individual financial statements for itself *[and its linked third parties]* and, if required, certificates on the financial statements (see Article 20);
- the data needed to draw up the technical reports (see Article 20);
- ethics committee opinions and notifications or authorisations for activities raising ethical issues (see Article 34);
- any other documents or information required by the *[Commission][Agency]* under the Agreement, unless the Agreement requires the beneficiary to submit this information directly to the *[Commission][Agency]*.

(b) The **coordinator** must:

(i) monitor that the action is implemented properly (see Article 7);

(ii) act as the intermediary for all communications between the beneficiaries and the *[Commission][Agency]* (in particular, providing the *[Commission][Agency]* with the information described in Article 17), unless the Agreement specifies otherwise;

(iii) request and review any documents or information required by the *[Commission][Agency]* and verify their completeness and correctness before passing them on to the *[Commission][Agency]*;

(iv) submit the deliverables and reports to the *[Commission][Agency]* (see Articles 19 and 20);

(v) ensure that all payments are made to the other beneficiaries without unjustified delay (see Article 21);

(vi) inform the *[Commission][Agency]* of the amounts paid to each beneficiary, when required under the Agreement (see Articles 44 and 50) or requested by the *[Commission][Agency]*.

The coordinator may not delegate the above-mentioned tasks to any other beneficiary or subcontract them to any third party.

[OPTION to be used when the coordinator is a secondary or higher education establishment or public body and there is an 'authorisation to administer' given to a third party created, controlled or affiliated to the coordinator: *As an exception, the coordinator delegates the tasks set out in Point 2(b)(v) and (vi) above to [insert name of third party with an authorisation to administer]. The coordinator retains sole responsibility for the EU contribution and for compliance with the obligations under the Agreement.**]***

41.3 Internal arrangements between beneficiaries — Consortium agreement

[OPTION to be used, unless the work programme specifies that there is no need for a consortium agreement*: The beneficiaries must have internal arrangements regarding their operation and coordination to ensure that the action is implemented properly. These internal arrangements must be set out in a written '****consortium agreement****' between the beneficiaries, which may cover:*

- *internal organisation of the consortium;*
- *management of access to the electronic exchange system;*
- *distribution of EU funding;*
- *additional rules on rights and obligations related to background and results (including whether access rights remain or not, if a beneficiary is in breach of its obligations) (see Section 3);*
- *settlement of internal disputes;*
- *liability, indemnification and confidentiality arrangements between the beneficiaries.*

The consortium agreement must not contain any provision contrary to the Agreement.

[OPTION: *not applicable**]***

41.4 Relationship with complementary beneficiaries — Collaboration agreement

[OPTION for complementary grants if foreseen in the work programme: *The beneficiaries must conclude a written 'collaboration agreement' with the complementary beneficiaries to coordinate the work under the Agreement and the complementary grant agreement(s) (see Article 2), covering for instance:*

- *efficient decision making processes and*
- *settlement of disputes.*

The coordination agreement must not contain any provision contrary to the Agreement.

The beneficiaries and complementary beneficiaries must create and participate in common boards and advisory structures to decide on collaboration and synchronisation of activities, including on management of outcomes, common approaches towards standardisation, SME involvement, links with regulatory and policy activities, and commonly shared dissemination and awareness raising activities.

The beneficiaries must give access to their results to the complementary beneficiaries, for the purposes of the complementary grant agreement(s) (see Article 31.6).

*The beneficiaries must share the technical reports (see Article 20.3 and 20.4). The confidentiality obligations in Article 36 apply.**]***

[OPTION: *not applicable**]***

41.5 Relationship with partners of a joint action — Coordination agreement

[OPTION for joint actions (joint call with a third country or an international organisation)*: The beneficiaries must conclude a '****coordination agreement****' with the partners of the third country or international organisation action (see Article 2), covering for instance:*

- *the internal organisation of the beneficiaries in both actions, including the decision making procedures;*
- *rules on intellectual property rights (for example regarding protection, dissemination, use and access rights);*
- *the settlement of internal disputes;*
- *liability, indemnification and confidentiality arrangements between the beneficiaries in both actions.*

*The coordination agreement must not contain any provision contrary to the Agreement.****]***

[OPTION: *not applicable****]***

1. Division of roles and responsibilities — Roles and responsibilities within the consortium

The general division of roles and responsibilities within the consortium is as follows:

- the coordinator must coordinate and manage the grant and is the central contact point for the Commission/Agency
- the beneficiaries must all together contribute to a smooth and successful implementation of the grant (i.e. contribute to the proper implementation of the action, comply with their own obligations under the GA and support the coordinator in his obligations).

The beneficiaries must send all documents/information **via the coordinator**, unless in specific cases, the Commission/Agency requests them to provide such information directly to it *(see Article 22)*.

Example: *in case of an audit, the beneficiaries must submit the documents requested directly to the auditors, if requested so.*

2. The coordinator's roles and responsibilities

The coordinator is the **central contact point** for the Commission/Agency and represents the consortium (vis-à-vis the Commission/Agency).

For this purpose, the GA imposes a number of specific coordination tasks.

Main coordination tasks:

- Monitor that the action is implemented properly
- Act as the intermediary for all communications, unless the Agreement specifies otherwise
- Request and review any documents or information required and verify their completeness and correctness

The coordinator must check the quality of the documents submitted by the beneficiaries, including:

- reviewing the individual financial statements from each beneficiary to verify consistency with the action tasks, as well as their completeness and correctness *(e.g. that the addition of the different costs declared by the beneficiary corresponds to the total amount declared, or that the 25% flat-rate for indirect costs is correctly calculated)*.

  The coordinator is not, however, obliged to verify the *eligibility* of these costs (under Article 6) or to request justifications. Each beneficiary remains responsible for the cost it declares (both as regards eligibility and as regards sufficient records and supporting documents to substantiate them).

- verifying that all the requested documents are submitted by the beneficiary *(e.g. the summary, the questionnaire etc.)*

- verifying that the beneficiary submits the documents in the requested format

- verifying that the technical information submitted by a beneficiary concerns its action tasks as described in Annex 1 (and not something unrelated to the action).

- Submit the deliverables and reports
- Distribute payments to the other beneficiaries, without unjustified delay
- Inform the Commission/Agency of the amounts paid to each beneficiary, if requested to do so *(see Article 44.1.2)*

⚠ These coordination tasks **cannot be subcontracted or outsourced** to a third party. They cannot be carried out by other beneficiaries.

Specific cases:

Authorisation to administer — Secondary or higher education establishments and public bodies may delegate some of their coordination tasks *(e.g. the obligation to pay the other beneficiaries and to inform the Commission/Agency of the amounts paid to each beneficiary)* to another legal entity (third party), in most cases a foundation.

This third party must fulfil the following cumulative conditions:

- it must have been granted the 'authorisation to administer' by the coordinator and

- it must be affiliated, controlled or set up by the coordinator in order to handle its administrative affairs, including receiving and administering EU funds (administration is considered an action task).

This entity must be registered in the 'Beneficiary Register' and validated by the Commission/Agency. It will get its own PIC, although it is not a beneficiary.

ⓘ For more information on beneficiary registration and validation, see the H2020 Online Manual.

⚠ The coordinator will retain sole responsibility for the EU's financial contribution and for complying with its obligations under the GA. Thus, if the third party does not comply with its obligations *(e.g. does not properly administer the monies)*, the coordinator will be held responsible.

Scientific coordinator other than the coordinator — coordination tasks not listed in this Article can in principle be carried out by another beneficiary *(e.g. scientific coordination of the action).*

Such a beneficiary may — internally (i.e. within the consortium) — be called 'scientific coordinator'. In the relationship with the Commission/Agency, it remains however one of the 'other beneficiaries' of the GA; it will not be considered the action's coordinator.

The tasks of scientific coordination performed by this beneficiary can be reimbursed, if they comply with the eligibility criteria set out in Article 6.

The coordinator remains free to subcontract other (non-coordination) action tasks, according to the conditions set out in Article 13.

Example: *performance of some research activities.*

3. Internal arrangements between beneficiaries — Consortium agreement

The beneficiaries must conclude a consortium agreement (unless exceptionally stipulated otherwise in the Work Programme, for a specific call).

Best practice: In view of their importance for avoiding disputes and ensuring a smooth implementation of the grant, the Commission/Agencies strongly recommend that every consortium sets up a consortium agreement, even if not mandatory.

The 'consortium agreement (CA)' is an internal agreement between members of the consortium, to set out their internal arrangements for implementing the grant.

Consortium agreements are purely internal; the EU/Euratom is not party and has no responsibility for them (nor for any adverse consequences).

The consortium agreement should in principle be negotiated and concluded **before the action starts**. (Otherwise, there is usually a serious risk that prolonged disagreement jeopardises the action.)

The CA must be **in writing**. It may be a simple written agreement or take some other form *(e.g. a notarial deed or part of the statutes of a separate legal entity, such as a European Economic Interest Grouping, association or joint venture).*

Best practice: The beneficiaries are advised to carefully consider the advantages and disadvantages of the different legal forms, and choose the one that best fits the consortium's specific needs.

⚠ Consortium agreements **must comply with all obligations** under the Rules for Participation Regulation No 1290/2013 and the GA. If necessary, they can contain contractual provisions *complementing* these obligations, but they may not *contradict* or *ignore* them.

ⓘ *For more guidance on consortium agreements and links to stakeholder organisations that have developed models for consortium agreements, see the H2020 Online Manual.*

4. Relationship with complementary beneficiaries — Collaboration agreement

For complementary actions *(see Article 2),* the beneficiaries must conclude a collaboration agreement.

'Collaboration agreement' are agreements between the consortium and the beneficiaries of another complementary Horizon 2020 grant, to coordinate their work under the different GAs.

Collaboration agreements are also internal; the EU/Euratom is not party and has no responsibility for them (nor for any adverse consequences).

⚠ This obligation applies only if it is foreseen in your GA.

5. Relationship with partners of a joint action — Coordination agreement

For joint actions *(see Article 2)*, the beneficiaries must conclude a coordination agreement.

> ‘Coordination agreements’ are agreements between the consortium and partners from a third country (including scientific and technological organisations and agencies) or an international organisation, with which the joint call was organised.
>
> Coordination agreements are also internal; the EU/Euratom is not party and has no responsibility for them (or for any adverse consequences).

⚠ This obligation applies only if it is foreseen in your GA.

CHAPTER 6 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — PENALTIES — DAMAGES — SUSPENSION — TERMINATION — FORCE MAJEURE

SECTION 1 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — PENALTIES

ARTICLE 42 — REJECTION OF INELIGIBLE COSTS

42.1 Conditions

42.1.1 The *[Commission][Agency]* will — at the time of an **interim payment, at the payment of the balance** or **afterwards** — reject any costs which are ineligible (see Article 6), in particular following checks, reviews, audits or investigations (see Article 22).

42.1.2 The rejection may also be based on the **extension of findings from other grants to this grant**, under the conditions set out in Article 22.5.2.

42.2 Ineligible costs to be rejected — Calculation — Procedure

Ineligible costs will be rejected in full ***[OPTION if lump sum foreseen in Article 5.2:****, except for lump sum costs, which will be rejected proportionally to the tasks or parts of the action not implemented****]***.

If the *[Commission][Agency]* rejects costs **without reduction of the grant** (see Article 43) or **recovery of undue amounts** (see Article 44), it will formally notify the coordinator or beneficiary concerned the rejection of costs, the amounts and the reasons why (if applicable, together with the notification of amounts due; see Article 21.5). The coordinator or beneficiary concerned may — within 30 days of receiving notification — formally notify the *[Commission][Agency]* of its disagreement and the reasons why.

If the *[Commission][Agency]* rejects costs **with reduction of the grant** or **recovery of undue amounts**, it will formally notify the rejection in the '**pre-information letter**' on reduction or recovery set out in Articles 43 and 44.

42.3 Effects

If the *[Commission][Agency]* **rejects costs at the time of an interim payment or the payment of the balance**, it will deduct them from the total eligible costs declared, for the action, in the periodic or final summary financial as set out in Articles 21.3 or 21.4. statement (see Articles 20.3 and 20.4). It will then calculate the interim payment or payment of the balance.

If the *[Commission][Agency]* — **after an interim payment but before the payment of the balance** — rejects costs declared in a periodic summary financial statement, it will deduct them from the total eligible costs declared, for the action, in the next periodic summary financial statement or in the final summary financial statement. It will then calculate the interim payment or payment of the balance as set out in Articles 21.3 or 21.4.

If the *[Commission][Agency]* **rejects costs after the payment of the balance**, it will deduct the amount rejected from the total eligible costs declared, by the beneficiary, in the final summary financial statement. It will then calculate the revised final grant amount as set out in Article 5.4.

1. Rejection of ineligible costs

If the Commission/Agency finds **ineligible costs** *(in particular, following a check, audit, extension of audit findings, review or OLAF investigation)*, these costs will be rejected.

Rejection of costs can take place at any moment — at the time of an interim payment, of the payment of the balance or afterwards.

Ineligible costs will always be rejected in **full** (i.e. for the **amount** that is ineligible).

2. Procedure

The procedure differs according to the situation:

– if rejection of costs is combined with a reduction of the grant or a recovery: there will be an *ex ante* '**contradictory procedure**'

– if there is only rejection of costs: there will be no *ex ante* contradictory procedure, but the possibility to object *ex post* to the rejection ('**review procedure**').

In both cases, the Commission/Agency will explain which costs were rejected and why they were rejected. In both cases, beneficiaries can object and bring forward their arguments for disagreeing. The switch to the ex post review procedure allows the Commission/Agency however to pay promptly within the payment deadlines (by postponing the discussion on the disputed costs).

Basic contradictory procedure:

Step 1 — The Commission/Agency informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter** (sent via the electronic exchange system, *see Article 52*).

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations.

Step 3 — The Commission/Agency analyses the observations and either stops the procedure or **confirms** it.

⚠ If necessary, this procedure will be combined with a procedure on the reduction of the grant and/or recovery *(see Articles 43 and 44)*. In this case, there will be one **single pre-information letter** for all procedures and one single reply (i.e. beneficiaries are expected to submit one **single set of observations** that address the different aspects).

Review procedure:

Step 1 — The Commission/Agency informs the coordinator about the rejection of costs and notifies the amounts that will be paid out ('**notification of amounts due**'; *see Article 21.5)*.

Step 2 — If the beneficiaries disagree, the coordinator/beneficiary concerned has **30 days** to inform the Commission/Agency of its objections (using the 'formal notifications box' in electronic exchange system).

Step 3 — The Commission/Agency analyses the request for review and **informs** the coordinator of its **outcome**.

Depending on the moment when costs are rejected, this procedure will be directed either at the coordinator or the beneficiary concerned:

– for rejections the time of an interim payment or the payment of the balance: normally the coordinator

– for rejections after payment of the balance: normally the beneficiary concerned.

If it is directed at the coordinator, the coordinator must immediately inform the beneficiary concerned offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)* and ask for its comments. It must also inform the other beneficiaries.

3. Rejection of costs at the time of an interim payment or the payment of the balance

If the Commission/Agency rejects costs (declared in the periodic or final report) **at the moment of an interim payment or the payment of the balance**, it will deduct them and calculate the amount to be paid accordingly.

Example:

Action with three beneficiaries (A, B and C) and a reimbursement rate of 100%.
Maximum grant amount: EUR 500000.
Pre-financing: EUR 200000.
Costs declared by beneficiary A at the end of the first reporting period: EUR 95000 (direct costs) + EUR 23750 (indirect costs 25%) = EUR 118750.
Costs declared by beneficiary B at the end of the first reporting period: EUR 115000 (direct costs) +EUR 28750 (indirect costs 25%) = EUR 143750.
Costs declared by beneficiary C at the end of the first reporting period: EUR 90000 (direct costs) +EUR 22500 (indirect costs 25%) = EUR 112500.
Total costs declared for the action at the end of the first reporting period: EUR 118 750 + EUR 143750 + EUR 112500 = EUR 375000.
Some direct costs declared by beneficiary A are rejected for an amount of EUR 10000 + EUR 2500 (25% flat rate for indirect costs) = EUR 12500.
Total declared eligible costs approved by the Commission at the end of the first reporting period: EUR 375000 — EUR 12500 = EUR 362500.

Interim payment:
Application of the reimbursement rate: 100%: EUR 362 500
Limit to 90% of the maximum grant amount minus pre-financing: EUR 450000— EUR 200000 = EUR 250000.
Amount due as interim payment: EUR 250000

Specific case:

Ineligible costs in-between payments — If the Commission/Agency finds ineligible costs (declared in a previous report and already paid for) in-between payments, it will reject the costs at the next payment (i.e. deduct the amount rejected from the costs declared in the next summary financial statement and calculate the amount to be paid accordingly).

Example:

Total costs declared for the action in the 1st periodic report: = EUR 375000
Interim payment for the 1st periodic report = EUR 375 000
Cost rejected after interim payment or 1st periodic report: EUR 12 500
Total costs declared and accepted for the action in 2nd periodic report: = EUR 100000
Total eligible costs to be considered for the 2nd interim payment: EUR 100000 — EUR 12500 = EUR 87500

4. Rejection of costs after payment of the balance

If the Commission/Agency rejects costs (declared in a periodic or final report) **after the payment of the balance**, it will deduct the amount rejected from the costs declared by the beneficiary in the final summary financial statement and calculate a **revised grant amount** for this beneficiary *(see Article 5.4)*. If the revised grant amount for the beneficiary is lower than its share in the final grant amount, the Commission/Agency will recover the difference *(see Article 44)*.

Example:

Action with three beneficiaries (A, B and C) and a reimbursement rate of 100%.
Maximum grant amount: EUR 500000
Eligible costs accepted for beneficiary A at payment of the balance: EUR 150000 (direct costs) + EUR 37500 (25% flat rate for indirect costs) = EUR 187500
Eligible costs accepted for beneficiary B at payment of the balance: EUR 125000 (direct costs) + EUR 31250 (25% flat rate for indirect costs) = EUR 156250
Eligible costs accepted for beneficiary C at payment of the balance: EUR 120000 (direct costs) + EUR 30000 (25% flat rate for indirect costs) = EUR 150000

Final grant amount at payment of the balance (action properly implemented, no receipt): EUR 187 500 + EUR 156 250 + EUR 150 000 = EUR 493 750
An audit concluded that the direct costs of beneficiary A were not eligible for an amount of EUR 30 000

Revised grant amount for beneficiary A:
EUR 150 000 — EUR 30 000 = EUR 120 000 + EUR 30 000 (25 % flat rate for indirect costs) = EUR 150 000.
The share of beneficiary A in the final grant amount = EUR 187 500.
The EU contribution that will be recovered from beneficiary A: EUR 187 500 — EUR 150 000 = EUR 37 500.
The EU contributions of the other beneficiaries are unchanged.

ARTICLE 43 — REDUCTION OF THE GRANT

43.1 Conditions

43.1.1 The *[Commission][Agency]* may — at the payment of the balance or afterwards — reduce the maximum grant amount (see Article 5.1), if the action has not been implemented properly as described in Annex 1 or another obligation under the Agreement has been breached.

43.1.2 The *[Commission][Agency]* may also reduce the maximum grant amount on the basis of the **extension of findings from other grants to this grant**, under the conditions set out in Article 22.5.2.

43.2 Amount to be reduced — Calculation — Procedure

The amount of the reduction will be proportionate to the improper implementation of the action or to the seriousness of the breach.

Before reduction of the grant, the *[Commission][Agency]* will formally notify a '**pre-information letter**' to the coordinator or beneficiary concerned:

- informing it of its intention to reduce the grant, the amount it intends to reduce and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If the *[Commission][Agency]* does not receive any observations or decides to pursue reduction despite the observations it has received, it will formally notify **confirmation** of the reduction (if applicable, together with the notification of amounts due; see Article 21).

43.3 Effects

If the *[Commission][Agency]* **reduces the grant at the time of the payment of the balance**, it will calculate the reduced grant amount for the action and then determine the amount due as payment of the balance (see Articles 5.3.4 and 21.4).

If the *[Commission][Agency]* **reduces the grant after the payment of the balance**, it will calculate the revised final grant amount for the beneficiary concerned (see Article 5.4). If the revised final grant amount for the beneficiary concerned is lower than its share of the final grant amount, the *[Commission][Agency]* will recover the difference (see Article 44).

1. Reduction of the grant

If the Commission/Agency finds *(in particular, following a check, audit, extension of audit findings, review or OLAF investigation)* that the action has **not** been **properly implemented** or that **other obligations** have been **breached**, it may reduce the maximum grant amount.

Reduction of the grant can take place at or after the payment of the balance, not before.

⚠ If the improper implementation *(e.g. delays)* or a breach of obligations is found before the end of the action, the beneficiaries must take all possible corrective steps to bring the action implementation back into line with the GA.

The reduction of the grant **amount** will be **proportionate to** the improper implementation of the action or the seriousness of the **breach**.

2. Procedure

The Commission/Agency will follow a contradictory procedure.

ⓘ *For the basic contradictory procedure, see Article 42.*

Depending on the moment the reduction takes place, this procedure will be directed either at the coordinator or the beneficiary concerned:

- for reductions at payment of the balance: normally the coordinator
- for reductions after payment of the balance:
  - normally the beneficiary concerned, if the finding of improper implementation or breach concerns a beneficiary
  - normally the coordinator, if the finding cannot be linked to one (or more) specific beneficiaries (and therefore concerns the consortium).

If it is directed at the coordinator, the coordinator must immediately inform the beneficiaries concerned offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)* and ask for their comments. It must also inform the other beneficiaries.

3. Reduction of the grant at the payment of the balance

If the Commission/Agency reduces the grant at the payment of the balance, it will make the reduction **at the level of the action** and calculate the balance to be paid (i.e. final grant amount) accordingly.

Example:

Consortium with a maximum grant amount of EUR 3 000 000 (100 %.reimbursement rate)
Pre-financing: EUR 750 000
Interim payments: EUR 1 500 000
Eligible costs accepted at the time of payment of the balance: EUR 2 900 000
The Commission carries out a review which demonstrates that some work packages were not carried out and only 80% of the action was carried out. Following the review, the Commission reduces the maximum grant amount by 20 % (EUR 600 000) because of improper implementation and notifies the consortium via a pre-information letter notified to the coordinator.
Reduced maximum grant amount at the payment of the balance: EUR 3 000 000- EUR 600 000 = EUR 2 400 000.
Final grant amount: Lower between EUR 2 900 000 and EUR 2 400 000 = 2 400 000
Payments already made (pre-financing + interim) EUR 2 250 000= EUR 750 000 + EUR 1 500 000
Amount due as payment of the balance: EUR 150 000 (EUR 2 400 000 – EUR 2 250 000).

4. Reduction of the grant after payment of the balance

If the grant is reduced after the payment of the balance, a **revised grant amount** has to be calculated at **beneficiary level**, by first reducing the grant and then calculating the revised final grant amount for each beneficiary concerned.

⚠ If the improper implementation or breach of obligations cannot be linked to one (or more) specific beneficiaries (and therefore concerns the whole consortium), a revised final grant amount will be calculated for all of them (i.e. they will all have to bear their pro-rata share of the reduction).

Procedure for reduction of the grant (after payment of the balance):

Step 1 — The Commission/Agency reduces the maximum grant amount set out in Article 5.1 in proportion to the improper implementation or to the seriousness of the breach.

Example:

Maximum grant amount: EUR 3 000 000 for an action with a 100% reimbursement rate. Three beneficiaries: A, B and C.

Estimated budget per beneficiary (Annex 2): EUR 800 000 (A); EUR 1 600 000 (B) and EUR 600 000 (C).
Total eligible costs and EU contribution accepted for each beneficiary at payment of the balance: Beneficiary A: EUR 700 000; beneficiary B: EUR 1600 000; beneficiary C: EUR 700 000.

Reduction of grant amount:
The Commission carries out a review after the payment of the balance. Following the review, the Commission reduces the maximum grant amount by 13,3% (EUR 400 000) because of improper implementation/breach of obligations and notifies the consortium via a pre-information letter.

Reduced maximum grant amount: EUR 3 000 000 — EUR 400 000 = EUR 2 600 000.

Step 2 — The Commission/Agency calculates the revised final grant amount for each beneficiary concerned, by allocating the amount of the reduction to each of them, in proportion to their improper implementation or breach of obligation.

Examples (calculation of revised final grant amount for each beneficiary concerned):

1. (improper implementation/breach of obligation can be linked to specific beneficiaries): *During a review, the Commission found out that the improper implementation is due to the fact that beneficiary A carried out only 50% of its tasks as set out in Annex 1.*

Revised final grant amount for beneficiary A will be the lower amount between the costs accepted at the payment of the balance and the figure resulting from the reduction:
Lower between costs accepted (EUR 700 000) and 50% of beneficiary A's share of the maximum grant amount set out in the estimated budget in Annex 2 (50% x 800 000 = EUR 400 000) = EUR 400 000
For recovery (see Article 44.1.3):

The revised final grant amount for beneficiary A needs to be compared with beneficiary A's share of the final grant amount and the difference must be recovered: EUR 700 000-400 000 = EUR 300 000.

The other beneficiaries' share of the final grant amount is not affected

2. (improper implementation/breach of obligation cannot be linked to specific beneficiaries): *During the review, the Commission found out that the breach of obligations is due to the fact that the consortium did not use the EU emblem in the communication activities of the action. Therefore, the reduction by 13,3% will affect all beneficiaries, because the breach is not specifically linked to one (or more) of them.*

Each beneficiary's revised final grant amount after reduction of the grant:
beneficiary A: lower between (EUR 700 000 and (800 000/3 000 000) x 2600 000 = EUR 693 333) = EUR 693 333
beneficiary B: lower between (EUR 1 600 000 and (1600 000/3 000 000) x 2 600 000 = EUR 1 386 667) = EUR 1 386 667
beneficiary C: lower between (EUR 700 000 and (600 000/3 000 000) x 2 600 000 = EUR 520 000) = EUR 520 000

For recovery (see Article 44.1.3):
The revised final grant amount for each beneficiary (as calculated above) needs to be compared with its share of the final grant amount and the difference must be recovered:
beneficiary A: 700 000-693 333 = EUR 6 667
beneficiary B: 1600 000-1 386 667 = EUR 213 333
beneficiary C: 700 000-520 000 = EUR 180 000

ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

41.1 Amount to be recovered — Calculation — Procedure

The *[Commission][Agency]* will — after **termination of the participation of a beneficiary**, **at the payment of the balance** or **afterwards** — recover any amount that was paid but is not due under the Agreement.

Each beneficiary's financial responsibility in case of recovery is limited to its own debt ***[OPTION if Article 14 applies:*** *(including undue amounts paid by the [Commission][Agency] for costs declared by its linked third parties)**]***, except for the amount retained for the Guarantee Fund (see Article 21.4).

44.1.1 Recovery after termination of a beneficiary's participation

If recovery takes place after termination of a beneficiary's participation (including the coordinator), the *[Commission][Agency]* will recover the undue amount from the beneficiary concerned by formally notifying it a debit note (see Article 50.2 and 50.3). This note will specify the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *[Commission][Agency]* will **recover** the amount:

(a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the Commission or an executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *[Commission][Agency]* may offset before the payment date specified in the debit note;

(b) ***[OPTION if Article 14 applies and joint and several liability has been requested by the [Commission][Agency]:*** *if a linked third party has accepted joint and several liability (see Article 14), by **holding the third party liable** up to the maximum EU contribution indicated, for the linked third party, in the estimated budget (see Annex 2) and/or**][OPTION:*** *not applicable, and/or**]***

(c) by **taking legal action** or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) *[and Article 106a of the Euratom Treaty]* (see Article 57).

If payment is not made by the date specified in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *[Commission][Agency]* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

44.1.2 Recovery at payment of the balance

If the payment of the balance takes the form of a recovery (see Article 21.4), the *[Commission][Agency]* will formally notify a '**pre-information letter**' to the coordinator:

- informing it of its intention to recover, the amount due as the balance and the reasons why;
- specifying that it intends to deduct the amount to be recovered from the amount retained for the Guarantee Fund;
- requesting the coordinator to submit a report on the distribution of payments to the beneficiaries within 30 days of receiving notification, and
- inviting the coordinator to submit observations within 30 days of receiving notification.

If no observations are submitted or the *[Commission][Agency]* decides to pursue recovery despite the observations it has received, it will **confirm recovery** (together with the notification of amounts due; see Article 21.5) and:

- pay the difference between the amount to be recovered and the amount retained for the Guarantee Fund, **if the difference is positive** or

- formally notify to the coordinator a **debit note** for the difference between the amount to be recovered and the amount retained for the Guarantee Fund, **if the difference is negative**. This note will also specify the terms and the date for payment.

If the coordinator does not repay the *[Commission][Agency]* by the date in the debit note and has not submitted the report on the distribution of payments: the *[Commission][Agency]* will **recover** the amount set out in the debit note from the coordinator (see below).

If the coordinator does not repay the *[Commission][Agency]* by the date in the debit note, but has submitted the report on the distribution of payments: the *[Commission][Agency]* will:

(a) identify the beneficiaries for which the amount calculated as follows is negative:

{{{{beneficiary's costs declared in the final summary financial statement and approved by the *[Commission][Agency]* multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned

[plus

its linked third parties' costs declared in the final summary financial statement and approved by the [Commission][Agency] multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned]}

divided by

the EU contribution for the action calculated according to Article 5.3.1}

multiplied by

the final grant amount (see Article 5.3)**}**,

minus

{pre-financing and interim payments received by the beneficiary}**}**.

(b) formally notify to each beneficiary identified according to point (a) a **debit note** specifying the terms and date for payment. The amount of the debit note is calculated as follows:

{{amount calculated according to point (a) for the beneficiary concerned

divided by

the sum of the amounts calculated according to point (a) for all the beneficiaries identified according to point (a)}

multiplied by

the amount set out in the debit note formally notified to the coordinator}.

If payment is not made by the date specified in the debit note, the *[Commission][Agency]* will **recover** the amount:

(a) by **offsetting** it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the Commission or an executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *[Commission][Agency]* may offset before the payment date specified in the debit note;

(b) by **drawing on the Guarantee Fund.** The *[Commission][Agency]* will formally notify the beneficiary concerned the debit note on behalf of the Guarantee Fund and recover the amount:

(i) ***[OPTION if Article 14 applies and joint and several liability has been requested by the [Commission][Agency]:*** *if a linked third party has accepted joint and several liability (see Article 14), by* ***holding the third party liable*** *up to the maximum EU contribution indicated, for the linked third party, in the estimated budget (see Annex 2) and/or****][OPTION:*** *not applicable****]***

(ii) by **taking legal action** or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) *[and Article 106a of the Euratom Treaty]* (see Article 57).

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *[Commission][Agency]* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

44.1.3 Recovery of amounts after payment of the balance

If, for a beneficiary, the revised final grant amount (see Article 5.4) is lower than its share of the final grant amount, it must repay the difference to the *[Commission][Agency]*.

The beneficiary's share of the final grant amount is calculated as follows:

{{{beneficiary's costs declared in the final summary financial statement and approved by the *[Commission][Agency]* multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned

[plus

its linked third parties' costs declared in the final summary financial statement and approved by the [Commission][Agency] multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned]}

divided by

the EU contribution for the action calculated according to Article 5.3.1}

multiplied by

the final grant amount (see Article 5.3)**}**.

If the coordinator has not distributed amounts received (see Article 21.7), the Commission will also recover these amounts.

The *[Commission][Agency]* will formally notify a **pre-information letter** to the beneficiary concerned:

- informing it of its intention to recover, the due amount and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If no observations are submitted or the *[Commission][Agency]* decides to pursue recovery despite the observations it has received, it will **confirm** the amount to be recovered and formally notify to the

If payment is not made by the date specified in the debit note, the *[Commission][Agency]* will **recover** the amount:

(a) by **offsetting** it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the Commission or an executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *[Commission][Agency]* may offset before the payment date specified in the debit note;

(b) by **drawing on the Guarantee Fund.** The *[Commission][Agency]* will formally notify the beneficiary concerned the debit note on behalf of the Guarantee Fund and recover the amount:

(i) ***[OPTION if Article 14 applies and joint and several liability has been requested by the [Commission][Agency]:*** *if a linked third party has accepted joint and several liability (see Article 14), by* ***holding the third party liable*** *up to the maximum EU contribution indicated, for the linked third party, in the estimated budget (see Annex 2) and/or**]*** ***[OPTION:*** *not applicable**]***

(ii) by **taking legal action** or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) *[and Article 106a of the Euratom Treaty]* (see Article 57).

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the date for payment in the debit note, up to and including the date the *[Commission][Agency]* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies

1. Recovery of undue amounts

If it turns out that — due to a rejection of costs or a reduction of the grant *(in particular, following a check, audit, extension of audit findings, review or OLAF investigation)* — the Commission/Agency **paid too much**, it will recover the undue amounts. In addition, recovery may also take place in the context of the termination of the participation of a beneficiary.

Recovery can normally take place only at payment of the balance or afterwards. It can take place before only in the case of terminating a beneficiary's participation.

The recovery will be for the **amount** that is **undue**.

The Commission/Agency will recover the undue amounts from the beneficiary owing money to it (i.e. with a debt towards the Commission/Agency).

⚠ In case of recovery, each beneficiary's financial responsibility is normally limited to its own debt (including undue amounts paid for costs declared by its linked third parties, if any). Only the responsibility for the amount retained for the Guarantee Fund is shared.

Specific case:

If the Commission/Agency has requested **joint and several liability of** a **linked third party** *(see Article 14.1)*, it may recover also from the linked third party. The linked third party's financial

responsibility (for the debt of the beneficiary) is limited to the maximum EU contribution specified for the third party in the estimated budget *(Annex 2)*.

2. Procedure

The basic procedure for recovery is almost always the same: After a contradictory procedure, the Commission/Agency claims repayment of the amounts and then enforces recovery.

Basic recovery procedure:

Step 1 — Contradictory procedure

The Commission/Agency informs the coordinator/beneficiary concerned of its intention to recover undue amounts (and their amount and the reasons why), in a **pre-information letter**.

The coordinator/beneficiary concerned has **30 days** to submit observations.

Step 2 — Confirmation of recovery

The Commission/Agency analyses the observations and either stops the procedure or **confirms** the recovery and issues a **debit note** against the coordinator/beneficiary concerned.

The coordinator/beneficiary concerned must pay by the date specified in the debit note.

Step 3 — Recovery

If the coordinator/beneficiary concerned does not pay by this date, the Commission/Agency will **recover** the amount (with interest at the rate set out in Article 21.11), in one of the following ways:

– by **offsetting** it[65]

Offsetting consists of subtracting the amount the debtor (i.e. coordinator/beneficiary) owes to the Commission/Agency from another amount that the Commission/Agency owes to it.

⚠ For the coordinator/beneficiary, offsetting is the same as paying the debit note normally (i.e. by bank transfer).

In principle, offsetting is carried out after the payment deadline stated in the debit note has expired. However, in exceptional circumstances, the Commission/Agency may offset the amount to be recovered before this date, in order to safeguard the EU's financial interests.[66]

If the offsetting takes place after the deadline for payment has expired, both the principal amount and the interest must be offset against a payment due to the debtor (starting with the interest).

– by drawing on the Guarantee Fund and then follow it with the **debit note on behalf of** the **Guarantee Fund** (to continue the recovery procedure):

– if the Commission/Agency has requested joint and several liability from a linked third party: by **holding** the **linked third party liable**

or

– by either:

65 *See Article 80(1) of the Financial Regulation.*
66 *See Article 87 of the Rules for Application.*

– taking **legal action** in a national court or the Court of Justice of the EU *(see Article 57.2)* or

– adopting a **Commission decision** that is **enforceable** within the meaning of Article 299 TFEU[67].[68]

The decision taken by the Commission describes the claim and its grounds, notes that the debtor has not paid (despite having been sent a debit note and reminders) and indicates the amount of the debt.

This decision — duly endorsed with the 'order for enforcement' issued by the competent authority in the Member State concerned — enables the Commission to have the debtor's assets seized.

3. Recovery after termination of a beneficiary's participation

The Commission/Agency may recover after termination of a beneficiary's participation, if that beneficiary did not pay back to the coordinator the amounts it received in excess and — following this — the Guarantee Fund had to intervene.

ⓘ *For the procedure, see Article 50.*

4. Recovery at the payment of the balance

The payment of the balance may take the form of a recovery if the sum of the pre-financing and the interim payments exceeds the final grant amount calculated by the Commission/Agency *(see Article 21.4)*.

Procedure for recovery (at payment of the balance):

Step 1 — Contradictory procedure with coordinator *(see above point 2)* and request to submit the 'report on the distribution of payments'.

Step 2 — Confirmation of recovery *(see above point 2)*, together with notification of the amounts due *(see Article 21.5)*

Step 3 — Release of the amounts retained for the PGF. The Commission/Agency will **deduct** the amount the consortium owes from the **contribution to the Guarantee Fund** that needs to be reimbursed to the consortium.

If, after the debt is deducted, the difference is positive (i.e. part of the amount retained for the Guarantee Fund must be reimbursed) or if the result equals zero, the recovery process ends.

Step 4 — If the difference is negative (i.e. if the amount retained for the Guarantee Fund was not sufficient to cover the consortium's debt to the Commission/Agency and there is still an

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[67] *See Article 299 TFEU:* Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. Enforcement may be suspended only by a decision of the Court. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

[68] *See Article 79(2) of the Financial Regulation.*

amount to be recovered), the Commission/Agency will send the coordinator a **debit note** for the amount still to be recovered.

If the coordinator pays the debt by the date specified in the debit note the recovery process ends.

Step 5a — If the coordinator does not repay the Commission/Agency by the date specified and if it has not submitted the report on the distribution of payments: the Commission/Agency will **recover** the amount **from the coordinator** exclusively.

ⓘ *For the rest of the procedure, see point 2.*

Step 5b — If the coordinator does not repay the Commission/Agency by the date specified, but has submitted the report on the distribution of payments, the Commission/Agency will:

- identify the beneficiaries that received funds in excess and
- calculate the amount each beneficiary owes to the Commission/Agency.

In order to **identify the beneficiaries that received funds** in excess, the amount each beneficiary *actually* received (as established on the basis of in the 'report on the distribution of payments') is compared to its share of the final grant amount (as established on the basis of the accepted eligible costs in the final summary financial statement).

The '**share of the final grant amount**' is calculated by dividing the EU contribution for the beneficiary (on the basis of the accepted eligible costs of the final summary financial statement) by the total EU contribution for the consortium and by applying the percentage so obtained to the final grant amount.

In order to **calculate the amount each beneficiary owes** (i.e. to distribute the debt towards the Commission/Agency among the beneficiaries that received funds in excess) the amount to be recovered will be split between the beneficiaries that have received payments in excess, in proportion to their relative share of the total payments in excess.

Step 6 — The Commission/Agency will cancel the debit note sent to the coordinator and send a debit note to each beneficiary that received funds in excess, for its proportional share in the debt to the Commission/Agency.

ⓘ *For the rest of the procedure, see point 2.*

Example (recovery at the payment of the balance):

GA with a maximum grant amount of EUR 3 000 000 and with a reimbursement rate: 100 %
Four beneficiaries: A (coordinator), B, C, D
According to the estimated budget in Annex 2, the four beneficiaries were entitled to a maximum contribution for carrying out their part of the action set out in Annex 1 of EUR 800 000 (A); EUR 1 200 000 (B); EUR 600 000 (C); EUR 400 000 (D)
Total eligible costs approved by the Commission: EUR 2 430 000
Final grant amount: EUR 2 430 000
EU contribution per beneficiary based on the accepted eligible costs: A: EUR 600 000; B: EUR 1 100 000; C: EUR 400 000; D: EUR 330 000
Payments made by the Commission (pre-financing and interim payments): EUR 2 700 000 (limit of 90 % of the maximum grant amount).

The Commission needs to recover EUR 2 700 000 minus EUR 2 430 000 = EUR 270 000.

Amount retained for the Guarantee Fund (5 % of the maximum grant amount; see Article 21.2) = EUR 150 000.
Payment effectively transferred to the coordinator: EUR 2 550 000 = EUR 2 700 000 - EUR 150 000

A pre-information letter is sent to the coordinator (beneficiary A) informing it that the Commission intends to recover EUR 270 000. No observations are made by the consortium, and the Commission confirms the amount.

The Commission deducts the amount it needs to recover from the consortium from the amount retained for the Guarantee Fund that needs to be reimbursed to the consortium (EUR 150 000).

The difference of EUR 120 000 needs to be recovered and the ***Commission sends a debit note for that amount****.*

The coordinator does not reimburse the Commission and sends the report on the distribution of the payments among beneficiaries:
A= EUR 400 000; B= EUR 1 200 000 ; C = EUR 600 000 ; D= EUR 350 000.

First step: *identification of the beneficiaries that received funds in excess:*
Coordinator A: share in the final grant: EUR 600 000; received EUR 400 000 (no payment in excess);
beneficiary B: share in the final grant: EUR 1 100 000; received EUR 1 200 000 (payment in excess of 100 000)
beneficiary C: share in the final grant: EUR 400 000; received EUR 600 000 (payment in excess of 200 000);
beneficiary D: share in the final grant: EUR 330 000 ; received EUR 350 000 (payment in excess of 20 000).
Beneficiaries B, C and D received payments in excess of their EU contribution and will have to reimburse the Commission.

Second step: *distribution of the debt to be reimbursed among the beneficiaries that have received payments in excess:*
The distribution of the final debt towards the Commission will be made in proportion to the payments in excess received by each beneficiary compared to the total payments made in excess.
Total payments made in excess = 320 000.
Beneficiary B's share of the payments in excess: 100 000/320 000 = 31.25 %.
Beneficiary C's share of the payments in excess: 200 000/320 000 = 62.5 %.
Beneficiary D's share of the payments in excess: 20 000/320 000 = 6.25 %.

The Commission will notify three debit notes for a cumulative amount of EUR 120,000 *(270,000 – 150,000): beneficiary B with a debit note for the amount of 31.25 % x 120 000 = 37 500; beneficiary C for the amount of 62.5 % x 120 000 = 75 000; beneficiary D for the amount of 6.25 % x 120 000 = 7 500.*

⚠ *Beneficiary A will have to recover the money owed to it from the other beneficiaries in the consortium*

5. Recovery after payment of the balance

The Commission/Agency may recover after payment of the balance, if — due to a rejection of costs or a reduction of the grant *(in particular, following a check, audit, extension of audit findings or OLAF investigation)* — the Commission/Agency paid too much.

Procedure for recovery after payment of the balance (due to a reduction of the grant):

Step 1 — The Commission/Agency calculates a **revised grant amount** for the beneficiary concerned *(see Article 43)*

Step 2 — The Commission/Agency will calculate the **amount to be recovered** by comparing the revised grant amount for the beneficiary concerned with its share of the final grant amount.

ⓘ *For the calculation of the share of the final grant amount, see point 4.*

If the revised grant amount is lower than its share of the final grant amount, the beneficiary must repay the difference.

ⓘ *For the rest of the procedure, see point 2.*

Procedure for recovery after payment of the balance (due to a rejection of costs):

Step 1 — The Commission/Agency calculates a **revised grant amount** for the beneficiary concerned *(see Article 42)*

Step 2 — The Commission/Agency calculates the **amount to be recovered,** by comparing the revised grant amount for the beneficiary concerned with its share of the final grant amount.

The '**share of the final grant amount**' is calculated as follows:

– **for an underspent GA:** An underspent GA means a GA for which the EU contribution (calculated in accordance with Article 5.3.1) is lower than the maximum EU contribution for the GA. In other words, a GA where the consortium declared less costs than could have been reimbursed: it equals the eligible costs declared by the beneficiary (and approved by the Commission) multiplied by its reimbursement rate

– **for an overspent GA:** An overspent GA means a GA for which the EU contribution calculated in accordance with Article 5.3.1 exceeds the maximum EU contribution for the GA (maximum grant amount); in other words, a GA where the consortium declared more costs than could be reimbursed: Each beneficiary's EU contribution must therefore be adjusted to bring it into line with the maximum grant amount. This adjustment is done in proportion to the eligible declared costs approved by the Commission/Agency *(see the calculation in the example below).*

If the revised grant amount is lower than its share of the final grant amount, the beneficiary must repay the difference.

Example (recovery in an underspent GA):

Action with three beneficiaries (A, B and C) and a reimbursement rate of 100%.
Maximum grant amount: EUR 500 000
Eligible costs accepted for beneficiary A at payment of the balance: EUR 150 000 (direct costs) + EUR 37 500 (25% flat rate for indirect costs) = EUR 187 500
Eligible costs accepted for beneficiary B at payment of the balance: EUR 125 000 (direct costs) + EUR 31 250 (25% flat rate for indirect costs) = EUR 156 250
Eligible costs accepted for beneficiary C at payment of the balance: EUR 120 000 (direct costs) + EUR 30 000 (25% flat rate for indirect costs) = EUR 150 000
Final grant amount at payment of the balance: EUR 187 500 + EUR 156 250 + EUR 150 000 = EUR 493 750

An audit concluded that the direct costs of beneficiary A were not eligible for an amount of EUR 30 000.

Revised grant amount for beneficiary A:
(Revised direct costs: EUR 150 000 — EUR 30 000 = EUR 120 000) + EUR 30 000 (25% flat rate for indirect costs) = EUR 150 000.

The share of beneficiary A in the final grant amount = EUR 187 500.

The EU contribution that will be recovered from beneficiary A: EUR 187 500 — EUR 150 000 = EUR 37 500.

The EU contributions of the other beneficiaries remain unchanged.

Example (recovery in an overspent GA):

Maximum grant amount: EUR 500 000; Three beneficiaries A, B and C
Estimated budget indicated in Annex 2: A: EUR 200 000; B: EUR 100 000; C: EUR 200 000
Reimbursement rate for all the beneficiaries: 100%
Direct eligible costs approved for Beneficiary A at the payment of balance: EUR 160 000 (direct costs) + EUR 40 000 (indirect costs) =EUR 200 000
Direct eligible costs approved for Beneficiary B at the payment of balance: EUR 120 000 (direct costs) + EUR 30 000 (indirect costs) =EUR 150 000
Direct eligible costs approved for Beneficiary C at the payment of balance: EUR 200 000 (direct costs) + EUR 50 000 (indirect costs) =EUR 250 000
Total eligible costs of the consortium approved by the Commission = EUR 600 000
Difference between the maximum grant amount and the approved eligible costs= EUR 600 000 - 500 000 = EUR 100 000
Limit to the maximum grant amount: Final grant amount = EUR 500 000

An audit after payment of the balance concluded that direct costs claimed by beneficiary A are not eligible for an amount of EUR 30 000.

Another audit concluded that direct costs claimed by beneficiary C are not eligible for an amount of EUR 20 000.

Step 1 Calculation of each beneficiary's share in the final grant amount:

*Beneficiary approved costs multiplied by the reimbursement rate (100%) * final grant amount (500 000)*
EU contribution for the action according to 5.3.1 (EUR 600 000)

Beneficiary A's share in the final grant amount = (200 000/600 000) x 500 000 = EUR 166 667
Beneficiary B's share in the final grant amount = (150 000/600 000) x 500 000 = EUR 125 000
Beneficiary C's share in the final grant amount = (250 000/600 000) x 500 000 = EUR 208 333

Step 2 Calculation of the revised grant amount after the audits:
The revised final grant amount is calculated as follows:
For beneficiary A: (Revised direct costs: 160 000 – 30 000 = 130 000) + 32 500 (indirect costs) = EUR 162 500
For beneficiary C: (Revised direct costs: 200 000 – 20 000 = 180 000) + 45 000 (indirect costs) = EUR 225 000

Step 3 Calculation of the amount to be recovered:
The amount to be recovered is calculated on the basis of the beneficiary's share in the final grant amount and neither on the basis of the reported eligible costs nor on the basis of the amounts actually received from the coordinator.
Amount to be recovered per beneficiary = share in the final grant amount - revised final grant amount
For beneficiary A: EUR 166 667-162 500 = EUR 4 167 will be recovered
For beneficiary C: EUR 208 333- EUR 225 000 = - EUR 16 667. As, for Beneficiary C, the revised final grant amount is greater than the share in the final grant amount (in other terms, the revised eligible costs still justify the share in the final grant amount), nothing will be recovered.

ARTICLE 45 — ADMINISTRATIVE AND FINANCIAL PENALTIES

45.1 Conditions

Under Articles 109 and 131(4) of the Financial Regulation No 966/2012, the *[Commission][Agency]* may impose **administrative** and **financial penalties** if a beneficiary:

(a) has committed substantial errors, irregularities or fraud or is in serious breach of its obligations under the Agreement or

(b) has made false declarations about information required under the Agreement or for the submission of the proposal (or has not supplied such information).

Each beneficiary is responsible for paying the financial penalties imposed on it.

Under Article 109(3) of the Financial Regulation No 966/2012, the *[Commission][Agency]* may — under certain conditions and limits — publish decisions imposing administrative or financial penalties.

45.2 Duration — Amount of penalty — Calculation

Administrative penalties exclude the beneficiary from all contracts and grants financed from the EU or Euratom budget for a maximum of five years from the date the infringement is established by the *[Commission][Agency]*.

If the beneficiary commits another infringement within five years of the date the first infringement is established, the *[Commission][Agency]* may extend the exclusion period up to 10 years.

Financial penalties will be between 2% and 10% of the maximum EU contribution indicated, for the beneficiary concerned, in the estimated budget (see Annex 2).

If the beneficiary commits another infringement within five years of the date the first infringement is established, the *[Commission][Agency]* may increase the rate of financial penalties to between 4% and 20%.

45.3 Procedure

Before applying a penalty, the *[Commission][Agency]* will formally notify the beneficiary concerned:

- informing it of its intention to impose a penalty, its duration or amount and the reasons why and
- inviting it to submit observations within 30 days.

If the *[Commission][Agency]* does not receive any observations or decides to impose the penalty despite of observations it has received, it will formally notify **confirmation** of the penalty to the beneficiary concerned and — in case of financial penalties — deduct the penalty from the payment of the balance or formally notify a **debit note**, specifying the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *[Commission][Agency]* may **recover** the amount:

(a) by **offsetting** it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the Commission or an executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *[Commission][Agency]* may offset before the payment date in the debit note;

(b) by **taking legal action** or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) *[and Article 106a of the Euratom Treaty]* (see Article 57).

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *[Commission][Agency]* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

1. Administrative and financial penalties

If the Commission/Agency finds *(in particular, following a check, audit, review or OLAF investigation)* that a beneficiary has committed substantial errors, irregularities or fraud, is in serious breach of its obligations under the GA or has made false declarations, it may impose an administrative and/or financial penalty.

> ***Examples:*** *plagiarism; absence of time-recording systems (that were required); false declaration concerning SME status.*

⚠ The Commission/Agency will apply penalties only on a case-by-case basis and where this is justified, in view of the misconduct.

Administrative and financial penalties may be cumulative, depending on the nature and seriousness of the misconduct. This means that the misconduct may lead both to the exclusion of the beneficiary from EU procurement and grant procedures *and* to the obligation to pay a certain amount to the Commission.

The **amount/duration** is as follows:

- for administrative penalties: up to **five years** from the date on which the Commission/Agency establishes the infringement, i.e. confirms the penalty and formally notifies this to the beneficiary.

  ⚠ If, in that time, the beneficiary commits the same infringement again (under the same GA or another EU or Euratom grant or contract), the exclusion period may be extended to **10 years**.

- for financial penalties: between 2% and 10% of the maximum EU contribution to the beneficiary concerned according to the estimated budget depending on the seriousness of the infringement.

  ⚠ If, within five years of the first infringement being established, the beneficiary commits the same infringement again (under the same GA or another EU or Euratom grant or contract), the rate may be increased to between 4% and 20%.

  If the new infringement concerns the same GA, the rate will be increased in that GA *(e.g. from 5% to 15%).*

  If the infringement concerns a different GA, the new rate *(e.g. 15%)* will apply in that GA and the original rate *(e.g. 5%)* will be maintained in the GA concerned by the first infringement.

  Example:

  GA with an EU contribution of EUR 2 500 000. The estimated EU contribution for beneficiary A in Annex 2 is EUR 600 000.

  During an audit of the first reporting period, the Commission finds that beneficiary A has overcharged for its personnel costs by 20% and has falsely certified that the information on the time spent on the action set out in

the report was true. Following the contradictory procedure, the Commission imposes a financial penalty of 5 % of beneficiary A's estimated budget and asks the beneficiary to amend its practice.

Financial penalty/amount to recover: 5 % of EUR 600 000 = EUR 30 000.

Case 1: *A year after the action ends and the balance is paid, the Commission decides to verify the situation and carries out another audit (of the same GA). It finds that beneficiary A has maintained its practice and overcharged for its personnel costs also in the second and final reporting periods of that grant. Following the contradictory procedure, the Commission imposes an increased rate of 15 %.*

New financial penalty: 15 % of EUR 600 000 = EUR 90 000; additional amount to recover: EUR 60 000

Case 2: *Six months after the first infringement was established, the Commission audits another GA of the same beneficiary, with an estimated EU contribution in Annex 2 of EUR 450 000. It finds that the beneficiary also overcharged for its personnel costs in this other GA. Following the contradictory procedure, the Commission imposes an increased rate of 15 %, given that it is the beneficiary's second infringement of the same rule under an EU contract/grant.*

Financial penalty in second GA: 15 % of 450 000 = EUR 67 500.
Financial penalty in first GA: 5 % (no change).

Additional amount to recover after the second audit: EUR 67 500

⚠ If appropriate, the decision to apply the penalty may also be **published** on Commission or Agency websites —together with the name of the person responsible for the misconduct, information on the misconduct and the penalty(ies) (duration of the exclusion and/or amount of the financial penalty).

The decision to publish will take into account, in particular:

- seriousness of the misconduct (including impact on the EU's financial interest and image)
- time that has elapsed since it took place
- duration and recurrence of the misconduct
- intention or degree of negligence and
- measures taken by the beneficiary to remedy the situation.

2. Procedure

Before applying a penalty, the Commission/Agency will follow a **contradictory procedure** with the beneficiary concerned.

ⓘ *For the basic contradictory procedure, see Article 42.*

If the Commission/Agency confirms a financial penalty, it will issue a debit note to **recover** the amount.

ⓘ *For the basic recovery procedure, see Article 44.*

⚠ However, there is no:

- separate contradictory procedure on recovery
- intervention of the Guarantee Fund
- joint and several liability of linked third parties.

In the absence of payment by the date set out in the debit note, late-payment interest will be added to the amount to be recovered.

ARTICLE 46 — LIABILITY FOR DAMAGES

46.1 Liability of the *[Commission][Agency]*

The *[Commission][Agency]* cannot be held liable for any damage caused to the beneficiaries or to third parties as a consequence of implementing the Agreement, including for gross negligence.

The *[Commission][Agency]* cannot be held liable for any damage caused by any of the beneficiaries or third parties involved in the action, as a consequence on implementing the Agreement.

1. Liability for damages, of the Commission/Agency

The Commission/Agency cannot be held liable for any damages where — in implementing the GA — a beneficiary:

– causes damage to a third party (including another beneficiary)

Example: *An experiment carried out by a beneficiary in a GA which leads to an accidental escape of pollutants into the local river.*

– suffers damage

even if the beneficiary was grossly negligent.

Example: *A fire breaks out in a beneficiary's laboratory in the course of an experiment for the GA.*

Subsidiary (secondary) liability is also excluded.

Non-liability extends to damages caused by any third party involved in the action (i.e. linked third parties, third parties providing in-kind contributions, subcontractors etc.; *see Article 8*).

46.2 Liability of the beneficiaries

46.2.1 Conditions

Except in case of force majeure (see Article 51), the beneficiaries must compensate the *[Commission][Agency]* for any damage it sustains as a result of the implementation of the action or because the action was not implemented in full compliance with the Agreement.

Each beneficiary is responsible for paying the damages claimed from it.

46.2.2 Amount of damages — Calculation

The amount the *[Commission][Agency]* can claim from a beneficiary will correspond to the damage caused by that beneficiary.

46.2.3 Procedure

Before claiming damages, the *[Commission][Agency]* will formally notify the beneficiary concerned:

- informing it of its intention to claim damages, the amount and the reasons why and
- inviting it to submit observations within 30 days.

If the *[Commission][Agency]* does not receive any observations or decides to claim damages despite the observations it has received, it will formally notify **confirmation** of the claim for damages and a **debit note**, specifying the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *[Commission][Agency]* may **recover** the amount:

(a) by **offsetting** it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the Commission or an executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *[Commission][Agency]* may offset before the payment date in the debit note;

(b) by **taking legal action** or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) *[and Article 106a of the Euratom Treaty]* (see Article 57).

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *[Commission][Agency]* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

1. Liability for damages, of the beneficiaries

If a beneficiary causes damage to the Commission/Agency (in implementing the action), it must compensate the Commission/Agency.

Examples: *Costs of legal proceedings borne by the Commission.*

At a meeting on Commission premises, a beneficiary smokes and causes a fire.

The **amount** claimed will correspond to the damage caused.

2. Procedure

Before claiming damages, the Commission/Agency will follow a **contradictory procedure** with the beneficiary concerned.

ⓘ *For the basic contradictory procedure, see Article 42.*

If the Commission/Agency confirms the claim, it will issue a debit note to recover the amount.

ⓘ *For the basic recovery procedure, see Article 44.*

⚠ However, there is no:

- separate contradictory procedure on recovery
- intervention of the Guarantee Fund
- joint and several liability of linked third parties.

In the absence of payment by the date set out in the debit note, late-payment interest will be added to the amount to be recovered.

ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE

47.1 Conditions

The *[Commission][Agency]* may — at any moment — suspend the payment deadline (see Article 21.2 to 21.4) if a request for payment (see Article 20) cannot be approved because:

(a) it does not comply with the provisions of the Agreement (see Article 20);

(b) the technical reports or financial reports have not been submitted or are not complete or additional information is needed, or

(c) there is doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

47.2 Procedure

The *[Commission][Agency]* will formally notify the coordinator of the suspension and the reasons why.

The suspension will **take effect** the day notification is sent by the *[Commission][Agency]* (see Article 52).

If the conditions for suspending the payment deadline are no longer met, the suspension will be **lifted** — and the remaining period will resume.

If the suspension exceeds two months, the coordinator may request the *[Commission][Agency]* if the suspension will continue.

If the payment deadline has been suspended due to the non-compliance of the technical or financial reports (see Article 20) and the revised report or statement is not submitted or was submitted but is also rejected, the *[Commission][Agency]* may also terminate the Agreement or the participation of the beneficiary (see Article 50.3.1(l)).

1. Suspension of the payment deadline

The Commission/Agency may 'stop the clock' **(suspend the deadline)** if a payment request cannot be immediately approved, on the grounds listed in this Article.

The **payment deadline** (i.e. the number of days within which the Commission/Agency has to pay the consortium — after having received the payment request) depends on the type of payment *(see Article 21)*:

- for pre-financing: **30 days**
- for interim payments and payment of the balance: **90 days**.

Before paying, the Commission/Agency will:

- analyse the technical reports and financial statements
- verify the eligibility of the claimed costs

  ⚠ This is not an in-depth verification and can therefore not vouch for their compliance or correctness. The costs may therefore still be rejected later on, if the Commission/Agency finds — in a more in-depth verification — that they are ineligible.

- calculate the amount to be paid

– approve the payment request and authorise the payment.

Late payment by the Commission/Agency gives rise to **late-payment interest** *(see Article 21.11)*.

Grounds for suspension of the payment deadline:

❖ **Payment request does not comply with the provisions of the GA**

The Commission/Agency may suspend the payment deadline, if the reports (or any of their documents) do not fulfil the requirements set out in Article 20.

> ***Examples:*** *the certificate on the financial statements does not comply with the template; inconsistencies in the technical report (meaning that the action cannot be assessed); the financial statement contains errors.*

❖ **Payment request is incomplete or requires clarification**

The Commission/Agency may suspend the payment deadline, if the reports (or any of their documents) are incomplete or it needs additional information.

> ***Examples:*** *the reports, the certificate on the financial statement or other supporting documents are missing; the information in the periodic technical report is incomplete.*

❖ **Doubts on the eligibility of costs in the financial statements that require additional verifications**

The Commission/Agency may suspend the payment deadline, if it has doubts *(e.g. due to audit findings in other grants)* on the eligibility of the costs in the financial statements and additional checks, reviews, audits or investigations are needed.

> ***Example:*** *The costs claimed in the financial statements are not consistent with the action tasks described in the technical report.*

Suspension **starts** on the day the notification (announcing suspension) is sent to the coordinator (and **ends** on the day it is lifted).

2. Procedure

The Commission/Agency will immediately formally notify the coordinator of the suspension of the payment deadline and explain the reasons why (via the electronic exchange system; *see Article 52*).

⚠ There is no *ex ante* contradictory procedure. However, if the suspension exceeds **two months**, the coordinator may ask the Commission/Agency if the suspension is to be continued (i.e. ask to confirm it or lift it).

3. Effects

If the **issues** have been **resolved satisfactorily** *(e.g. the coordinator sent the requested information or re-submitted the report)* or the Commission/Agency has **finished** the necessary **verifications** *(e.g. an audit)*, the Commission/Agency will lift the suspension and formally notify the coordinator.

⚠ With the lifting of the suspension the remaining payment period starts to run again.

⚠ If a deadline has been suspended for a number of reasons, it will be lifted only when the consortium has satisfactorily addressed all the reasons.

ARTICLE 48 — SUSPENSION OF PAYMENTS

48.1 Conditions

The *[Commission][Agency]* may — at any moment — suspend, in whole or in part, the pre-financing payment and interim payments for one or more beneficiaries or the payment of the balance for all beneficiaries, if a beneficiary:

(a) has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations in the award procedure or under this Agreement or

(b) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2).

48.2 Procedure

Before suspending payments, the *[Commission][Agency]* will formally notify the coordinator:

- informing it of its intention to suspend payments and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If the *[Commission][Agency]* does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify **confirmation** of the suspension. Otherwise, it will formally notify that the suspension procedure is not continued.

The suspension will **take effect** the day the confirmation notification is sent by the *[Commission][Agency]*.

If the conditions for resuming payments are met, the suspension will be **lifted**. The Commission will formally notify the coordinator.

During the suspension, the periodic report(s) (see Article 20.3) must not contain any individual financial statements from the beneficiary concerned *[and its linked third parties]*. When the *[Commission][Agency]* resumes payments, the coordinator may include them in the next periodic report.

The beneficiaries may suspend implementation of the action (see Article 49.1) or terminate the Agreement or the participation of the beneficiary concerned (see Article 50.1 and 50.2).

1. Suspension of payments

The Commission/Agency may suspend (pre-financing or interim payments for one or more beneficiaries or the final payment for all of them), on the grounds listed in this Article.

Grounds for suspension of payments:

❖ **(Suspicion of) Substantial errors, irregularities, fraud or serious breach of obligations (in this grant)**

The Commission/Agency may suspend payments, if a beneficiary has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations — either during the award procedure or under the GA.

Example: *statements made by the beneficiary in the declaration form are found to be false.*

ⓘ *For more information on substantial errors, irregularities, fraud or serious breach of obligations, see Article 50.3.*

– **Substantial errors, irregularities, fraud or serious breach of obligations (in other grants)**

The Commission/Agency may also suspend payments, if such substantial errors, irregularities, fraud or serious breach of obligations were found in *other* award procedures or GAs ('extension of findings from other grants to this grant'), if

- the other grants were awarded under similar conditions and
- the substantial errors, irregularities, fraud or serious breach of obligations are:
  - systemic or recurrent and
  - have a material impact on this grant.

Example:

During an audit of other grants, the Commission detects systemic substantial errors in the calculation of personnel costs of a beneficiary participating in several H2020 actions. Since these errors stem from the beneficiary's methodology for declaring personnel costs, they also affect this GA.

For the ongoing GAs of the beneficiary, the Commission may suspend:

- *outstanding pre-financing and/or interim payments to the beneficiary in question*
- *(if necessary) outstanding payment of the balance for all beneficiaries.*

until the beneficiary submits revised cost statements or the Commission implements the correction for extrapolation (see Article 22.5.3).

Suspension **starts** on the day the notification (confirming suspension) is sent to the coordinator (and **ends** on the day it is lifted).

⚠ Suspension of payment does not mean suspension of the *action implementation* — the consortium should continue to work on the action, while addressing the issues that have led to suspension of the payment; costs incurred during suspension of payments are in principle eligible.

If necessary, the consortium may however decide to:

- suspend action implementation *(see Article 49)*
- terminate the GA or the participation of the beneficiary concerned *(see Article 50)*.

2. Procedure

Before suspending payments, the Commission/Agency will follow a **contradictory procedure** with the coordinator.

ⓘ *For the basic contradictory procedure, see Article 42.*

The contradictory procedure will be made using the electronic exchange system *(see Article 52)*. The coordinator must immediately inform the beneficiary concerned offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)* and ask for its comments. It must also inform the other beneficiaries.

If the Commission/Agency simultaneously suspends payments for a beneficiary in several actions *(e.g. for errors or irregularities having a material impact on several grants)*, it will make a separate contradictory procedure with each coordinator individually.

3. Effects

During suspension, **no individual financial statements** for the beneficiary (or beneficiaries) concerned may be submitted.

Costs incurred (for continuing to implement the action during suspension) are **eligible** and may be included in the next financial report, after suspension has been lifted.

Technical reports submitted during suspension must include the work of the beneficiaries concerned.

Example:

1 May: *the Commission informs the coordinator of its intention to suspend interim payments for beneficiary B because an audit for other H2020 grants has detected systematic substantial errors in the calculation of its personnel costs.*
15 May: *the coordinator comments that beneficiary B was not aware of its obligations in this respect.*
1 June: *the Commission rejects the comments and confirms the suspension of payments for beneficiary B.*
1 July: *the coordinator submits all reports except the individual financial statement for beneficiary B (covering an amount of EUR 75 000).*
10 August: *the Commission pays for all beneficiaries except B.*
25 October: *the Commission approves remedial measures taken by beneficiary B (correcting the substantial errors and submitting revised financial statements) and lifts the suspension. The costs of beneficiary B will be submitted in the next reporting period.*

ARTICLE 49 — SUSPENSION OF THE ACTION IMPLEMENTATION

49.1 Suspension of the action implementation, by the beneficiaries

49.1.1 Conditions

The beneficiaries may suspend implementation of the action or any part of it, if exceptional circumstances — in particular *force majeure* (see Article 51) — make implementation impossible or excessively difficult.

49.1.2 Procedure

The coordinator must immediately formally notify to the *[Commission][Agency]* the suspension (see Article 52), stating:

- the reasons why and
- the expected date of resumption.

The suspension will **take effect** the day this notification is received by the *[Commission][Agency]*.

Once circumstances allow for implementation to resume, the coordinator must immediately formally notify the *[Commission][Agency]* and request an **amendment** of the Agreement to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement or the participation of a beneficiary has been terminated (see Article 50).

The suspension will be **lifted** with effect from the resumption date set out in the amendment.

This date may be before the date on which the amendment enters into force.

Costs incurred during suspension of the action implementation are not eligible (see Article 6).

1. Suspension of the action implementation, by the beneficiaries

The beneficiaries may suspend the action implementation (in full or in part), on the ground set out in this Article.

Grounds for suspension of the action implementation (by the beneficiaries):

- **Action can no longer be implemented (or becomes excessively difficult)**.

  The beneficiaries may suspend the action implementation (in full or in part), if implementation becomes impossible or excessively difficult.

  Example: *A fire devastates a beneficiary's laboratory, with most of the technical equipment and computers used for the action and containing the research results. The beneficiaries therefore request that the part of the action that is affected by this is suspended until the laboratory is restored.*

  ⚠ This means that you stop the implementation of the action, in order to fix specific problems. Suspension should therefore only be used in exceptional situations that can be resolved through a temporary interruption. Otherwise, it may be better to terminate *(see Article 50).*

Suspension **starts** on the day the Commission/Agency receives the notification (and **ends** on the resumption date specified in the amendment signed by the Commission/Agency).

⚠ Do not forget that — depending on the reasons for suspension — you may also have to take other measures under the GA *(e.g. inform the Commission/Agency under Article 17.2; notify a situation of 'force majeure' under Article 51).*

2. Procedure

The coordinator must immediately formally notify the Commission/Agency (through the electronic exchange system; *see Article 52*)

3. Effects

The beneficiaries must immediately take all the necessary steps to **limit the damage** and do their best to resume (continue) implementing the action as soon as possible.

During suspension, **costs** incurred (for implementing the suspended part of the action) are **not eligible** *(see Article 6.5)*. Costs may again be charged to the action, once the action implementation is resumed.

If the **action can be continued** (resumed), the coordinator must:

- immediately formally notify the Commission/Agency of the date from which the action will start again
- request an amendment to the GA, to adapt it to the new situation *(e.g. by extending the action's duration, modifying Annexes 1 and 2, updating the reporting periods).*

  ⚠ The amendment must be requested in accordance with Article 55 *(e.g. it must be signed by the coordinator's LSIGN).*

The suspension is lifted (as from the resumption date set out in the amendment), if the Commission/Agency approves the amendment.

If the suspension is lifted and the action continues, the action's remaining budget can be used to implement the action.

⚠ However, it is possible that the action is resumed with a lower budget to adapt it to the new situation (agreed as part of the amendment).

Example: *After the suspension, it is decided that not all the tasks described in Annex 1 will be implemented.*

If the **action** (or part of it) ***cannot* be continued** (or the Commission does not approve the amendment; *see Article 55*), the GA (or the participation of one or more beneficiaries) may be terminated.

If the suspension leads to termination, no further costs (incurred after the date of suspension) can be declared, except for costs related to submitting the periodic report for the last reporting period and the final report *(see Article 6.1)*.

Example: *The action starts on 1.1.2015 and is to last 36 months. The action's implementation is suspended for four months, from the date after the Commission is notified, 1.12.2015 to 31.3.2016 and the suspension leads to the termination of the GA. The eligible costs are:*

- *costs incurred from the action's start (1.1.2015) until the date of notification (30.11.2015)*
- *costs incurred for the submission of the first periodic report and the final report.*

49.2 Suspension of the action implementation, by the *[Commission][Agency]*

49.2.1 Conditions

The *[Commission][Agency]* may suspend implementation of the action or any part of it:

(a) if a beneficiary has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations in the award procedure or under this Agreement;

(b) if a beneficiary has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2), or

(c) if the action is suspected of having lost its scientific or technological relevance.

49.2.2 Procedure

Before suspending implementation of the action, the *[Commission][Agency]* will formally notify the coordinator:

- informing it of its intention to suspend the implementation and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If the *[Commission][Agency]* does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify **confirmation** of the suspension. Otherwise, it will formally notify that the procedure is not continued.

The suspension will **take effect** five days after confirmation notification is received by the coordinator (or on a later date specified in the notification).

It will be **lifted** if the conditions for resuming implementation of the action are met.

The coordinator will be formally notified of the lifting and the Agreement will be amended to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the

Agreement has already been terminated (see Article 50).

The suspension will be lifted with effect from the resumption date set out in the amendment.

This date may be before the date on which the amendment enters into force.

Costs incurred during suspension are not eligible (see Article 6).

The beneficiaries may not claim damages due to suspension by the *[Commission][Agency]* (see Article 46).

Suspension of the action implementation does not affect the *[Commission's][Agency's]* right to terminate the Agreement or participation of a beneficiary (see Article 50), reduce the grant or recover amounts unduly paid (see Articles 43 and 44).

1. Suspension of the action implementation, by the Commission/Agency

The Commission/Agency may suspend the action implementation (in full or in part), on the grounds listed in this Article.

Grounds for suspension of the action implementation (by the Commission/Agency):

❖ **(Suspicion of) Substantial errors, irregularities, fraud or serious breach of obligations (in this grant)**

The Commission/Agency may suspend the action implementation, if a beneficiary has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations — either during the award procedure or under the GA

Example: *A beneficiary is suspected to have provided false documents in order to participate in the EU action.*

ⓘ *For more information on substantial errors, irregularities, fraud or serious breach of obligations, see Article 50.3.*

❖ **Substantial errors, irregularities, fraud or serious breach of obligations (in other grants)**

The Commission/Agency may also suspend the action implementation if such substantial errors, irregularities, fraud or serious breach of obligations were found in *other* award procedures or GAs ('extension of findings from other grants to this grant'), if

- the other grants were awarded under similar conditions and
- the substantial errors, irregularities, fraud or serious breach of obligations are:
  - systemic or recurrent and
  - have a material impact on this grant.

Example:

During an audit of a beneficiary participating in several H2020 actions, the Commission detected systematic substantial errors in the calculation of personnel costs (which mainly include costs of personnel employed by another company). These errors are not limited to the GA audited, but also affect all other GAs signed by the audited beneficiary.

The Commission may suspend the part of the implementation of the action concerned by the audit findings (i.e. the part of the action to be implemented by the beneficiary audited) until the error is corrected for the on-going action.

❖ **Suspicion of loss of scientific or technological relevance**

The Commission/Agency may suspend the action implementation, if it needs time to assess whether the action has lost scientific or technological relevance.

This may in particular be the case:

- if a complete revision of Annex 1 is necessary to assess the impact of a request for amendment
- if work has significantly deviated from the original work plan
- if a key beneficiary leaves the action and the consortium needs time to find a replacement
- after a check, audit or review of the action.

Example: *There are technical problems with implementing the work under an action as described in Annex 1, so the consortium proposes changes to the work to be carried out. This may jeopardise its technological relevance and the Commission decides to suspend its implementation and to carry out a review.*

Suspension **starts** five days after it is notified to the coordinator (or on a later date specified in the notification) and **ends** on the resumption date specified in the amendment signed by the Commission/Agency).

2. Procedure

Before suspending the action implementation, the Commission/Agency will follow a **contradictory procedure**.

ⓘ *For the basic contradictory procedure, see Article 42.*

If possible, the Commission/Agency will give an estimation of the length of the suspension period.

The contradictory procedure will be made using the electronic exchange system *(see Article 52)*. The coordinator must inform the other beneficiaries offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)*.

If the Commission/Agency simultaneously suspends a beneficiary's participation in several actions *(e.g. for irregularities having a material impact on several grants)*, it will make a separate contradictory procedure with each coordinator individually.

3. Effects

During suspension, **costs** incurred (for implementing the suspended part of the action) are **not eligible** *(see Article 6.5)*. Costs may again be charged to the action, once the action implementation is resumed.

If the **action can be continued**, the Commission/Agency will lift the suspension and formally notify the coordinator.

The coordinator (or the Commission/Agency) must then request an amendment to the GA, to adapt it to the new situation *(e.g. by extending the action's duration modifying Annexes 1 and 2, updating the reporting periods)*.

⚠ The amendment must be requested in accordance with Article 55 *(e.g. it must be signed by the coordinator's LSIGN)*.

The suspension is lifted (as from the resumption date set out in the amendment), if the Commission/Agency approves the amendment.

If the **action** (or part of it) **cannot be continued**, the Commission/Agency may decide to terminate the GA (or the participation of a beneficiary).

If the suspension leads to the termination, no further costs (incurred after the date of suspension) can be declared, except for costs related to submitting the periodic report for the last reporting period and the final report *(see Article 6.1)*.

⚠ **Ineligible costs** will be rejected. The **grant** may be **reduced,** if the termination is based on substantial errors, irregularities, fraud or serious breach of obligations (*for instance if the action has not been implemented properly; see Articles 5.3 and 43*). In certain cases, the Commission/Agency may also impose **administrative and/or financial penalties** *(see Article 45)*.

Example:

A key beneficiary is suspected of having declared as eligible personnel costs under the GA the costs of personnel employed by another company. The Commission suspends the implementation of the action in order to carry out checks. During that period of suspension, the beneficiary withdraws from the action. The consortium cannot find a replacement for this beneficiary and terminates the GA in accordance with Article 50.1.

The GA starts on 1.5.2015 and lasts 42 months.
The Commission suspends its implementation.
The coordinator confirms having received notification of the suspension on 18.3.2017.
The suspension takes effect on 23.3.2017.
On 23.6.2017, the consortium formally notifies the termination of the GA.
Only costs incurred from 1.5.2015 to 23.3.2017 and the costs of submitting the periodic report for the last reporting period and the final report are eligible.
The Commission will reject the ineligible personnel costs.

ARTICLE 50 — TERMINATION OF THE AGREEMENT OR OF PARTICIPATION FOR ONE OR MORE BENEFICIARIES

50.1 Termination of the Agreement, by the beneficiaries

50.1.1 Conditions and procedure

The beneficiaries may terminate the Agreement.

The coordinator must formally notify termination to the *[Commission][Agency]* (see Article 52), stating:

- the reasons why and
- the date the termination will take effect. This date must be after the notification.

If no reasons are given or if the *[Commission][Agency]* considers the reasons do not justify termination, the Agreement will be considered to have been '**terminated improperly'**

The termination will **take effect** on the day specified in the notification**.**

50.1.2 Effects

The coordinator must — within 60 days from when termination takes effect — submit:

(i) a periodic report (for the open reporting period until termination; see Article 20.3) and

(ii) the final report (see Article 20.4).

If the *[Commission][Agency]* does not receive the reports within the deadline (see above), only costs which are included in an approved periodic report will be taken into account.

The *[Commission][Agency]* will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

Improper termination may lead to a reduction of the grant (see Article 43).

After termination, the beneficiaries' obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

1. Termination of the GA, by the beneficiaries

The beneficiaries have the right to terminate the GA.

Termination may in principle be based on **any ground** *(e.g. circumstances make its implementation impossible or excessively difficult; loss of the action's scientific or technological relevance; force majeure).*

Example: *The consortium decides to terminate the GA due to technical difficulties that result in the action no longer being viable.*

 If action implementation just becomes *temporarily* impossible or excessively difficult, it may be better not to terminate the GA but to suspend it *(see Article 49)*. In this case, the GA would only be terminated if it turns out later that implementation cannot be resumed anymore.

Example:

A fire devastates a laboratory where most of the technical equipment and computers used in the action are stored.

If the beneficiaries consider that the laboratory can be replaced and the action will still be correctly implemented, they may suspend implementation and resume it when the new laboratory is operational. However, if the action has been suspended and it is not possible to find a new laboratory and therefore it is impossible to resume the action, the beneficiaries may terminate the GA.

The Commission/Agency **cannot oppose**, but termination will be considered '**improper**' if there are no legitimate reasons for discontinuing the action.

This will be the case, for instance, if:

- the implementation of the action has become impossible or excessively difficult due to the beneficiaries' wilful misconduct or gross negligence
- the reasons provided are based on changes in the strategic choices of the beneficiaries, not linked to any specific economic or operational difficulties
- implementation would have been possible if the beneficiaries had made more (but still reasonable) efforts.

Example: *The beneficiaries decide to terminate the GA due to internal communication and decision-making problems within the consortium, and notify the Commission via the coordinator. The Commission considers that these internal problems have jeopardised the action's implementation, but do not justify terminating the GA because they could have been solved within the consortium on the basis of the consortium agreement. This improper termination may lead to a reduction of the grant.*

⚠ Improper termination of the GA may lead to a reduction of the grant.

2. Procedure

The coordinator must formally notify the Commission/Agency (through the electronic exchange system; *see Article 52*) of the termination on behalf of the beneficiaries.

Best practice: Beneficiaries are advised to contact the Commission/Agency beforehand, in order to discuss the termination.

3. Effects

The coordinator must — within 60 days — **submit** the necessary **reports** (i.e. a periodic report for the open reporting period until termination and the final report).

The Commission/Agency will **calculate** the **final grant amount** and the **payment of the balance** *(see Articles 5.3 and 21.4)*.

If the total amount of earlier payments (pre-financing payment and interim payments, if any) received before termination:

- is greater than the final grant amount, the balance is negative and will take the form of a recovery *(see Article 21.4 and 44.1.2)*.
- is lower than the final grant amount, the Commission/Agency will pay the balance *(see Article 21.4)*.

Only costs incurred before termination (i.e. before the notified date on which termination takes effect) are **eligible**.

Exception/Specific case:

Costs related to submission of the **periodic report for the last reporting period** and the **final report** are eligible, even though incurred after the end of the action *(see Article 6.1)*.

> ***Example:*** *The action's duration is 36 months. The starting date is 1.1.2016. The notified termination date is 1.5.2017. Therefore, only costs incurred in connection with the action from 1.1.2016 to 1.5.2017 (16 months) and the costs related to submission of the periodic report for the last reporting period and the final report are eligible*

Costs related to contracts or subcontracts are eligible for the part of the contract/subcontract delivered before the termination.

> ***Example:*** *One of the beneficiaries of the GA has a contract to carry out 8 tests during the action's duration. However, only three tests out of 8 are carried out before the GA is terminated. Therefore, only the costs related to these 3 tests carried out before termination may be eligible for the action.*

⚠ If the coordinator **fails to submit the reports** (within the 60 calendar days of the date on which termination takes effect), the costs that are not included in an approved periodic financial report will not be taken into account when the final grant amount is calculated. The Commission/Agency will not send a reminder and will not extend the deadline.

⚠ If the Commission/Agency considers that the **termination** was **improper**, it may reduce the grant *(see Articles 5.3 and 43)*.

Termination has no effect on the **provisions** that normally **continue to apply** after the end of the action.

Obligations that continue to apply after the GA is terminated:

- Keeping records and other supporting documentation *(Article 18.1)*
- Submitting the periodic report (for the open reporting period until termination) and the final report *(see Article 50.1.1 and 20)*
- Providing requested information and allow access to their sites and premises (for checks, reviews, audits, investigations or evaluations of the action's impact; *see Articles 22 and 23)*
- Complying with the rules on management of intellectual property, background and results *(see Section 3 of Chapter 4)*
- Maintaining confidentiality *(see Article 36)*
- Complying with the obligations concerning security-related issues (if applicable) *(see Article 37)*
- Promoting the action and giving visibility to the EU funding *(see Article 38)*
- No assignment of claims for payment *(see Article 40)*

50.2 Termination of participation for one or more beneficiaries, by the beneficiaries

50.2.1 Conditions and procedure

The participation of one or more beneficiaries may be terminated by the coordinator, on request of the beneficiary concerned or on behalf of the other beneficiaries.

The coordinator must formally notify termination to the *[Commission][Agency]* (see Article 52) and inform the beneficiary concerned.

If the coordinator's participation is terminated without its agreement, the formal notification must be done by another beneficiary (acting on behalf of the other beneficiaries).

The notification must include:

- the reasons why;
- the opinion of the beneficiary concerned (or proof that this opinion has been requested in writing);
- the date the termination takes effect. This date must be after the notification, and
- a request for amendment (see Article 55), with a proposal for reallocation of the tasks and the estimated budget of the beneficiary concerned (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 56). If termination takes effect after the period set out in Article 3, no request for amendment must be included unless the beneficiary concerned is the coordinator. In this case, the request for amendment must propose a new coordinator.

If this information is not given or if the *[Commission][Agency]* considers that the reasons do not justify termination, the participation will be considered to have been **terminated improperly**.

The termination will **take effect** on the day specified in the notification.

50.2.2 Effects

The coordinator must — within 30 days from when termination takes effect — submit:

(i) a report on the distribution of payments to the beneficiary concerned and

(ii) if termination takes effect during the period set out in Article 3, a '**termination report**' from the beneficiary concerned, for the open reporting period until termination, containing an overview of the progress of the work, an overview of the use of resources, the individual financial statement and, if applicable, the certificate on the financial statement (see Article 20.3 and 20.4).

The information in the termination report must also be included in the periodic report for the next reporting period (see Article 20.3).

If the request for amendment is rejected by the *[Commission][Agency]* because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants the Agreement may be terminated according to Article 50.3.1(c).

If the request for amendment is accepted by the *[Commission][Agency]*, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The *[Commission][Agency]* will **calculate** — on the basis of the periodic reports, the termination report and the report on the distribution of payments — if the (pre-financing and interim) payments received by the beneficiary concerned exceed the beneficiary's EU contribution (calculated by applying the reimbursement rate(s) to the eligible costs declared by the beneficiary *[and its linked third parties]* and approved by the *[Commission][Agency]*). Only costs incurred by the beneficiary concerned until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

- If the payments received **exceed the amounts due**:

  - if termination takes effect during the period set out in Article 3 and the request for amendment is accepted, the beneficiary concerned must repay to the coordinator the amount unduly received. The *[Commission][Agency]* will formally notify the amount unduly received and request the beneficiary concerned to repay it to the coordinator within 30 days of receiving notification. If it does not repay the coordinator, the *[Commission][Agency]* will draw upon the Guarantee Fund to pay the coordinator and then notify a **debit note** on behalf draw upon the Guarantee Fund to the beneficiary concerned (see Article 44);

  - in all other cases (in particular if termination takes effect after the period set out in Article 3), the *[Commission][Agency]* will formally notify a **debit note** to the beneficiary concerned. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *[Commission][Agency]* the amount due and the *[Commission][Agency]* will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);

  - if the beneficiary concerned is the former coordinator, it must repay the new coordinator the amount unduly received, unless:

    - termination takes effect after an interim payment and

    - the former coordinator has not distributed amounts received as pre-financing or interim payments (see Article 21.7).

    In this case, the *[Commission][Agency]* will formally notify a **debit note** to the former coordinator. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *[Commission][Agency]* the amount due. The *[Commission][Agency]* will then pay the new coordinator and notify a debit note on behalf of the Guarantee Fund to the former coordinator (see Article 44).

- If the payments received **do not exceed the amounts due**: amounts owed to the beneficiary concerned will be included in the next interim or final payment.

If the *[Commission][Agency]* does not receive the termination report within the deadline (see above), only costs included in an approved periodic report will be taken into account.

If the *[Commission][Agency]* does not receive the report on the distribution of payments within the deadline (see above), it will consider that:

- the coordinator did not distribute any payment to the beneficiary concerned and that

- the beneficiary concerned must not repay any amount to the coordinator.

Improper termination may lead to a reduction of the grant (see Article 43) or termination of the Agreement (see Article 50).

After termination, the concerned beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

1. Termination of the participation of one or more beneficiaries, by the beneficiaries

The beneficiaries may terminate the participation of a beneficiary (or of several beneficiaries), if:

- the beneficiary concerned requests it or
- the consortium decides to terminate the beneficiary's participation (using its internal decision-making procedures). In this case, the consortium must ask for the beneficiary's opinion and provide it to the Commission/Agency if obtained.

Specific case:

The decision to terminate the **coordinator**'s **participation without its agreement**, must be made by the rest of the consortium, according to its internal decision-making procedures.

Termination may in principle be based on **any ground**.

⚠ If a beneficiary goes bankrupt or is wound up**,** it or the coordinator must inform the Commission/Agency and notify the termination of its participation without delay. Late notification will be considered as a breach of the information obligation under the GA *(see Article 17.2)*.

⚠ Termination extends to linked third parties. Terminating a beneficiary's participation implies that its linked third parties' may not implement part of the action either.

The Commission/Agency **cannot oppose** the termination of a beneficiary's participation, but termination will be considered '**improper**' if there are no legitimate reasons.

2. Procedure

The coordinator must formally notify the Commission/Agency (through the electronic exchange system; *see Article 52*) of the termination. At the same time, the coordinator must inform the beneficiary concerned (through the usual communication channels — in writing and offline, i.e. **not** via the electronic exchange system).

Specific case:

In case the **coordinator's participation** is terminated **without its agreement**, the notification must be made by one of the beneficiaries (acting on behalf of the other beneficiaries).

⚠ Notification can only be made by a person authorised to do so in the electronic exchange system (authorisation is linked certain roles (i.e. functions) in the electronic exchange system).

ⓘ *For more information on the roles and access rights in the electronic exchange system, see the H2020 Online Manual.*

The notification must include all the **information** set out in this Article (including the date the termination takes effect) and a **request for** an **amendment**.

Exception:

No amendment is needed, if the termination takes effect after the end of the action (unless it concerns the coordinator, since the new coordinator has many obligations also after the end of the action, *e.g. submit the reports, receive the payment of the balance and distribute the payment among the beneficiaries*).

The amendment must be requested in accordance with Article 55.

If it is accepted, the GA will be amended to introduce the necessary changes (including, if necessary, the addition of new beneficiaries).

If it is rejected, the beneficiaries will have to make another proposal to the Commission/Agency. If a satisfactory solution cannot be found (*i.e. the request for an amendment calls into question the decision awarding the grant or breaches the principle of the equal treatment of applicants)*, the GA may be terminated.

Example:

A key beneficiary terminates its participation in the GA. The consortium cannot find a replacement and cannot continue implementing the action without one.

3. Effects

If the **GA continues** (i.e. it is amended), the remaining members of the consortium (and any new beneficiaries) have the responsibility for fully implementing the action as described in Annex 1 *(see Article 41.1)*. They must carry out the action — including the part that the defaulting beneficiary was supposed to carry out and without any additional EU contribution to do so —, unless the Commission/Agency expressly renounces it.

The (new) coordinator must — within 30 days — **submit** the necessary **reports** (i.e. a report on the distribution of payments to the beneficiary concerned and a termination report).

⚠ The information contained in the beneficiary's termination report must also be included in the periodic report for the next reporting period.

The Commission/Agency will **calculate** the **amount due** to the beneficiary whose participation is terminated:

- if the Commission/Agency owes amounts to the beneficiary, those amounts will be paid with the following payment to the consortium (interim or final)
- if the beneficiary owes amounts to the Commission/Agency, those amounts must be repaid by it.

Only costs incurred before termination (i.e. before the notified date on which termination takes effect) are **eligible**.

Exception/Specific case:

Costs related to submission of the **termination report** are eligible, even though incurred after the end of the action for that beneficiary *(see Article 6.1)*.

Costs related to **contracts** or **subcontracts** are eligible for the part of the contract/subcontract delivered before the termination.

⚠ If the coordinator **fails to submit the termination report** (within the 30 calendar days of the date on which termination takes effect), costs that are not included in an approved periodic financial report will not be taken into account when the contribution is calculated. The Commission/Agency will not send a written reminder and will not extend the deadline. In this case:

⚠ If the coordinator **fails to submit the report on the distribution of payments**, the beneficiary whose participation was terminated will not have to repay any amounts.

If the Commission/Agency considers that the **termination** was **improper**, it may terminate the GA *(see Article 50.3.1(c)) and/*or — at the payment of the balance — reduce the grant *(see Articles 5.3 and 43)*.

Termination has no effect on the **provisions** that normally **continue to apply** after the end of the action *(see Article 50.1)*.

50.3 Termination of the Agreement or participation for one or more beneficiaries, by the *[Commission][Agency]*

50.3.1 Conditions

The *[Commission][Agency]* may terminate the Agreement or the participation of one or more beneficiaries, if:

(a) one or more beneficiaries do not accede to the Agreement (see Article 56);

(b) a change to their legal, financial, technical, organisational or ownership situation *[(or those of its linked third parties)]* is likely to substantially affect or delay the implementation of the action or calls into question the decision to award the grant;

(c) following termination of participation for one or more beneficiaries (see above), the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants (see Article 55);

(d) implementation of the action is prevented by force majeure (see Article 51) or suspended by the coordinator (see Article 49.1) and either:

(i) resumption is impossible, or

(ii) the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants;

(e) a beneficiary is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law;

(f) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has been found guilty of professional misconduct, proven by any means;

(g) a beneficiary does not comply with the applicable national law on taxes and social security;

(h) the action has lost scientific or technological relevance;

(i) [OPTION for joint actions (joint call with a third country or an international organisation): the third country or international organisation action (see Article 2) has not started by the date specified in Annex 1.][OPTION: not applicable];

(j) [OPTION for joint actions (joint call with a third country or an international organisation): the third country or international organisation action (see Article 2) is terminated or can no longer contribute to the action][OPTION: not applicable];

(k) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity affecting the EU's financial interests;

(i) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has — in the award procedure or under the Agreement — committed:

(i) substantial errors, irregularities, fraud or

(ii) serious breach of obligations, including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles;

(m) a beneficiary has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant ('**extension of findings from other grants to this grant**').

50.3.2 Procedure

Before terminating the Agreement or participation of one or more beneficiaries, the *[Commission][Agency]* will formally notify the coordinator:

- informing it of its intention to terminate and the reasons why and
- inviting it, within 30 days of receiving notification, to submit observations and — in case of Point (l.ii) above — to inform the *[Commission][Agency]* of the measures to ensure compliance with the obligations under the Agreement.

If the *[Commission][Agency]* does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify to the coordinator **confirmation** of the termination and the date it will take effect. Otherwise, it will formally notify that the procedure is not continued.

The termination will **take effect**:

- for terminations under Points (b), (c), (e), (g), (h), (j), and (l.ii) above: on the day specified in the notification (see above);
- for terminations under Points (a), (d), (f), (i), (k), (l.i) and (m) above: on the day after notification is received by the coordinator.

50.3.3 Effects

(a) for **termination of the Agreement**:

The coordinator must — within 60 days from when termination takes effect — submit:

(i) a periodic report (for the last open reporting period until termination; see Article 20.3) and

(ii) a final report (see Article 20.4).

If the Agreement is terminated for breach of the obligation to submit the reports (see Articles 20.8 and 50.3.1(l)), the coordinator may not submit any reports after termination.

If the *[Commission][Agency]* does not receive the reports within the deadline (see above), only costs which are included in an approved periodic report will be taken into account.

The *[Commission][Agency]* will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

This does not affect the *[Commission's][Agency's]* right to reduce the grant (see Article 43) or to impose administrative and financial penalties (Article 45).

The beneficiaries may not claim damages due to termination by the *[Commission][Agency]* (see Article 46).

After termination, the beneficiaries' obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

(b) for **termination of the participation of one or more beneficiaries**:

The coordinator must — within 60 days from when termination takes effect — submit:

(i) a report on the distribution of payments to the beneficiary concerned;

(ii) a request for amendment (see Article 55), with a proposal for reallocation of the tasks and estimated budget of the beneficiary concerned (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 56). If termination is notified after the period set out in Article 3, no request for amendment must be submitted unless the beneficiary concerned is the coordinator. In this case the request for amendment must propose a new coordinator, and

(iii) if termination takes effect during the period set out in Article 3, a **termination report** from the beneficiary concerned, for the open reporting period until termination, containing an overview of the progress of the work, an overview of the use of resources, the individual financial statement and, if applicable, the certificate on the financial statement (see Article 20).

The information in the termination report must also be included in the periodic report for the next reporting period (see Article 20.3).

If the request for amendment is rejected by the *[Commission][Agency]* because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants, the Agreement may be terminated according to Article 50.3.1(c).

If the request for amendment is accepted by the *[Commission][Agency]*, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The *[Commission][Agency]* will **calculate** — on the basis of the periodic reports, the termination report and the report on the distribution of payments — if the (pre-financing and interim) payments received by the beneficiary concerned exceed the beneficiary's EU contribution (calculated by applying the reimbursement rate(s) to the eligible costs declared by the beneficiary *[and its linked third parties]* and approved by the *[Commission][Agency]*). Only costs incurred by the beneficiary concerned until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

- If the payments received **exceed the amounts due**:
  - if termination takes effect during the period set out in Article 3 and the request for amendment is accepted, the beneficiary concerned must repay to the coordinator the amount unduly received. The *[Commission][Agency]* will formally notify the amount unduly received and request the beneficiary concerned to repay it to the coordinator within 30 days of receiving notification. If it does not repay the coordinator, the *[Commission][Agency]* will draw upon the Guarantee Fund to pay the coordinator and then notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
  - in all other cases, in particular if termination takes effect after the period set out in Article 3, the *[Commission][Agency]* will formally notify a **debit note** to the beneficiary concerned. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *[Commission][Agency]* the amount due and the *[Commission][Agency]* will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44) ;

- if the beneficiary concerned is the former coordinator, it must repay the new coordinator the amount unduly received, unless:
  - termination takes effect after an interim payment and
  - the former coordinator has not distributed amounts received as pre-financing or interim payments (see Article 21.7)

  In this case, the *[Commission][Agency]* will formally notify a **debit note** to the former coordinator. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *[Commission][Agency]* the amount due. The *[Commission][Agency]* will then pay the new coordinator and notify a debit note on behalf of the Guarantee Fund to the former coordinator (see Article 44).

- If the payments received **do not exceed the amounts due**: amounts owed to the beneficiary concerned will be included in the next interim or final payment.

If the *[Commission][Agency]* does not receive the termination report within the deadline (see above), only costs included in an approved periodic report will be taken into account.

If the *[Commission][Agency]* does not receive the report on the distribution of payments within the deadline (see above), it will consider that:

- the coordinator did not distribute any payment to the beneficiary concerned, and that
- the beneficiary concerned must not repay any amount to the coordinator.

After termination, the concerned beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

1. Termination of the GA or of the participation for one or more beneficiaries, by the Commission/Agency

The Commission/Agency may terminate the GA or the participation of one (or more) of the beneficiaries, on the grounds listed in this Article.

Grounds for termination (by the Commission/Agency):

❖ **Non-accession to the GA**

The Commission/Agency may terminate the GA, if one (or more) beneficiaries did not accede to the GA (i.e. did not sign the Accession Form within 30 days after the entry into force of the GA).

⚠ Non-accession of a beneficiary does not automatically lead to the termination of the GA.

The coordinator can request an amendment, to adapt the action to the new situation and ensure its proper implementation (even without the beneficiary) *(see Article 55)*.

In this case, the Commission/Agency will terminate the GA only if the consortium does not find an appropriate solution or no longer complies with the eligibility criteria set out General Annexes A and C to the Main Work Programme *(e.g. the rules regarding the number of participants, their legal situation, or their place of establishment)*.[69]

Examples:

1. Three entities from Poland, Portugal and France, are going to participate in a GA. The French beneficiary does not accede to the GA, and the other two beneficiaries fail to find a solution to this.

[69] *See also Article 8 of the Rules for Participation.*

The Commission terminates the GA because the conditions set out in the work programme are not met (i.e. the rule that three legal entities must take part).

2. *A key beneficiary does not take part in the action after all; the assessment of the action based on the award criteria announced in the call for proposals would have had a different result.*

❖ **Change in a beneficiary's situation**

The Commission/Agency may terminate the participation of a beneficiary, if there was a change to its (or one of its linked third parties') legal, financial, technical, organisational or ownership situation, that is likely to substantially affect or delay the action's implementation or calls into question the decision to award the grant.

Example: *An action's key beneficiary is taken over by a non-European company (not entitled to participate due to security reasons). This substantially affects the action's implementation and the ownership, protection, exploitation and dissemination of the results. The Commission decides to terminate the beneficiary's participation in the GA, or the GA if the other beneficiaries fail to find a solution to this.*

❖ **GA cannot be amended after termination** of a beneficiary's participation

The Commission/Agency may terminate the GA, if it cannot be amended after the termination of a beneficiary's participation (because the necessary changes to the GA would call into question the decision awarding the grant or breach the principle of the equal treatment of applicants; *see Article 55*).

Example: *A beneficiary that has the necessary background to work on the action and owns the installations where most of the work would be implemented decides to terminate its participation. The Commission decides to terminate the GA because continuing implementing the action without this beneficiary calls into question the decision awarding the grant.*

❖ **Action can no longer be implemented**

The Commission/Agency may terminate the GA, if action implementation is prevented by *force majeure* or the action implementation is suspended and resumption is not possible or the necessary amendment is not acceptable *(see Articles 49 and 55).*

Example: *A fire devastates a laboratory where most of the technical equipment and computers with the action's research data are stored. The coordinator suspends the action's implementation to rebuild the laboratory. The Commission carries out a review after the force majeure takes place and concludes that the consortium can no longer implement the action. It therefore decides to terminate the GA.*

❖ **Bankruptcy, winding-up, administration**, **arrangement with creditors, suspension of business activities or other similar proceedings**

The Commission/Agency may terminate the participation of a beneficiary, if it is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law (since this normally implies that the beneficiary cannot carry out the work properly).

Example: *A coordinator informs the Commission that a beneficiary participating in a GA is insolvent. It does not notify termination of the participation of the beneficiary because it thinks that the beneficiary may continue implementing the action. The Commission considers that the beneficiary has not sufficient means to pursue implementation and terminates the beneficiary's participation.*

⚠ The beneficiaries must inform the Commission/Agency immediately of any such proceedings *(see Article 17.2).*

❖ **Professional misconduct**

The Commission/Agency may terminate the participation of a beneficiary, if it (or one of its representatives) has been found guilty of professional misconduct (proven by any means).

Example: *A legal entity's participation in a GA is terminated when an investigation uncovers that it has falsified the results of clinical studies.*

❖ **Non-compliance with tax or social security obligations**

The Commission/Agency may terminate the participation of a beneficiary, if it has not fulfilled its obligations to pay social security contributions or taxes under national law (i.e. the law of the country in which it is established and those of the country where the action is to be implemented; *see Article 7*).

Example: *A national administration notifies to the Commission/Agency that a beneficiary did not pay social security contribution for its employees. If this beneficiary cannot prove that it paid these contributions or clarify the situation within a given deadline, the Commission may terminate its participation in the GA.*

❖ **Loss of scientific or technological relevance**

The Commission/Agency may terminate the GA, if the action has lost scientific or technological relevance.

Example: *A proposal on research on a new system based on recently discovered material is selected. After the action starts, a European scientific publication demonstrates that this material contains a chemical substance that irremediably harms human health. Therefore, the action cannot continue and the Commission decides to terminate the GA.*

❖ **Specific grounds for joint actions**

For joint actions (i.e. actions funded following a joint call with a third country or an international organisation; *see Article 2*), the Commission/Agency may terminate the GA, if:

– the third country's or international organisation's action does not start by the date specified in Annex 1

⚠ In this case, **no costs** incurred by the consortium will be accepted. Any pre-financing provided to the consortium must be returned to the Commission in full.

– the third country's or international organisation's action is terminated

– the third country's or international organisation's action can no longer contribute to the subject of the GA.

Example: *if the coordination agreement is not signed.*

❖ **Fraud, corruption or other criminal activities**

The Commission/Agency may terminate the participation of a beneficiary, if it (or one of its representatives) has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity affecting the EU's financial interests.

Example: *A legal entity's participation in several EU projects is terminated when its owner is convicted by national courts to have falsified documents to illicitly obtain European funds.*

❖ **Substantial errors, irregularities, fraud or serious breach of obligations (in this grant or other grants)**

The Commission/Agency may terminate the participation of a beneficiary, if it (or one of its representatives) has committed — either during the award procedure or under the GA —

substantial errors, irregularities, fraud or a serious breach of obligations (including improper implementation of the action, submission of false information, failure to provide required information or breach of ethical principles).

An '**irregularity**' means a violation of the applicable rules (i.e. GA or applicable international, EU or national law) that may result from an act or omission and has (or would have) a negative effect on the EU budget (through unjustified expenditure).

A '**serious breach of obligations**' may refer to any of the consortium's or beneficiaries' obligations under the GA. It is normally also considered an irregularity**.**

Examples:

The coordinator of the GA failed to transfer EUR 200.000 to the other beneficiaries and used these funds to pursue its own aims. The Commission therefore decides to terminate the participation of the coordinator in the GA.

The beneficiaries failed to submit the reports required for the action and the request for payment within the given deadlines, despite the reminders sent by the project officer. The Agency therefore decides to terminate the GA.

'**Improper implementation of the action**' is specifically linked to the implementation of the action tasks (as described in Annex 1).

Example: *The Commission reviews an action and concludes that it failed to achieve its critical objectives and is absolutely not on schedule. It then requires the consortium to provide a short-term implementation plan to be carried out in the second half of the year to solve the situation. The consortium submits the short-term implementation plan. The Commission/Agency concludes that the plan provided is not acceptable and decides to terminate the GA.*

Submission of false information

Example: *The Commission may decide to terminate a beneficiary's participation if an audit reveals that the beneficiary charged costs in its individual financial statement that did not correspond to the services rendered and they were based on fake invoices.*

'Failure to provide required information' normally happens if a beneficiary refuses — in the context of a check, review, audit or investigation *(see Article 22)* — to provide the requested information or allow access to its premises.

Example: *The Commission decides to carry an on-the-spot audit of a beneficiary that is participating in a GA. It requests the beneficiary to provide certain information, including its accounts. The beneficiary refuses to provide this information. After this refusal, the Commission may in writing request this information within a given deadline. If it does this and the beneficiary again fails to provide the information required, the Commission may terminate the beneficiary's participation in the GA.*

'Breach of ethical principles' means breach of the obligations under Article 34.1 or of the ethics requirements set out in Annex 1.

Example: *The Agency decides to terminate a GA after discovering that the scientific reports submitted by the consortium were almost entirely copied from the web (plagiarism).*

⚠ The Commission/Agency may also terminate the GA or the participation of the concerned beneficiary, if such substantial errors, irregularities, fraud or serious breach of obligations were found in other award procedures or GAs ('**extension of findings** from other grants to this grant'), if:

– the other grants were awarded under similar conditions and

– the substantial errors, irregularities, fraud or serious breach of obligations are:

– systemic or recurrent and,

– have a material impact on this grant.

⚠ Before terminating (the GA or the participation of a beneficiary), the Commission/Agency may first *suspend* the action implementation *(see Article 49.2)* to try to fix the problems and re-establish compliance with the GA. In this case, it will only terminate (the GA or a beneficiary) if the action cannot be resumed.

2. Procedure

Before terminating a GA or the participation of one or more beneficiaries, the Commission/Agency will follow a **contradictory procedure**.

ⓘ *For the basic contradictory procedure, see Article 42.*

The contradictory procedure will be made using the electronic exchange system *(see Article 52)*. The coordinator must immediately inform the beneficiaries concerned offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)* and ask for their comments. It must also inform the other beneficiaries.

If the Commission/Agency simultaneously terminates a beneficiary's participation in several actions *(e.g. for irregularities having a material impact on several grants)*, it will make a separate contradictory procedure with each coordinator individually.

If a beneficiary's participation is terminated on the basis of Article 50.3.1(e) (i.e. bankruptcy, winding-up, administration, etc), the Commission/Agency will also contact the liquidator/administrator.

If it confirms termination, the Commission/Agency will specify the date on which termination will **take effect**.

For some cases, the Commission/Agency may choose a future date (in order to give the beneficiaries the possibility to close the action). For the other cases, the termination will take effect immediately, i.e. on the day after the coordinator receives the notification *(see Article 50.3.2)*.

3. Effects

The effects of terminating the GA are the same as when the beneficiaries terminate the GA *(see Article 50.1.2)*.

⚠ **Ineligible costs** may be **rejected**. The **grant** may be **reduced**, if the termination is based on substantial errors, irregularities, fraud or serious breach of obligations (*for instance if the action has not been implemented properly; see Articles 5.3 and 43)*.

⚠ In certain cases, the Commission/Agency may moreover impose **administrative and/or financial penalties** *(see Article 45)*.

The effects of terminating the participation of one (or more) of the beneficiaries are the same as when the beneficiaries terminate the participation of another beneficiary *(see Article 50.2.2)***.**

ARTICLE 51 — FORCE MAJEURE

51.1 Force majeure

'Force majeure' means any situation or event that:

- prevents either party from fulfilling their obligations under the Agreement,
- was unforeseeable, exceptional situation and beyond the parties' control,
- was not due to error or negligence on their part (or on the part of third parties involved in the action), and
- proves to be inevitable in spite of exercising all due diligence.

The following cannot be invoked as force majeure:

- any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure,
- labour disputes or strikes, or
- financial difficulties.

Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects.

The parties must immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation of the action as soon as possible.

The party prevented by force majeure from fulfilling its obligations under the Agreement cannot be considered in breach of them.

1. Force majeure

In case of force majeure, a party will be excused from not fulfilling its obligations. (Therefore, if the Commission agrees that an event should be considered force majeure, it is understood that there is no breach of obligations under the GA and none of the adverse measures for breach of contract will be applied.)

'Force majeure' relates to an extraordinary event or situation that is beyond the party's control and that prevents it from fulfilling its obligations under the GA.

The event or situation must be inevitable (despite the beneficiary's due diligence, i.e. level of care that can reasonably be expected from a beneficiary, in order to ensure the fulfilment of its obligations under the GA) and unforeseeable. Force majeure cannot be used as justification in situations caused by a beneficiary's negligence or by events that could reasonably have been anticipated.

Examples (force majeure): *An earthquake, terrorist attack or volcanic eruption; delay in delivering equipment due to floods in the region/country.*

The following cases are explicitly **not** considered force majeure:

- default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure
- labour disputes or strikes

– financial difficulties.

Examples (not force majeure): *machine malfunctions, robberies; a subcontractor building a test site went bankrupt.*

In a case of force majeure, the party concerned must immediately **formally notify** the other party (via the coordinator, via the electronic exchange system, *see Article 52*). The coordinator must inform the other beneficiaries offline.

The party concerned must quickly put in place all possible **measures to limit** the **damage** caused by the force majeure, including measures to limit related costs.

Force majeure normally has **no specific effects** on the **eligibility of costs**.

Costs are eligible, if they fulfil the conditions set out in Article 6 — like any other costs incurred under the action. However, if force majeure entails *extra* costs for the implementation of the action, it will normally be the beneficiaries that must bear them (since they were not budgeted and the maximum grant amount set out in Article 5 cannot be increased).

Example: *Airline tickets bought for a beneficiary to attend a meeting related to the action. The flight is cancelled due to a volcano eruption, making it impossible for the beneficiary to travel to the meeting. If the ticket costs fulfil the eligibility conditions set out under Article 6 of the GA, they are eligible, even if the beneficiary did not travel and did not take part in the meeting.*

This is different from FP7, where only costs for tasks that had actually been executed *up to* the date of the force majeure were eligible (⚠ new in Horizon 2020).

Force majeure may lead to suspension of the action implementation *(see Article 49)* or termination of the GA *(see Article 50)*.

CHAPTER 7 FINAL PROVISIONS

ARTICLE 52 — COMMUNICATION BETWEEN THE PARTIES

52.1 Form and means of communication

Communication under the Agreement (information, requests, submissions, 'formal notifications', etc.) must:

- be made in writing and
- bear the number of the Agreement.

Until the payment of the balance: all communication must be made through the electronic exchange system and using the forms and templates provided there.

After the payment of the balance: formal notifications must be made by registered post with proof of delivery ('formal notification on paper').

Communications in the electronic exchange system must be made by persons authorised according to the 'Terms and Conditions of Use of the electronic exchange system'. For naming the authorised persons, each beneficiary must have designated to the *[Commission][Agency]* — before the signature of this Agreement — a 'Legal Entity Appointed Representative (LEAR)'. The role and tasks of the LEAR are stipulated in his/her appointment letter (see Terms and Conditions of Use of the electronic exchange system).

If the electronic exchange system is temporarily unavailable, instructions will be given on the *[Commission's][Agency's]* websites.

52.2 Date of communication

Communications are considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the electronic exchange system).

Formal notifications through the **electronic** exchange system are considered to have been made when they are received by the receiving party (i.e. on the date and time of acceptance by the receiving party, as indicated by the time stamp). A formal notification that has not been accepted within 10 days after sending is considered to have been accepted.

Formal notifications **on paper** sent by **registered post** with proof of delivery (only after the payment of the balance) are considered to have been made on either:

- the delivery date registered by the postal service or
- the deadline for collection at the post office.

If the electronic exchange system is temporarily unavailable, the sending party cannot be considered in breach of its obligation to send a communication within a specified deadline.

52.3 Addresses for communication

The **electronic** exchange system must be accessed via the following URL:

[insert URL]

The *[Commission][Agency]* will formally notify the coordinator and beneficiaries in advance any changes to this URL.

Formal notifications on paper (only after the payment of the balance) addressed **to the *[Commission][Agency]*** must be sent to the following address:

[*European Commission][name of the Agency]*
[*Directorate-General][Department]* [complete]
[*Directorate [complete*]]
Unit [complete]
[Post code, town and country]

Formal notifications on paper (only after the payment of the balance) addressed **to the beneficiaries** must be sent to their legal address as specified in the Beneficiary Register (in the electronic exchange system).

1. Communication between the parties — Electronic exchange system

All communication between the consortium and the Commission/Agency (except for *formal* notifications after payment of the balance) must be in electronic form **via the electronic exchange system** (i.e. the 'My Area' section of the Participant Portal).

The electronic exchange system offers different **functions**:

- you can view and change your legal entity data in the 'Beneficiary Register'
- for reporting, deliverables and amendments, you can directly access the necessary forms and applications and make submissions
- to contact the Commission/Agency, you can use a 'Messaging' function
- to make formal notifications (i.e. when the GA refers to 'formal notifications' or 'formally notify'), you can use the 'Formal Notifications' function
- where necessary, the electronic exchange system allows for secured **electronic signatures** (*for instance, for signing the GA, accession to the GA, amendments and financial statements).*

The electronic exchange system keeps **logs** of **all communication** and allows for **delivery** of formal notifications **with proof of receipt**.

All messages are recorded in the 'Grant File' (with date and time).

Formal notifications are also recorded via the 'formal notifications' function (with information on when they were sent and received, i.e. date and time the receiving party first accessed the notification, as indicated by the time stamp).

⚠ Even if the recipient beneficiary never accesses the notification in the electronic exchange system *(e.g. refusal of reception or omission)*, the formal notification is **considered to have been accepted** ten days after it is sent. Any delay for reacting is counted as of day eleven.

A**ccess** to the electronic exchange system is limited to persons with a **user account** and **authorisation** to act for the beneficiary.

Authorisation is linked to the 'role' (i.e. function) that is attributed to the person (each beneficiary's LEAR does this for the people authorised to sign grant agreements and amendments (LSIGNs) or financial statements (FSIGNs)). Only persons who have been assigned one of these roles can use the electronic exchange system.

Examples:

Only Legal Signatories (PLSIGNs) may sign the GA and amendments.

Only Financial Statement Signatories (PFSIGNs) may sign the financial statements.

Only Coordinator Contacts (CoCos) may submit information to the Commission.

Only Participant Contacts (PaCos) may submit information to the coordinator (information that must be submitted via the electronic exchange system). They cannot submit information directly to the Commission.

Only the Participant Contact (PaCo, or CoCo in case of the coordinator), Legal Signatory (PLSIGN) or Financial Signatory (PFSIGN) of the recipient beneficiary may access a formal notification for the first time (i.e. may formally receive it).

Task Managers (TaMa) may only complete and save web forms and upload documents related to their organisation's participation in the grant. They cannot submit information to the coordinator or the Commission.

Team Members (TeMe) have read-only access to project information. They cannot complete or save forms, nor submit information to the coordinator or the Commission.

ⓘ *For more information on access and roles in the electronic exchange system, see the H2020 Online Manual.*

In principle, all communications from/to the Commission/Agency must go **via the coordinator** (unless the GA or other rules provide for direct communication with the other beneficiaries, *e.g. Articles 20, 22, 23, 30, 41, 55; OLAF Regulations*).

ARTICLE 53 — INTERPRETATION OF THE AGREEMENT

53.1 Precedence of the Terms and Conditions over the Annexes

The provisions in the Terms and Conditions of the Agreement take precedence over its Annexes.

The provisions in Annex 2 take precedence over Annex 1.

53.2 Privileges and immunities

[OPTION for all international organisations: *Nothing in the Agreement may be interpreted as a waiver of any privileges or immunities accorded to the [insert name of international organisation(s)] by its constituent documents or international law.**]***

ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES

In accordance with Regulation No 1182/71[47], **periods expressed in days, months or years** are calculated from the moment the triggering event occurs.

The day during which that event occurs is not considered as falling within the period.

[47] Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L124, 8.6.1971, p.1)

1. Periods expressed in days

A period expressed in days starts on the day following the triggering event and ends at midnight of the last day of the period. Days are calendar days.

Example: *Under Article 18.3, the coordinator must submit a periodic report within 60 days following the end of each reporting period.*

The action is divided into the following reporting periods:

RP1: from 1 March 2015 to 31 August 2016

RP2: from 1 September 2016 to 28 February 2017

Therefore, the deadline of 60 days for the first periodic report starts on 1 September 2016 and ends on 30 October 2016.

The deadline of 60 days for the second and last periodic report starts on 1 March 2017 and ends on 29 of April 2017.

2. Periods expressed in months or years

Periods expressed in months or years end at midnight on the day with the same date as the day on which the period started, in the last month or year of the period.

Example:

Under Article 47, the Commission/Agency may suspend the payment deadline if a request for payment cannot be approved. The suspension takes effect on the day the Commission/Agency sends the notification. When the suspension exceeds two months, the coordinator may ask the Commission/Agency if it will continue.

The Commission sent the notification for a grant payment deadline on 31 July 2016. Therefore, the suspension will have exceeded two months on 30 September 2016.

If that day does not exist *(e.g. 31 of April)*, the period ends at midnight of the last day of that month (e.g. 30 of April).

Example:

Under Article 22.1.2, reviews may be started up to two years after the balance is paid.

A grant's balance is paid on 29 February 2016. Therefore, the two-year period starts on 1 March 2016 and ends on 28 February 2018.

ARTICLE 55 — AMENDMENTS TO THE AGREEMENT

55.1 Conditions

The Agreement may be amended, unless the amendment entails changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

Amendments may be requested by any of the parties.

55.2 Procedure

The party requesting an amendment must submit a request for amendment signed in the electronic exchange system (see Article 52).

The coordinator submits and receives requests for amendment on behalf of the beneficiaries (see Annex 3).

If a change of coordinator is requested without its agreement, the submission must be done by another beneficiary (acting on behalf of the other beneficiaries).

The notification must include:

- the reasons why;
- the appropriate supporting documents; and
- for a change of coordinator without its agreement: the opinion of the coordinator (or proof that this opinion has been requested in writing).

The *[Commission][Agency]* may request additional information.

If the party receiving the request agrees, it must sign the amendment in the electronic exchange system within 45 days of receiving notification (or any additional information the *[Commission][Agency]* has requested). If it does not agree, it must formally notify its disagreement within the same deadline. The deadline may be extended, if necessary for the assessment of the request. If no notification is received within the deadline, the request is considered to have been rejected.

An amendment **enters into force** on the day of the signature by the receiving party.

An amendment **takes effect** on the date agreed by the parties or, in the absence of such an agreement, on the date on which the amendment enters into force.

When & What?

An amendment is necessary whenever there is a need to **change** the **terms and conditions** of the GA. In some cases, the GA explicitly provides for them.

⚠ Amendments may **not** result in changes that — if known before awarding the grant — would have had an impact on the decision to award it. Those are mostly changes that:

- may have had an impact on the assessment of the applicant with regard to the eligibility and selection criteria *(e.g. consortium of three entities established in three different Member States (BG, PL and FR) and replacement of the PL beneficiary by a BG beneficiary while the call required the representation in the consortium of at least three Member States)*
- breach the principle of equal treatment of applicants
- involve modifications in the action and/or the related budget which may have affected the assessment with regard to the award criteria announced in the call *(e.g. the tasks in*

Annex 1 are changed so substantially that the action no longer corresponds to the scope of the call)

– do not comply with the rules applicable to the GA (i.e. Financial Regulation, Rules for Participation, etc.) or with provisions of the GA itself *(e.g. amendment to subcontract tasks of the coordinator).*

Normally amendments are done at the initiative of the consortium, but they may also be proposed by the Commission/Agency *(e.g. where errors need to be rectified or to modify Annex 1 following a review of the action).*

The amended provisions **become an integral part of the GA**; all other provisions remain unchanged and continue to have full effect.

Indicative list of cases where an amendment is necessary:

❖ **Removing a beneficiary whose participation was terminated** by the beneficiaries or by the Commission/Agency *(see Article 50.2 and 50.3).*

For termination by the beneficiaries, the request for amendment must be part of the notification of termination. In this case, don't forget to also submit the opinion of the beneficiary whose participation is terminated (or proof that its opinion has been requested in writing).

For termination by the Commission/Agency, the request for amendment must be submitted together with the report on the distribution of payments and the termination report (if needed).

⚠ No need to request an amendment if termination takes effect *after* the end of the action *(see Article 3)*, unless the beneficiary concerned is the coordinator and the amendment is necessary to comply with the obligation to submit the reports and distribute the payments.

❖ **Adding a new beneficiary** *(see Article 56.2)*

The request for amendment must include the Accession Form (signed by the new beneficiary in the electronic exchange system (i.e. the 'My Area' section of the Participant Portal; *see Article 52*).

The new beneficiary must provide a declaration on joint and several liability of its linked third party if required by the Commission/Agency.

⚠ Don't forget that the new beneficiary must first register (and get validated) in the 'Beneficiary Register' of the Participant Portal (unless it already has a validated Participant Identification Code (PIC)).

Depending on the Horizon 2020 status(es) of the new beneficiary, the applicable options will be added.

Example:

If the new beneficiary is an international organisation, the options related to international organisations specified under Articles 22.4, 53.2, will be added to the GA and the options specified under Articles 57.1 and 57.2 will be added if applicable to that international organisation.

For the JRC, the options in the Preamble, Article 20.3(b)(iii) and Article 21.2 will be added.

❖ **Change of beneficiary due to partial takeover (called 'partial transfer of rights and obligations' in FP7)**

'Partial takeover' means that some assets of the beneficiary have been taken over by another entity *(e.g. partial acquisition).*

If the GA is part of the assets taken over, the beneficiary must request an amendment: the entity to which the GA has been transferred may become the new party of the GA if the Commission/Agency agrees on that.

The contractual position of the old and the new party (vis-à-vis the Commission/Agency and the other beneficiaries) must be clearly spelled out in the request for amendment: in particular, it must clarify which is the financial liability of the new party for the old party's debts towards the Commission/Agency or the Guarantee Fund.

⚠ Don't forget that the new party must first register (and get validated) in the 'Beneficiary Register' of the Participant Portal (unless it already has a validated Participant Identification Code (PIC)).

❖ **Change of coordinator**

The amendment request may be submitted after the period set out under Article 3 of the GA ends.

The initial coordinator may continue to participate in the action as a beneficiary (or may terminate its participation).

If the new coordinator is already a beneficiary of the GA, he will start his new functions from the date agreed by the parties, or — in the absence of such an agreement — the date on which the amendment enters into force. The date agreed cannot be before the initial coordinator has terminated its functions.

⚠ If the new coordinator is not a beneficiary of the GA, it must also accede to the GA as a new beneficiary *(see Article 56.2)*.

❖ **Change of the coordinator's bank account for payments**

Example: *The coordinator changes bank.*

The coordinator must submit the necessary supporting documents and update the banking information on the Participant Portal.

⚠ Do not forget to first update the bank account data in the Beneficiary Register (and get it validated).

❖ **Change of the action's title and/or acronym**

Example: *the consortium finds out that the acronym of their action is a protected trademark.*

❖ **Change of the starting date, duration of the action or reporting periods**

Example: *The GA for the action has a fixed starting date that is before the date on which the GA enters into force. Because of weather conditions, the consortium cannot start on that date and requests the Commission to change it.*

An extension of the action must be requested *before* the action ends and will only be accepted in exceptional cases.

⚠ Even if the action is prolonged, the maximum grant amount cannot be increased.

❖ **Amendment for resuming the action after a suspension of the action implementation**

⚠ Don't forget to communicate the date from which the action's implementation can restart ('resumption date').

❖ **Changes to Annex 1 (description of the action)**, in particular:

– a significant change of the **action tasks** *(e.g. if tasks are added/removed)* or of their division among the beneficiaries

– changes concerning **in-kind contributions** provided by third parties (against payment or free-of-charge) or **subcontracts**

Such changes could in principle also be made as 'approval without formal amendment' (*see Articles 11, 12 and 13*); however, if the beneficiary requests an amendment, it has prior assurance of the Commission/Agency's *agreement* (on the in-kind contribution or subcontracting). If no amendment is requested, the Commission/Agency may consider them as not compliant with the GA, and declare their costs ineligible (when approving the reports).

– changes concerning the tasks to be carried out by **linked third parties** and related costs

There is no 'approval without formal amendment' *(see Article 14)*.

– changes concerning optional clauses in the GA (options are removed or added, *e.g. adding the options to provide trans-national access to research infrastructure requires normally a modification of Annex 1 and/or Annex 2).*

❖ **Changes to the maximum grant amount, the action's estimated eligible costs, amount of pre-financing or contribution to the Guarantee Fund**

Changes to the maximum grant amount and/or the action's estimated eligible costs will be accepted only in very exceptional cases *(e.g. due to a clerical mistake).*

⚠ The maximum grant amount cannot be increased.

Changes to the maximum grant amount may have an effect on the pre-financing (and the contribution to the Guarantee Fund).

❖ **Changes to Annex 2 (estimated budget)** which require an amendment *(see Article 4)*, in particular:

– a budget transfer of amounts between beneficiaries or between budget categories (or both) which arises from a significant change that affects the action's work (i.e. Annex 1)

– a budget transfer to a form of costs that is not provided for in Annex 2 *(e.g. from actual costs to unit costs)*

Examples:

During the action's implementation, a beneficiary that declared its direct personnel costs as actual costs in Annex 2 decides to change this and instead to declare its direct personnel costs as unit costs in accordance with its usual accounting practices.

An SME joins an on-going GA. The SME owner does not have a salary and requests to be reimbursed for his/her personnel costs based on the unit costs for SME owners. In this case, it is necessary to amend the GA to add the appropriate option under Article 5.2 and to modify the action's estimated budget in Annexes 1 and 2.

Indicative list of cases where no amendment is needed:

- **Budget transfers not listed above**

  Transfers of amounts between beneficiaries or between budget categories (or both) do not require an amendment provided that the action is implemented in line with Annex 1 *(see Article 4.2).*

- **Change of name or address of a beneficiary or coordinator**

  Changes concerning name, legal form *(e.g. Ltd., S.A.)*, registration number, address, VAT number or persons authorised to represent it for the purposes of signing the GA) do not require a formal amendment; an update of this data in the Beneficiary Register (by the LEAR, validated by the Commission validation service) is normally sufficient.

  ⓘ *For more information on data updates, see the Horizon 2020 Online Manual.*

  ⚠ If — exceptionally — the Commission/Agency considers that the change you registered affects the implementation of the action, it will inform the coordinator. If an amendment of the GA is needed, the coordinator may request it.

  Example: *Company RO moves from Europe to Australia. If the change of address implies that the beneficiary is not going to be anymore eligible for EU funding, then it may be necessary to amend the GAs in which it participates*

- **Change of beneficiary due to universal takeover (called 'universal transfer of rights and obligations' in FP7)**

  'Universal takeover' means that all the rights and obligations of the beneficiary have been taken over by another entity *(e.g. in cases of merger or full acquisition)*. The beneficiary ceases to exist and all its rights and obligations (including those under the GA) are taken over by the new entity.

  Example:

  Beneficiary X may merge with another existing entity Y by:

  (i) becoming part of it (thus X and Y are together known as 'Y', and entity X ceases to exist) or

  (ii) establishing a new separate legal entity (X and Y are together known as 'Z').

  Since *all* the rights and obligations of the old entity (including the GA) are transferred to the new one, there is normally no issue of legal certainty and it is therefore not necessary to make a formal amendment under Article 55. An update of the data in the Beneficiary Register (by the LEAR, validated by the Commission validation service) is normally sufficient.

  ⚠ If — exceptionally — the Commission/Agency considers that the change you registered affects the implementation of the action, it will inform the coordinator. If an amendment to the GA is needed, the coordinator may request it.

  Example:

  The legal form or type of organisation of the new entity differs from that of the former beneficiary or linked third party and this has an impact on the implementation of the action.

  Case 1: *The coordinator transfers all its rights and obligations to another legal entity. If this involves a change of the bank account number in Article 21.8, each GA in which it participates as coordinator must be amended to update this information.*

Case 2: *A non-profit legal entity X is acquired by a big for-profit company Y; as a result of the acquisition Y assumes the rights and obligations of X in on-going Innovation GAs. The reimbursement rate applicable to Y in those on-going GAs will differ from that of X since the new beneficiary will not be entitled to a reimbursement rate of 100% but to a reimbursement rate of 70%. It may be necessary to modify the GA via an amendment, notably to update the table of costs.*

For on-going RIA grants there will be no need to modify Annex 2 since the reimbursement rate is the same for all beneficiaries (100%).

⚠ Don't forget that — in addition to updating the data in the Beneficiary Register — you must also inform your coordinator (offline) under Article 17.2, if the universal takeover may:

- significantly affect or delay the implementation of the action or the EU's financial interests or
- affect the decision to award the grant or the compliance with requirements under the GA.

The coordinators must then inform the Commission/Agency (via the electronic exchange system) and may request an amendment.

The same is true if the universal takeover concerns one of your linked third parties.

How?

An amendment request must be **prepared** by the **coordinator**, normally by filling out the forms **directly in the electronic exchange system** (i.e. the 'My Area' section of the Participant Portal; *see Article 52*).

Specific case:

A request to **change the coordinator** (against the coordinator's will) can be submitted by any beneficiary (acting on behalf of the others).

⚠ If none of the available forms are appropriate, beneficiaries are advised to contact the Commission/Agency for the drafting of the request.

⚠ **Requests** for amendment must be unambiguous and complete and submitted **sufficiently in advance** (to allow proper analysis and preparation before they are due to take effect) and, generally, **before the end of the action** (i.e. the date set out in Article 3).

Requests introduced after the end of the action will be accepted only exceptionally, for very specific (duly substantiated) cases (*e.g. change of bank account, change of coordinator to make the payment of the balance).*

Once completed, the amendment request (with all its supporting documents) must be **submitted** and **signed** by the PLSIGN of the coordinator. (⚠ The coordinator submits and signs on behalf of the other beneficiaries; *see Annex 3*).

Coordinators must ensure internally that they have the agreement of the consortium, on the basis of their internal decision-making processes *(e.g. unanimity, simple or qualified majority, etc. set out in the consortium agreement).*

⚠ Don't forget:

- for new beneficiaries (or linked third parties): to ensure that they have obtained all necessary validations in the 'Beneficiary Register'

Example:

Validation of the new bank account, to change the bank account

Legal entity validation, to add a new beneficiary that is not yet validated. This means that the new beneficiary will first have to register in the Beneficiary Register, be validated, appoint a LEAR, and provide the necessary information and supporting documents through the Participant Portal.

– to include the necessary information and supporting documents (as required for certain amendments)

Examples:

For a change of coordinator without his/her agreement, the coordinator's opinion (or written proof that this has been requested).

To add a new beneficiary, an Accession Form (Annex 3) duly signed in the electronic exchange system (see Article 56.2).

To amend Annexes 1 and 2, amended versions of these annexes.

ⓘ *For more information on the submission procedure, see the Horizon 2020 Online Manual.*

The coordinator may at any moment **withdraw** the amendment request (before it has been accepted or rejected). However, it cannot be *change*d (without withdrawing it and submitting a new one).

2. Procedure

The requesting party must formally notify the request for amendment to the other party (through the electronic exchange system).

ⓘ *For more information on the preparation and submission procedure, see above point 1.*

⚠ Beneficiaries are advised to contact the Commission/Agency beforehand (via the 'Messages' function of the electronic exchange system), in order to discuss the amendment.

The other party must — within 45 days — agree or disagree, by sending a formal notification (for the consortium: signed by the PLSIGN of the coordinator) through the electronic exchange system.

If there is **no reaction** within this deadline, the request is considered to have been rejected (⚠ new in Horizon 2020: contrary to FP7, there is no tacit approval of amendments). A new amendment request may be submitted (even if it fully or partly repeats the initial request).

A request containing several changes to the GA will be considered as a **package** that cannot be divided into several requests. The request will be agreed or rejected by the other party as a whole.

If, the receiving party requests additional information/documents a new deadline will apply, i.e. 45 days from receipt of the additional information/documents.

Example: *The coordinator submits a request to add a new beneficiary with several linked third parties (see Article 14). The Commission requests a signed declaration for the joint and several liability of the linked third parties (Annex 3a). A new 45-day deadline for evaluation and validation will apply from the moment the Commission receives the declaration.*

The deadline may be extended by the Commission/Agency — for a period to be determined case-by-case —, if necessary for the assessment of the request *(e.g. a review is needed to assess the changes).*

⚠ A signed and submitted amendment requests (including supporting documents) cannot be changed — only accepted, rejected or withdrawn. It is however possible to provide clarifications (through the electronic exchange system) or additional information/documents.

The amendment **enters into force** and is binding from the moment the receiving party has agreed to it (i.e. signed in the electronic exchange system).

Unless the parties agree otherwise, the amendment will **take effect** (i.e. the modifications to the GA will start to apply) on the day of entry into force of the amendment.

If the parties agree on another date, it should normally be *after* the entry into force. In justified cases it may be before (retroactivity of the amendment). (⚠ In certain cases, the GA itself provides for retroactivity.)

Examples (retroactivity foreseen in the GA):

Where a new beneficiary or linked third party is added to the GA, it must assume the rights and obligations from the date of its accession specified in the Accession Form. This retroactivity implies that its costs will be considered eligible as from the date of its accession to the GA (and not as from the entry into force of the amendment).

Following a suspension of the implementation of the action by the beneficiary or by the Commission, the suspension will be lifted with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force (see Article 49.2.2).

⚠ Depending on the nature of the modification, the date of taking effect may have an impact on the eligibility of costs.

If an amendment request involves a number of changes, these could take effect on different dates.

Example:

On 1 May 2016, the coordinator requests an amendment to change the bank account and to add a new beneficiary. The addition of the beneficiary takes effect from the date of its accession, as specified in the Accession Form (1 April 2016), while the change of bank account takes effect on a date agreed by the parties or on the date on which the amendment enters into force (i.e. 10 June 2016, the day it is signed by the receiving party).

ARTICLE 56 — ACCESSION TO THE AGREEMENT

56.1 Accession of the beneficiaries mentioned in the Preamble

The other beneficiaries must accede to the Agreement by signing the Accession Form (see Annex 3) in the electronic exchange system (see Article 52), within 30 days after its entry into force (see Article 58).

[OPTION if Article 14 applies and joint and several liability has been requested: *If the [Commission][Agency] has requested joint and several liability of a linked third party, the beneficiary to which it is linked must also submit — at accession — a declaration on joint and several liability (see Annex 3a) signed by the third party.]*

They will assume the rights and obligations under the Agreement with effect from the date of its entry into force (see Article 58).

If a beneficiary does not accede to the Agreement within the above deadline, the coordinator must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action. This does not affect the *[Commission's][Agency's]* right to terminate the Agreement (see Article 50).

1. Accession to the GA, by the beneficiaries mentioned in the Preamble

All beneficiaries (except the coordinator) must accede to the GA by signing the Accession Form *(see Annex 3)* in the electronic exchange system. They must do this within 30 days after the GA enters into force *(see Article 58)*.

⚠ Only the beneficiary's Legal Signatories (PLSIGNs) may sign the Accession Forms.

The coordinator is not obliged to **distribute hard copies of the GA** and Accession Form to the other beneficiaries (⚠ new in Horizon 2020).

All documents are available in the electronic exchange system (i.e. the 'My Area' section of the Participant Portal).

Specific case:

If the Commission/Agency requested **joint and several liability** of a **linked third party** *(see Article 14)*, the beneficiary to which the third party is linked must also submit a declaration on joint and several liability (using the template in Annex 3a).

The third party must sign a hard copy of this declaration and must send it to its beneficiary. The beneficiary must scan it and submit it in PDF format, together with the Accession Form.

The beneficiary must keep the original version.

⚠ If the beneficiary does not submit this declaration, it will not be considered a party to the GA.

Third parties are not required to sign an Accession Form (since they are not parties to the grant).

Specific case:

⚠ If the **JRC** is a beneficiary, it must sign Annex 3b as its Accession Form (instead of Annex 3).

56.2 Addition of new beneficiaries

In justified cases, the beneficiaries may request the addition of a new beneficiary.

For this purpose, the coordinator must submit a request for amendment in accordance with Article 55. It must include an Accession Form (see Annex 3) signed by the new beneficiary in the electronic exchange system (see Article 52).

New beneficiaries must assume the rights and obligations under the Agreement with effect from the date of their accession specified in the Accession Form (see Annex 3).

1. Addition of new beneficiaries

In justified cases, the beneficiaries may request adding a new beneficiary.

The new beneficiary must comply with the eligibility criteria of the call, have sufficient operational and financial capacity to perform the proposed tasks, comply with the non-exclusion criteria and commit to implement the action under the same terms and conditions as the other beneficiaries.

Specific case:

For mono-beneficiary actions, replacing the beneficiary during the action implementation is only possible under exceptional circumstances *(e.g. the beneficiary transfers all its rights and obligations, including those related to the action, to another legal entity).*

How?

The new beneficiary must:

- register in the 'Beneficiary Register' of the Participant Portal and be validated (unless it already has a validated Participant Identification Code (PIC))
- sign the Accession Form directly in electronic exchange system (i.e. the 'My Area' section of the Participant Portal; *see Article 52*)
- provide a declaration on joint and several liability of its linked third party (if required by the Commission/Agency).

The coordinator must request an amendment for adding a new beneficiary (*see Article 55*).

ARTICLE 57 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES

57.1 Applicable law

The Agreement is governed by the applicable EU law, supplemented if necessary by the law of Belgium. ***[OPTION for international organisations that do not accept application of Union law:*** *except for [insert name(s) of the international organisations concerned])*

[OPTION for international organisations that accept application of Union law but not Belgian law: *For [insert name(s) of the international organisations concerned], the Agreement is governed by the applicable EU law, supplemented if necessary by the law of [insert name of a Member State or an EFTA country] [and, where appropriate, by the rules of the general principles governing the law of international organisations and the rules of general international law].**]***

57.2 Dispute settlement

If a dispute concerning the interpretation, application or validity of the Agreement cannot be settled amicably, the General Court — or, on appeal, the Court of Justice of the European Union — has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU).

[OPTION for non-EU beneficiaries (except beneficiaries established in an associated country with an association agreement to Horizon 2020 that stipulates sole jurisdiction of the European Court of Justice)*: As an exception, if such a dispute is between the [Commission][Agency] and [insert non-EU beneficiary(ies) name(s)], the competent Belgian courts have sole jurisdiction.**]***

If a dispute concerns offsetting or an enforceable decision under Article 299 TFEU (see Articles 44, 45 and 46), the beneficiaries must bring action before the General Court — or, on appeal, the Court of Justice of the European Union — under Article 263 TFEU.

[OPTION for beneficiaries that are international organisations and for beneficiaries not receiving EU funding, established in a non-EU or associated country and which according to their national law cannot be subject to the jurisdiction of the European Court of Justice: *For the following beneficiaries:*

- *[insert name of international organisation or beneficiary not receiving EU funding]*
- *[insert name of international organisation or beneficiary not receiving EU funding]*

[same for other beneficiaries that are international organisations or beneficiary not receiving EU funding]

disputes with the [Commission][Agency] relating to the Agreement must — if they cannot be settled amicably — be referred to arbitration.

The Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of entry into force of the Agreement will apply.

The appointing authority will be the Secretary-General of the Permanent Court of Arbitration following a written request submitted by either party.

The arbitration proceedings must take place in Brussels and the language used in the arbitral proceedings will be English.

*The arbitral award will be binding on all parties and will not be subject to appeal.**]***

1. Applicable law

As a general rule, Horizon 2020 GAs are subject to EU law (supplemented — where necessary — by Belgian law), for questions on their interpretation, application and validity.

Exception:

The GA may provide for derogations for international organisations (if requested by the international organisation):

	Applicable law
For international organisations that do not accept EU law	No reference to any applicable law[70]. The applicable law will be determined by the Permanent Court of Arbitration *(see also point 2)*. According to the *Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States*, the applicable law are: – the rules of the organisation concerned – the law applicable to any agreement or relationship between the parties and – where appropriate, the general principles governing the law of international organisations and the rules of general international law.
For international organisations that accept EU law, but not Belgian law	EU law applies, supplemented by the law of the Member state or EFTA country that is mentioned in the GA. In addition, a reference to the general principles governing the law of the international organisations and the rules of general international law may be included in the GA.

⚠ This is new compared to FP7, where (instead of a horizontal approach for all international organisations which cannot accept EU law) it was necessary to make specific provisions (special clause 3), in order to accommodate, for example, the participation of specialised agencies and international organisations of the UN system (⚠ new in Horizon 2020).

It makes it easier for international organisations to participate in Horizon 2020.

2. Dispute settlement

As a general rule, Horizon 2020 GAs contain an Article 272 TFEU-arbitration clause, referring disputes on the interpretation, application or validity of the GA to the Court of Justice of the European Union.

Exceptions/Specific cases:

For non-EU beneficiaries, disputes are normally referred to the competent Belgian courts.

For beneficiaries that cannot be subject to the jurisdiction of the Court of Justice (i.e. beneficiaries that do not receive EU funding and are established in a non-EU or associated country and international organisations), disputes are referred to the Permanent Court of Arbitration *(see also point 1)*. (⚠ This

[70] *See Article 180(1) of the Rules of Application.*

referral is in line with the Financial and Administrative Framework Agreement (FAFA) with the United Nations[71]).

If a dispute is of public law nature (i.e. concerns offsetting or an enforceable decision under Article 299 TFEU), actions must be brought before the Court of Justice of the European Union not under Article 272, but under Article 263 TFEU.

[71] Financial and Administrative Framework Agreement concluded by the European Community, represented by the Commission, and the United Nations of 29.4.2003, as amended by Addendum No 1 of 22.1.2014 (C(2014) 238).

ARTICLE 58 — ENTRY INTO FORCE OF THE AGREEMENT

The Agreement will **enter into force** on the day of signature by the *[Commission][Agency]* or the coordinator, depending on which is later.

1. Entry into force

The GA enters into force when the last of the following two signs:

- the coordinator
- the Commission/Agency.

⚠ It is usually the Commission/Agency who signs last.

II. ERC

II.1 Background information and approach

The ERC General Model Grant Agreement ('ERC General MGA') is used for the following ERC grants ('frontier research grants'):

- ERC Starting Grants (StG)
- ERC Consolidator Grants (CoG)
- ERC Advanced Grants (AdG)
- ERC Synergy Grants (SyG).

The ERC General MGA is not used for ERC PoC and ERC low value grants (which have specific MGAs; *see below*).

⚠ ERC grants are open to **principal investigators** (PIs) of any nationality who intend to conduct a **frontier research project** in a Member State or associated country and which are hosted by a host institution that is based in an EU Member State or associated country and can receive EU funds.

ⓘ *For more information on ERC actions, see Article 2.*

ⓘ *For information on ERC funding opportunities, see the 'Search Topic' function on the Participant Portal.*

ⓘ *For information on ERC standard eligibility criteria, see the ERC calls conditions of the ERC Work Programme.*

The ERC General MGA follows the General MGA for numbering and content, except for the following:

Introductory remark all ERC MGAs

The ERC Model Grant Agreements deviate from the General Model Grant Agreement as follows:

- 'Coordinator' is replaced by 'principal beneficiary' (also in the Annexes)
- *[Agency][Commission]* is replaced by 'Agency'
- References to/options for Euratom are taken out
- 'Technical report(s)' is replaced by 'scientific report(s)'
-
- The table of contents is adapted
- Cross-references in the footnotes are adapted

Introductory remark ERC General MGA

The ERC General Model Grant Agreement deviates from the General Model Grant Agreement as follows:

- Preamble (ERC principal beneficiary and name(s) of the PI(s))
- Article 5.2 (ERC specific reimbursement rate)
- Article 7.1 (ERC reference to work under the of the PI)
- Articles 11.1, 12.1, 13.1, 50.1.1, 50.1.2., 50.2.2, 50.3.1, 50.3.2., 50.3.3. (reference to financial or scientific reporting where necessary)
- Articles 15 and 16 (not applicable)
- Articles 20 and 21 (ERC specific articles on reporting and payment)
- Articles 25.4, 26.3, 27.3, 28.2, 29.2, 29.3, 29.4, 31.4, 31.6, 38.1.2, 38.2.1 (reference to the ERC funding, the ERC logo and the PI where necessary)
- Article 32 (Provisions on the working conditions for the PI and his/her team)
- Article 41.3 (Provisions on internal arrangements)
- Article 56 (Mono-beneficiary grant can become multi-beneficiary grant by addition of new beneficiaries)
- Article 56a (ERC-specific Article on portability)

- Annex 2 Model for the estimated budget for the action
- Annex 4 Model for the financial statements

Introductory remark ERC PoC MGA

The ERC PoC Model Grant Agreement deviates from the General Model Grant Agreement as follows:

- Preamble (ERC principal beneficiary and name(s) of the PI(s))
- Article 5.2 (ERC specific reimbursement rate)
- Article 7.1 (ERC reference to work under the of the PI)
- Articles 11.1, 12.1, 13.1, 50.1.1, 50.1.2., 50.3.1, 50.3.2., 50.3.3. (reference to single or multi reporting where necessary)
- Articles 15 and 16 (not applicable)
- Articles 20 and 21 (ERC PoC specific articles on reporting and payment)
- Articles 26.3, 27.3, 28.2, 29.2, 29.3, 29.4, 31.6, 38.1.2, 38.2.1 (reference to the ERC funding, the ERC logo and the Principal Investigator where necessary)
- Article 41.3 (Provisions on internal arrangements)

ERC frontier research grants are however different from General MGA grants because:

– EU funding is granted to an individual action proposed by a Principal Investigator (PI) (or several, in the case of SyG), while

– the grant is signed between the Agency on one side and the beneficiaries on the other, one of which is the host institution of the PI and his/her research team.

⚠ By signing the GA, the beneficiaries take on a series of obligations towards the PI and the research team. In order to participate in the action, the PI must sign a supplementary agreement (SA) with its host institution where s/he also takes on a series of rights and obligations *(see Article 32)*.

ERC PoC grants are then follow-up grants to explore the innovation potential of results generated in a previous ERC frontier research grant.

The annotations will concentrate on differences in substance and interpretation that require explanation.

Parts that are not applicable or differ only in presentation *(e.g. Articles 11.1, 12.1, 13.1, 50.1.1, 50.1.2., 50.2.2, 50.3.1, 50.3.2., 50.3.3., 15 and 16, Annexes)* will not be shown.

By contrast, provisions that do not deviate from the General MGA, but that require clarification or a specific interpretation for ERC actions are added:

- Article 2 (ERC actions)
- Article 4.1 (ERC budget categories)
- Article 6 (ERC eligible and ineligible costs)
- Article 8 (ERC rules on third party involvement).

Since the ERC General MGA and the ERC PoC MGA have a similar set-up (i.e. principal beneficiary, host institution, principal investigator) and provisions, the annotations of the ERC PoC MGA will be limited to major differences from the ERC General MGA.

The annotations (for both MGAs) are based on the multi-beneficiary version. The differences between multi and mono-beneficiary versions are marginal.

II.2 ERC General MGA: Annotations

ERC MULTI-BENEFICIARY MODEL GRANT AGREEMENT

GRANT AGREEMENT

NUMBER [insert number] — [insert acronym]

This **Agreement** ('the Agreement') is **between** the following parties:

on the one part,

the **European Research Council Executive Agency (ERCEA)** ('the Agency'), under the power delegated by the European Commission ('the Commission'),

represented for the purposes of signature of this Agreement by [[function, [Directorate-General, Directorate, Unit] [Department]], [forename and surname][1],

and

on the other part,

1. 'the **principal beneficiary**':

[**full official name (short name)**][legal form], [official registration No], [official address in full], [VAT number], represented for the purposes of signing the Agreement by [function, forename and surname], hosting [and engaging] the following

***[OPTION by default:** 'principal investigator':*

- *[**Name**][Date and place of birth][2]*

*[**OPTION for SyG:** 'corresponding principal investigator':*

- *[**Name**][Date and place of birth]*

[and 'other principal investigator(s)':

- *[**Name**][Date and place of birth]*

- *[**Name**][Date and place of birth]].**]***

and the following other **beneficiaries**, if they sign their 'Accession Form' (see Annex 3 and Article 56):

2. [**full official name (short name)**][**legal form**], [official registration No], [official address in full] [VAT number], *[**OPTION for SyG:** hosting [and engaging] the 'other principal investigator(s)':*

- *[**Name**][Date and place of birth]*

- *[**Name**][Date and place of birth]*

[same for each beneficiary]

[OPTION for beneficiaries not receiving EU funding: *X. [full official name (short name)] [legal form], [official registration No], established in [official address in full] [VAT number], as 'beneficiary not receiving EU funding' (see Article 9),**]***

[same for each beneficiary]

[OPTION if the JRC is a beneficiary: *and X. the* ***Joint Research Centre (JRC)*** *established in [official address in full], if it signs the administrative arrangement (see Annex 3b)].*

Unless otherwise specified, references to 'beneficiary' or 'beneficiaries' include the principal beneficiary ***[OPTION if the JRC participates:*** *and the Joint Research Centre (JRC).**]*.

[OPTION for SyG*: Unless otherwise specified, references to 'principal investigator' or 'principal investigators' include the corresponding principal investigator.**]***

The parties referred to above have agreed to enter into the Agreement under the terms and conditions below.

By signing the Agreement or the Accession Form ***[OPTION if the JRC is a beneficiary:*** *or the administrative arrangement]*, the beneficiaries accept the grant and agree to implement the action under their own responsibility and in accordance with the Agreement, with all the obligations and conditions it sets out.

The Agreement is composed of:

Terms and Conditions

Annex 1	Description of the action
Annex 2	Estimated budget for the action
Annex 3	Accession Forms
	[OPTION to be used if Article 14 applies and if joint and several liability has been requested by the Agency: *3a Declaration on joint and several liability of linked third parties**]***
	[OPTION if the JRC participates: *3b Administrative arrangement**]***
Annex 4	Model financial statements
Annex 5	Model for the certificate on the financial statements
Annex 6	Model for the certificate on the methodology

The person representing the Agency must be an authorising officer (by delegation or sub-delegation) designated in accordance with document 60008 of 22.02.2001 '*Mise en place de la Charte des ordonnateurs*'.

[2] Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

1. Principal beneficiary — Beneficiaries — Host institution

In ERC grants, the coordinator is called 'principal beneficiary'.

Depending on the type of ERC grant, (at least) one of the beneficiaries is the institution that host (or employ) a principal investigator ('host institution').

The PI is usually employed by the host institution.

Exceptions:

A PI may be employed by a third party. In this case, the third party must also sign the supplementary agreement *(see Article 32)* and agree to the obligations included in it.

Retired researchers, in case the PI is no longer under an active labour contract.

ⓘ For more information on arrangements for signature and third parties, see the preamble of the General MGA.

2. Principal investigator(s)

For ERC grants, the main researcher (i.e. the 'principal investigator (PI)') is named in the GA.

⚠ Due to the key role of the PI, s/he cannot be replaced by any other researcher during the implementation of the action. Requests for amendments to change the PI will be rejected.

PIs do not become party to the GA, but are key actors of ERC actions.

This leads to an asymmetrical relationship (in which the PI is the key actor in charge of innovative research, but it is the host institution that subscribes to the financial and legal obligations under the GA — since it is the beneficiary).

Examples:

A PI can choose its own research team. This team is the research team *of* the PI and thus different from that of a network or consortium of undertakings, universities, research centres or other legal entities.

PIs must be supported by their host institution during the entire duration of the action.

In order to govern their internal relationship (during the implementation of the ERC action), PIs and their host institutions, must sign a supplementary agreement (SA) *(see Article 32)*.

⚠ In the case of ERC Synergy grants (with several PIs), each host institution must conclude a supplementary agreement with the PI(s) they engage.

⚠ ERC PoC grants do not require a supplementary agreement.

⚠ ERC Synergy grants have several PIs (but only one principal beneficiary and one of the PIs that acts as 'correspondent PI').

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** ('**action**'), as described in Annex 1.

***[OPTION for complementary grants if foreseen in the work programme:** The grant is a '**complementary grant**' to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].]*

***[OPTION for joint actions (joint call with a third country or an international organisation)**: The action is a '**jointly funded action**' which must be coordinated with the 'joint action' called [insert the name of the third country or international organisation action], as described in Annex 1.]*

1. ERC actions

ERC actions are mono- or multi-beneficiary actions with the following activities:

– any type of frontier research activity in any field of research (except nuclear energy; see the ERC calls conditions of the ERC Work Programme).

What? ERC grants fund excellent investigators and their research teams for ground-breaking, high-gain/high-risk research at the frontiers of knowledge.

ⓘ For examples of successful ERC actions, see the ERC website[72].

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual, the ERC home page or the ERC calls conditions of the ERC Work Programme and the call and topics pages of your call.

[72] Available at http://erc.europa.eu/erc-stories.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary *[(and linked third party)]* and **budget category** (see Articles 5, 6, *[and 14]*). ***[OPTION to be used if Article 9 applies:** It also contains the estimated costs of the beneficiaries not receiving EU funding (see Article 9).]*

[…]

1. Budget categories

The ERC General MGA uses in principle the **same budget categories** as the **General MGA**.

Budget categories of the ERC General MGA:

- direct personnel costs
- subcontracting costs
- other direct costs
- indirect costs

Differences (compared to the General MGA):

- No 'direct costs of providing financial support to third parties'
- No 'specific categories of costs'

⚠ The budget categories are relevant for the estimated budget *(Article 4 and Annex 2)*, forms of costs *(Article 5)*, cost eligibility rules *(Article 6.2)* and the cost declarations (i.e. financial statements; *Article 20 and Annex 4*).

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATE AND FORMS OF COSTS

[…]

5.2 Form of grant, reimbursement rate and forms of costs

The grant reimburses **100%** of the beneficiaries' *[and linked third parties']* eligible costs *for the action* (see Article 6) ('**reimbursement of eligible costs grant**') (see Annex 2)**.**

The estimated eligible costs of the action are EUR **[insert amount** (insert amount in words)**]**.

Eligible costs (see Article 6) must be declared under the following forms ('**forms of costs**'):

(f) for **direct personnel costs** *[(excluding personnel costs for activities in Point (f))]*[5]:

- as actually incurred costs ('**actual costs**') or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

Personnel **costs for SME owners** or **beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points A.4 and A.5) must be declared on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(g) for **direct costs of subcontracting** *[(excluding subcontracting costs for activities in Point (f))]*[6]: as actually incurred costs (**actual costs**);

(h) *not applicable;*

(i) for **other direct costs** *[(excluding other direct costs for the activities in Point (f))]*[7]: as actually incurred costs (**actual costs**);

(j) for **indirect costs** *[(excluding indirect costs for the activities in Point (f))]*[8]: on the basis of a flat-rate applied as set out in Article 6.2, Point E ('**flat-rate costs**');

[…]

5 To be used only if option in Point (f) is used.
6 To be used only if option in Point (f) is used.
7 To be used only if option in Point (f) is used.
8 To be used only if option in Point (f) is used.

1. Reimbursement rate

How much? For ERC actions, the reimbursement rate is set at **100 %** *(see the ERC calls conditions of the ERC Work Programme).*

2. Cost forms

For ERC actions, the **cost forms** are the **same** as in the **General MGA** *(see Article 5 General MGA).*

Exception:

The ERC General MGA does not use the same **unit costs** and **flat-rates** of the General MGA:

Like the General MGA, the ERC General MGA uses the unit cost for personnel costs on the basis of the beneficiaries' usual accounting practices, the unit costs for SME owners without salary and beneficiaries that are natural persons without salary and the flat-rate of 25% for indirect costs.[73]

However, the unit costs for the 'specific categories of costs' of the General MGA do not apply.

[73] See Article 29(1) and 33(2) of the Rules for Participation and Commission Decision C(2013) 8197 of 3 December 2013 authorising the use of reimbursement on the basis of unit costs for the personnel costs of the owners of small and medium-sized enterprises and beneficiaries that are natural persons not receiving a salary under the Horizon 2020 Framework Programme for Research and Innovation and under the Research and Training Programme of the European Atomic Energy Community (2014-2018). Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_sme-owners_natural-persons-no-salary_en.pdf.

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

[…]

6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

A. direct personnel costs;
B. direct costs of subcontracting;
C. *not applicable*;
D. other direct costs;
E. indirect costs

'Direct costs' are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point E below).

'Indirect costs' are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

1. Specific conditions for costs to be eligible

Article 6.2 refers to specific eligibility conditions applicable per budget category.

The ERC MGAs use in principle the same budget categories (**covering** the same **types of costs)** as the General MGA *(see Article 6 General MGA)* (with the exception of 'direct costs of providing financial support to third parties', 'specific categories of costs' and 'costs for providing access to trans-national research infrastructure').

The same **conditions for eligibility** and rules for **calculation** apply as in the General MGA *(see Article 6 General MGA).*

Specific cases:

For **direct personnel costs**:

⚠ Costs for 'teaching buy-outs' are not eligible: if the beneficiaries hire substitutes to perform some of the PI's duties that are not linked to the ERC grant *(e.g. teaching)*, they cannot declare the costs related to these substitutes.

If the **PI** is exceptionally **engaged by a third party** (which pays his/her salary) and seconded to work on the premises of the beneficiary (against reimbursement by the beneficiary), the **salary costs** may be declared as direct personnel costs (costs of personnel seconded by a third party).

⚠ In this case, the supplementary agreement must be signed by the PI, the host institution *and* the third party.

For **other direct costs**:

For ERC actions, **recruitment costs** are eligible as other direct costs because recruitment is one of the action's activities.

⚠ Recruitment costs are not considered as one of the action's activities for PoC.

⚠ As in actions under the General MGA, for ERC actions the **purchase of scientific publications** *(e.g. books, manuscripts, articles, digital copies, etc.)* needed for the implementation of the action may be eligible, if their direct link to the action and their necessity for the action is demonstrated.

Given the increasing emphasis on the protection of inventions, the PIs are encouraged to **protect** their **intellectual property rights properly** and the related costs are considered eligible.

Costs related to open access (to publications – including monographs – and research data) are eligible during the duration of the action. This includes costs charged by data repositories or data centres for the storage and maintenance of the research data generated by the action. With explicit agreement by the Agency, it can also include fees levied for a membership scheme (if this is a requirement for publishing with open access or if membership is a pre-condition for significantly lower article processing charges).

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

The beneficiaries must have the appropriate resources to implement the action.

If it is necessary to implement the action, the beneficiaries may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the Agency and the other beneficiaries for implementing the action.

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

For ERC actions, the same rules on third party involvement apply as in the General MGA *(see Article 8 General MGA).*

The PI must however be hosted (or engaged) by the principal beneficiary (it cannot be with other beneficiaries or linked third parties).

ARTICLE 18 — KEEPING RECORDS — SUPPORTING DOCUMENTATION

18.1 Obligation to keep records and other supporting documentation

[…]

18.1.2 Records and other documentation to support the costs declared

The beneficiaries must keep the records and documentation supporting the costs declared, in particular the following:

(a) for **actual costs**: adequate records and other supporting documentation to prove the costs declared, such as contracts, subcontracts, invoices and accounting records. In addition, the beneficiaries' usual cost accounting practices and internal control procedures must enable direct reconciliation between the amounts declared, the amounts recorded in their accounts and the amounts stated in the supporting documentation;

(b) for **unit costs**: adequate records and other supporting documentation to prove the number of units declared. ***[OPTION for trans-national access to research infrastructure:*** *This documentation must include records of the names, nationalities, and home institutions of users, as well as the nature and quantity of access provided to them.**]*** Beneficiaries do not need to identify the actual eligible costs covered or to keep or provide supporting documentation (such as accounting statements) to prove the amount per unit.

In addition, for **direct personnel costs declared as unit costs calculated in accordance with the beneficiary's usual cost accounting practices**, the beneficiaries must keep adequate records and documentation to prove that the cost accounting practices used comply with the conditions set out in Article 6.2, Point A.

The beneficiaries *[and linked third parties]* may submit to the *[Commission][Agency]*, for approval, a certificate (drawn up in accordance with Annex 6) stating that their usual cost accounting practices comply with these conditions ('**certificate on the methodology**'). If the certificate is approved, costs declared in line with this methodology will not be challenged subsequently, unless the beneficiaries have concealed information for the purpose of the approval.

(c) for **flat-rate costs**: adequate records and other supporting documentation to prove the eligibility of the costs to which the flat-rate is applied. The beneficiaries do not need to identify the costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared at a flat-rate.

In addition, **for personnel costs** (declared as actual costs or on the basis of unit costs), the beneficiaries must keep **time records** for the number of hours declared. The time records must be in writing and approved by the persons working on the action and their supervisors, at least monthly. In the absence of reliable time records of the hours worked on the action, the Agency may accept alternative evidence supporting the number of hours declared, if it considers that it offers an adequate level of assurance.

As an exception**,** for **persons working exclusively on the action**, there is no need to keep time records, if the beneficiary signs a **declaration** confirming that the persons concerned have worked exclusively on the action.

[OPTION to be added if Article 14 applies*: For costs declared by linked third parties (see Article 14), it is the beneficiary that must keep the originals of the financial statements and the certificates on the financial statements of the linked third parties.**]***

[…]

1. Records for personnel costs — Hours worked for the action

For ERC actions, the same rules on record keeping apply as in the General MGA *(see Article 18 General MGA).*

In addition, the beneficiaries must however prove that the conditions concerning the time-commitments of the PI for implementing the action (as described in Annex 1) have been complied with.

Thus, they must be able to provide evidence that the PI dedicated the minimum time commitment (i.e. percentage of the total working time, i.e. percentage of the annual productive hours calculated in compliance with Article 6) to the action, via time sheets or alternative time recording system.

ⓘ *For the percentage required, see the ERC calls conditions of the work programme.*

Moreover, they must be able to provide evidence that the PI spent the minimum time commitment *in a Member State or associated country* (i.e. a Member State or an associated country), via time records or alternative evidence *(e.g. a self-declaration by the beneficiary).*

ⓘ *For the percentage required, see the ERC calls conditions of the work programme.*

⚠ Both must be proved, even if the salary of the PI is not covered by the grant (i.e. if the salary is not part of the estimated budget).

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The principal beneficiary must submit to the Agency (see Article 52) scientific and financial reports, including requests for payment.

The reports must be drawn up using the forms and templates provided by the Agency in the electronic exchange system (see Article 52).

20.2 Scientific reporting — Reporting periods

The action is divided into the following '**scientific reporting periods'**:

- SRP1: from month 1 to month [X]
- ***[****- SRP2: from month [X+1] to month[Y]*
- *SRP3: from month [Y+1] to month [Z]*
- *[same for other SRPs]*
- *final SRP: from month [N+1] to [the last month of the project].****]***

The beneficiary must submit to the Agency a:

- '**periodic scientific report**' within 60 days after the end of each period (except the last one) and
- '**final scientific report**' within 60 days after the end of the last reporting period.

The **periodic scientific report** must include:

(a) information about the **scientific progress** of the work;

(b) **achievements and results** of the action, such as publications and a declaration of any major change of scientific strategy;

(c) information on whether and how open access has been provided to these results (see Article 29);

(d) a summary of the achievements of the action for publication by the Agency.

The **final scientific report** must:

(a) present the **final results, achievements and conclusions** of the action, and how they have been disseminated (including via scientific publications) (see Article 29);

(b) contain a summary of the achievements of the action, for publication by the Agency.

20.3 Financial reporting — Payment requests — Reporting periods

The action is divided into the following '**financial reporting periods**':

- FRP1: from month 1 to month [X]
- ***[****- FRP2: from month [X+1] to month[Y]*
- *FRP3: from month [Y+1] to month [Z]*
- *[same for other FRPs]*
- *final FRP: from month [N+1] to [the last month of the project].****]***

The beneficiary must— within 60 days after the end of each period — submit to the Agency a '**financial report**' for each reporting period.

The **financial report** must contain:

(a) information on the eligible costs, including a '**breakdown of direct costs table**' and a '**budget follow-up table**';

(b) an '**individual financial statement**' (see Annex 4) from the beneficiary *[and from each linked third party]* for the reporting period concerned.

The individual financial statement must detail the eligible costs (actual costs, unit costs and flat-rate costs *[and lump sum costs]*; see Article 6) for each budget category (see Annex 2).

The beneficiary [*and linked third parties*] must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in a financial statement will not be taken into account by the Agency. If an individual financial statement is not submitted for a reporting period, it may be included in the periodic financial report for the next reporting period.

The final financial statements must also detail the **receipts of the action** (see Article 5.3.3).

The beneficiary *[and each linked third party]* must **certify** that:

- the information provided is full, reliable and true;
- the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, audits and investigations (see Article 22), and
- for the last reporting period: that all the receipts have been declared (see Article 5.3.3);
- the costs declared are eligible (see Article 6);

(c) a '**summary financial statement**' (see Annex 4), created automatically by thesystem, consolidating the individual financial statements for the reporting period concerned and including the **request for interim payment** (or — for the last financial reporting period — the **request for payment of the balance**);

(d) for the last financial reporting period only: a '**certificate on the financial statements**' (see Annex 5) for the beneficiary *[and linked third party]*, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2, Point A).

20.4 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

Beneficiaries *[and linked third parties]* with accounting established in a currency other than the euro must convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union*, calculated over the corresponding reporting period.

If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, it must be converted at the average of the monthly accounting rates published on the Commission's website, calculated over the corresponding reporting period.

If the beneficiary *[or a linked third party]* has accounting established in euro, it must convert costs incurred in another currency into euro according to its usual accounting practices.

20.5 Language of reports

All reports (scientific and financial reports, including financial statements) must be submitted in the language of the Agreement.

20.6 Consequences of non-compliance — Suspension of the payment deadline — Termination

If the reports submitted do not comply with this Article, the Agency may suspend the payment deadline (see Article 47) and apply any of the other measures described in Chapter 6.

If the beneficiary breaches its obligation to submit the reports and if it fails to comply with this obligation within 30 days following a written reminder sent by the Agency, the Agreement may be terminated (see Article 50).

1. Reports

When & What?

For ERC actions, the principal beneficiary must submit both:

- a '**periodic scientific report**' after the end of each scientific reporting period (except the last one), with:
  - information about the scientific progress of the work
  - the achievements and results of the action, *such as publications and a declaration of any major change of scientific strategy*
  - information on whether and how open access has been provided to these results *(see Article 29)*
  - a summary of the achievements of the action, for publication by the Agency.
- a '**final scientific report**' at the end of the action, with:
  - the final results, achievements and conclusions of the action, and how they have been disseminated (including via scientific publications) *(see Article 29)*
  - a summary of the achievements of the action, for publication by the Agency.

Example: *For a five-year grant, there are two scientific reporting periods, so a 'periodic scientific report' is due for months 1-30 and a 'final scientific report' for months 31-60.*

In addition, the principal beneficiary must submit a '**financial report**' at the end of each financial reporting period, with:

- a narrative containing information on the eligible costs, including a 'breakdown of direct costs table' and a 'budget follow-up table'
- an 'individual financial statement'
- a 'summary financial statement', created automatically by the system (on the basis of all financial statements submitted by the beneficiaries and linked third parties for the reporting period), which counts as the request of payment
- for the last financial reporting period only: a 'certificate on the financial statements (CFS)'.

Example: *For a five-year grant, there are four financial reporting periods, so a financial report is due for months 1-18, 19-36, 37-54 and 55-60.*

How? All reports must be prepared and submitted **directly in the electronic exchange system**, i.e. 'My Area' section of the Participant Portal*; see Article 52*).

ⓘ For more information on how to submit the reports, see Article 20 General MGA and the H2020 Online Manual.

2. Reporting periods

Like for the General MGA, ERC actions are divided into reporting periods.

The ERC General MGA has, however, different reporting periods for financial and scientific reports.

Their length is defined in the signed GA.

Normally, the financial reporting period is **18 months**, whereas scientific reports are due **halfway through** and at the **end** of the project.

> ***Example:*** *For a five-year grant, there are four financial reporting periods (months 1-18, 19-36, 37-54 and 55-60) and two scientific reporting periods (months 1-30 and 31-60).*

Reports must be submitted within 60 days after each period ends.

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the principal beneficiary:

- one **pre-financing payment**;
- one or more **interim payments**, on the basis of the request(s) for interim payment (see Article 20), and
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20).

21.2 Pre-financing payment — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiaries with a float.

It remains the property of the EU until the payment of the balance.

The amount of the pre-financing payment will be EUR [**insert amount** (insert amount in words)].

The Agency will — except if Article 48 applies - make the pre-financing payment to the principal beneficiary within 30 days ***[OPTION:*** *from the entry into force of the Agreement (see Article 58)****][OPTION:*** *from the starting date of the action (see Article 3)****][OPTION:*** *from the 45th day before the starting date of the action (see Article 3)****]***.

An amount of EUR [**insert amount** (insert amount in words)], corresponding to 5 % of the maximum grant amount (see Article 5.1), is retained by the Agency from the pre-financing payment and transferred into the '**Guarantee Fund**'

[OPTION if the JRC is a beneficiary: *Moreover, the part of the pre-financing payment related to the Joint Research Centre (JRC) ([****insert amount*** *(insert amount in words)] is not paid to the principal beneficiary, but kept by the [Agency] for the JRC.****]***

21.3 Interim payments — Amount — Calculation

Interim payments reimburse the eligible costs incurred for the implementation of the action during the corresponding reporting periods.

The Agency will pay to the principal beneficiary the amount due as interim payment within 90 days from receiving the financial report (see Article 20.3), except if Articles 47 or 48 apply.

Payment is subject to the approval of the financial report. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

The **amount due as interim payment** is calculated by the Agency in the following steps:

Step 1 — Application of the reimbursement rate

Step 2 — Limit to 90 % of the maximum grant amount

21.3.1 Step 1 — Application of the reimbursement rate

The reimbursement rate (see Article 5.2) is applied to the eligible costs (actual costs, unit costs and flat-rate costs *[and lump sum costs]*; see Article 6) declared by the beneficiaries *[and the linked third parties]* (see Article 20) and approved by the Agency (see above) for the concerned reporting period.

21.3.2 Step 2 — Limit to 90 % of the maximum grant amount

The total amount of pre-financing and interim payments must not exceed 90 % of the maximum grant amount specified in Article 5.1. The maximum amount for the interim payment will be calculated as follows:

{90 % of the maximum grant amount (see Article 5.1)

minus

{pre-financing and previous interim payments}**}**.

21.4 Payment of the balance — Amount — Calculation — Release of the amount retained for the Guarantee Fund

The payment of the balance reimburses the remaining part of the eligible costs incurred by the beneficiaries for the implementation of the action.

If the total amount of earlier payments is greater than the final grant amount (see Article 5.3), the payment of the balance takes the form of a recovery (see Article 44).

If the total amount of earlier payments is lower than the final grant amount, the Agency will pay the balance within 90 days from receiving the financial report and the final scientific report (see Article 20.3), except if Articles 47 or 48 apply.

Payment is subject to the approval of the financial and final scientific reports. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

The **amount due as the balance** is calculated by the Agency by deducting the total amount of pre-financing and interim payments (if any) already made, from the final grant amount determined in accordance with Article 5.3:

{final grant amount (see Article 5.3)

minus

{pre-financing and interim payments (if any) made}**}**.

At the payment of the balance, the amount retained for the Guarantee Fund (see above) will be released and:

- if the balance is positive: the amount released will be paid in full to the principal beneficiary together with the amount due as the balance;
- if the balance is negative (payment of the balance taking the form of recovery): it will be deducted from the amount released (see Article 44.1.2). If the resulting amount:
    - is positive, it will be paid to the principal beneficiary
    - is negative, it will be recovered.

The amount to be paid may however be offset — without the beneficiary's consent — against any other amount owed to a beneficiary by the Commission or an executive agency (from the EU or Euratom budget), up to the maximum EU contribution indicated, for that beneficiary, in the estimated budget (see Annex 2).

[…]

1. Payments

For ERC actions, the same rules on payments apply as in the General MGA *(see Article 21 General MGA).*

There is however an additional option for pre-financing payments. These cannot only be foreseen within the 30 days from:

- the starting date of the action (see Article 3) or
- from the date of entry into force of Grant Agreement (see Article 58)

but also

- from the 45th day *before* the starting date of the action (see Article 3)), if the action starts late (well after the entry into force of the GA).

⚠ In any case, it is not possible to make a payment before the GA is signed.

ARTICLE 26 — OWNERSHIP OF RESULTS

[…]

26.3 Rights of third parties (including personnel and the principal investigator[s])

If third parties (including personnel and the principal investigator*[s]*) may claim rights to the results, the beneficiary concerned must ensure that it complies with its obligations under the Agreement.

If a third party generates results for a beneficiary, the beneficiary concerned must obtain all necessary rights (transfer, licences or other) from the third party, in order to be able to respect its obligations as if those results were generated by the beneficiary itself.

If obtaining the rights is impossible, the beneficiary must refrain from using the third party to generate the results.

[…]

1. Rights of third parties

For ERC actions, the same rules on third party rights apply as in the General MGA *(see Article 26 General MGA)*.

⚠ Due to the key role of the PI, it is however particularly important that agreements between the host institution and the PI allow the host institution to comply with its obligations under the GA — either by foreseeing a transfer of ownership to the host institution or by providing it with appropriate access rights (with a right to sub-license).

ARTICLE 29 — DISSEMINATION OF RESULTS — OPEN ACCESS — VISIBILITY OF EU FUNDING

[…]

29.2 Open access to scientific publications

Each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

(d) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications.

Moreover, the beneficiary must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.

(e) ensure open access to the deposited publication — via the repository — at the latest:

(iii) on publication, if an electronic version is available for free via the publisher, or

(iv) within six months of publication (twelve months for publications in the social sciences and humanities) in any other case.

(f) ensure open access — via the repository — to the bibliographic metadata that identify the deposited publication, which must include a persistent identifier.

29.3 Open access to research data

[OPTION for grants wishing to participate on a voluntary basis in the open Research Data Pilot in the framework of an ERC frontier research action (if opt-in option provided for by the ERC work programme)*: Regarding the digital research data generated in the action (‘**data**’), the beneficiaries must take appropriate measures to ensure open access, including:*

(c) deposit in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate — free of charge for any user — the following:

(iii) the data, including associated metadata, needed to validate the results presented in scientific publications as soon as possible;

(iv) other data, including associated metadata, as specified in Annex 1;

(d) provide information — via the repository — about tools and instruments at the disposal of the beneficiaries and necessary for validating the results (and — where possible — provide the tools and instruments themselves).

This does not change the obligation to protect results in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

*As an exception, the beneficiaries do not have to ensure open access to specific parts of their research data if the achievement of one of the action objectives, as described in Annex 1, would be jeopardised by making those specific parts of the research data openly accessible. In this case, the Annex 1 must contain the reasons for not giving access.****]***

*[OPTION: **not applicable**]*

[…]

1. Open access to scientific publications

For ERC actions, the rules for open access to scientific publications are in principle the same as in the General MGA *(see Article 29 General MGA).*

Exceptions/Specific cases:

Open access to scientific publications for monographs or books (or parts of them) is only a best effort obligation. It is sufficient that the beneficiary makes its best efforts to comply as far as possible and can provide evidence for these efforts.

Examples: *Fulfilling all aspects of Article 29.2 may not be possible if there is no open access option, if the publisher does not allow depositing of the electronic version in a repository, or if a book is only published as print edition with no electronic version available.*

The ERC Scientific Council recommends the use of subject-specific repositories:

- for publications in the Life Sciences domain: Europe PubMed Central (http://europepmc.org)
- for publications in the Physical Sciences and Engineering domain: arXiv (http://arxiv.org).

If there is no appropriate discipline specific repository, researchers should make their publications available in institutional repositories or in centralized ones, such as Zenodo (http://zenodo.org).

For publications issued after the end of the action, beneficiaries are not obliged to provide for immediate open access within the given deadlines if this would incur additional costs for 'gold' open access. Instead, they may choose 'green' open access even if the embargo period imposed by the publisher goes beyond the given time limit of six/twelve months.

With explicit agreement by the Agency, the extended deadline for publications for grants in the social sciences and humanities domain (i.e. 12 months) can exceptionally be granted also for specific publications of grants in other domains, if the specific publication can be considered to relate to the social sciences and humanities. This must be requested within the 6 months originally foreseen.

For bibliographic metadata, the ERC General MGA foresees lighter requirements, focusing only on a persistent identifier (i.e. a stable address/marker to identify the publication, such as a 'Digital Object Identifier (DOI)'[74] or other systems).

⚠ As far as the chosen repository allows for this, beneficiaries of ERC grants are strongly encouraged to ensure that the bibliographic metadata also includes additional information such as the European Research Council (ERC) as funding source, the grant number, the title of the action and its acronym, the publication date, and the length of the embargo period (if applicable).

2. Open access to research data

This option will be inserted in the GA only for ERC frontier research actions that opt-in to the open research data pilot on a voluntary basis (if provided in the ERC Work Programme).

The rules on open access to research data are in principle the same as in the General MGA *(see Article 29 General MGA).*

Exceptions/Specific cases:

For ERC actions, there is no formal requirement for a '**data management plan**'. Nonetheless it is Annex 1 that sets out how research data will be handled during the action implementation and afterwards *(e.g. what data will be collected or generated; methodology and standards; whether and how this data will be shared and/or made open; how it will be curated and preserved).*

[74] *For more information, see http://www.doi.org/.*

The exception allowing beneficiaries not to give access to specific parts of research data applies not only if this would jeopardise the main objective of the action, but any one of the action objectives.

⚠ For ERC frontier research actions, the main objective is always a purely scientific one. The justification for non-disclosure does not need to be the scientific objective of the action but can refer to other objectives, such as the intended later commercialisation of the scientific findings.

ARTICLE 32 — WORKING CONDITIONS FOR THE PRINCIPAL INVESTIGATOR*[S]* AND *[HIS/HER][THEIR]* TEAM

32.1 Obligations towards the principal investigator*[s]* and *[his/her][their]* team

The beneficiaries must respect the following **working conditions for the principal investigator*[s]* and *[his/her][their]* team**:

(a) take all measures to implement the principles set out in the Commission Recommendation on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers[32] — in particular regarding working conditions, transparent recruitment processes based on merit and career development — and ensure that the principal investigator*[s]*, researchers and third parties involved in the action are aware of them;

(b) enter — before signature of the Agreement — into a '**supplementary agreement**' with the*[ir]* principal investigator, that specifies:

(i) the obligation of the beneficiary to meet its obligations under the Agreement;

(ii) the obligation of the *[OPTION for SyG: corresponding]* principal investigator to supervise the scientific and technological implementation of the action *[OPTION for SyG: and the obligation of the other principal investigator(s) to supervise the scientific and technological implementation of their part of the action and to contribute to the overall proper implementation of the action]*;

(iii) the obligation of the *[OPTION for SyG: corresponding]* principal investigator to assume the responsibility for the scientific reporting for the beneficiary and contribute to the financial reporting *[OPTION for SyG: and the obligation of the other principal investigator(s) to contribute to the scientific and financial reporting]*;

(iv) the obligation of the principal investigator to meet the time commitments for implementing the action as described in Annex 1;

(v) the obligation of the principal investigator to apply the beneficiary's usual management practices;

(vi) the obligation of the principal investigator to inform the principal beneficiary *[**OPTION for SyG:** and, where applicable, his/her beneficiary and the other principal investigator(s)]* immediately of any events or circumstances likely to affect the Agreement (see Article 17) , such as:

- a planned transfer of the action (or part of it) to a new beneficiary (see Article 56a);
- any personal grounds affecting the implementation of the action;
- any changes in the information that was used as a basis for signing the supplementary agreement;
- any changes in the information that was used as a basis for awarding the grant;

(vii) the obligation of the principal investigator to ensure the visibility of EU funding in communications or publications and in applications for the protection of results (see Articles 27, 28, 29 and 38);

(viii) the obligation of the principal investigator to uphold the intellectual property rights of the beneficiary during the implementation of the action and afterwards;

(ix) the obligation of the principal investigator to maintain confidentiality (see Article 36);

(x) for a transfer of the action (or part of it) to a new beneficiary (see Article 56a): the obligation of the principal investigator to:

- propose to the principal beneficiary *[**OPTION for SyG:** and, where applicable, to his/her beneficiary]* (in writing) to what extent the action will be transferred and the details of the transfer arrangement *[**OPTION for SyG:** and, if the transfer is done by (one of) the other principal investigator(s), the obligation of the corresponding principal investigator to verify that the principal investigator has informed his/her beneficiary and the principal beneficiary];*

- provide a statement to the principal beneficiary *[**OPTION for SyG:** and, where applicable, his/her beneficiary]* with the detailed results of the research up to the time of transfer;

(xi) the right of the Commission and the Agency, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) to exercise their rights under Articles 22 and 23 also towards the principal investigator;

(xii) the applicable law and the country in which disputes must be settled;

(c) provide the principal investigator*[s]* with a copy of the signed Agreement;

(d) guarantee the principal investigator*[s]* scientific independence, in particular for the:

(i) use of the budget to achieve the scientific objectives;

(ii) authority to publish as senior author and invite as co-authors those who have contributed substantially to the work;

(iii) preparation of scientific reports for the action;

(iv) selection and supervision of the other team members (hosted *[and engaged]* by the beneficiary or other legal entities), in line with the profiles needed to conduct the research and in accordance with the beneficiary's usual management practices;

(v) possibility to apply independently for funding;

(vi) access to appropriate space and facilities for conducting the research;

(e) provide — during the implementation of the action — research support to the principal investigator*[s]* and the*[ir]* team members (regarding infrastructure, equipment, access rights, products and other services necessary for conducting the research);

(f) support the principal investigator*[s]* and provide administrative assistance, in particular for the:

(i) general management of the work and his/her team

(ii) scientific reporting, especially ensuring that the team members send their scientific results to the principal investigator*[s];*

(iii) financial reporting, especially providing timely and clear financial information;

(iv) application of the beneficiary's usual management practices;

(v) general logistics of the action;

(vi) access to the electronic exchange system (see Article 52);

(g) inform the principal investigator*[s]* immediately (in writing) of any events or circumstances likely to affect the Agreement (see Article 17);

(h) ensure that the principal investigator*[s]* enjoy*[s]* adequate:

(i) conditions for annual, sickness and parental leave;

(ii) occupational health and safety standards;

(iii) insurance under the general social security scheme, such as pension rights;

(i) allow the transfer of the Agreement to a new beneficiary ('portability'; see Article 56a)

[…]

[32] Commission recommendation (EC) No 251/2005 of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (OJ L 75).

1. Working conditions — Rights for the PI and his/her team

In view of the key role of the PI and his/her team in ERC actions, the ERC General MGA foresees a series of obligations in order to guarantee best possible working conditions.

Main obligations (towards the PI):

- S**cientific autonomy**, to achieve the action's objectives under the best possible conditions, and within the time agreed
- C**ompetitive working conditions**, always in accordance with national law and institutional rules
- S**upport for managing the action** *(e.g access to infrastructure; legal, financial and administrative support)*
- Access to and protection of intellectual property rights
- Allow for transfer of the GA to another host institution (**portability**).

⚠ PIs cannot be prevented from applying independently (i.e. in their own name) for further EU funding for other actions. They can also apply for further EU funding for the same action, as long as it is for costs that are not eligible (or not declared) under the ERC grant.

In this context, 'action' refers to the specific ERC action, for which the beneficiaries receive the ERC grant *(see Article 2)*.

⚠ The fact that the funding rate for ERC grants is 100% does not mean that the grant pays for 100% of the costs of the action. Therefore cost items not declared under the ERC grant may be covered by other EU funding.

ⓘ For more information on combining EU funding for different actions ('complementary EU funding'), see the H2020 Online Manual.

2. Supplementary agreement — Obligations on the PI

The ERC General MGA foresees that the PI and its host institution must sign a supplementary agreement (SA), in order to formalise the commitments in the GA also vis-à-vis the PI.

The supplementary agreement should cover all the practical issues that may arise in the context of the grant implementation, and in particular the ones listed in Article 32.1(b).

Model clauses for supplementary agreements are available on the Participant Portal and the ERC website. [hyperlinks]

Host institutions and their PIs may add or use other clauses, if they benefit the research action and do not contradict the GA. Provisions that contradict the GA are considered void and may not be opposed to the Agency.

⚠ The supplementary agreement must be concluded before the GA is signed (and a copy must be sent to the Agency).

It does not replace an employment or collaboration contract between the PI and its host institution (which remain necessary under national labour and social laws).

Specific cases:

In the case of **ERC Synergy grants** (with **several PIs**), each host institution must conclude a supplementary agreement with the PI(s) they engage.

ERC PoC grants do not require a supplementary agreement.

In case of transfer of the Agreement to another host institution (**portability**; *see Article 56a*), the PI must sign a new supplementary agreement with its new host institution and forward it to the Agency. The GA cannot be amended before the PI has sent this new supplementary agreement.

Via the supplementary agreement, the PI must take on a number of obligations, to ensure the smooth implementation of grant.

Main obligations (of the PI):

- Supervision of the scientific and technological implementation of the action
- Responsibility for the scientific reporting for the beneficiary and contribution to the financial reporting
- Meeting the time commitments for implementing the action
- Applying the beneficiary's usual management practices
- Informing the principal beneficiary immediately of any events or circumstances likely to affect the GA
- Ensure the visibility of EU funding
- Upholding the intellectual property rights of the beneficiary

  This obligation is not limited to *respecting* the host institution's intellectual property rights (IPRs). The PI must *actively* inform it, if s/he becomes aware of any violation of the latter's IPRs related to the project.

  Example: The PI reads a research article and discovers a violation of the host institution's IPRs related to the project. S/he is obliged to inform the host institution.

- Maintaining confidentiality

ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING

[…]

38.1.2 Information on EU funding — Obligation and right to use the EU emblem and the ERC logo

Unless the Agency requests or agrees otherwise or unless it is impossible, any communication activity related to the action (including in electronic form, via social media, etc.) and any infrastructure funded by the grant must:

(c) display the EU emblem and the ERC logo and

(d) include the following text:

"This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No [number])".

When displayed together with another logo, the EU emblem and the ERC logo must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the EU emblem and the ERC logo without first obtaining approval from the Agency.

This does not, however, give them the right to exclusive use.

Moreover, they may not appropriate the EU emblem and the ERC logo or any similar trademark or logo, either by registration or by any other means.

[…]

1. Visibility of EU funding

For ERC actions, the same rules on visibility of EU funding apply as in the General MGA *(see Articles 27.3, 28.2, 29.4 and 38.1.2 General MGA).*

In addition, the beneficiaries must however make specific reference to the European Research Council (ERC). Thus, the clause acknowledging funding is slightly adapted and the beneficiaries must also use the ERC logo.

Guidance on the use of the ERC logo is available on the ERC homepage[75].

[75] Available at http://erc.europa.eu/logos-and-banners.

MULTI-BENEFICIARY: **ARTICLE 56 — ACCESSION TO THE AGREEMENT**

56.1 Accession of the beneficiaries mentioned in the Preamble

The other beneficiaries must accede to the Agreement by signing the Accession Form (see Annex 3) in the electronic exchange system (see Article 52), within 30 days after its entry into force (see Article 58).

[OPTION if Article 14 applies and joint and several liability has been requested: *If the Agency has requested joint and several liability of a linked third party, the beneficiary to which it is linked must also submit — at accession — a declaration on joint and several liability (see Annex 3a) signed by the third party.]*

They will assume the rights and obligations under the Agreement with effect from the date of its entry into force (see Article 58).

If a beneficiary does not accede to the Agreement within the above deadline, the principal beneficiary must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action. This does not affect the Agency's right to terminate the Agreement (see Article 50).

56.2 Addition of new beneficiaries

In justified cases, the beneficiaries may request the addition of a new beneficiary.

For this purpose, the principal beneficiary must submit a request for amendment in accordance with Article 55. It must include an Accession Form (see Annex 3) signed by the new beneficiary in the electronic exchange system (see Article 52).

New beneficiaries must assume the rights and obligations under the Agreement with effect from the date of their accession specified in the Accession Form (see Annex 3).

MONO-BENEFICIARY: **ARTICLE 56 — ARTICLE 56 — ACCESSION TO THE AGREEMENT**

56.1 Addition of new beneficiaries

In justified cases, the beneficiary may request the addition of a new beneficiary.

For this purpose, the beneficiary must submit a request for amendment in accordance with Article 55. It must include an Accession Form (see Annex 3) signed by the new beneficiary in the electronic exchange system (see Article 52).

New beneficiaries must assume the rights and obligations under the Agreement with effect from the date of their accession specified in the Accession Form (see Annex 3).

If a new beneficiary is added, the grant becomes a multi-beneficiary grant and ***[OPTION:*** *the preamble and the following Articles of the ERC Multi-beneficiary Model Grant Agreement will apply: […][…][…][same for further articles]****][OPTION:*** *the ERC Multi-beneficiary Model Grant Agreement will apply****].***

1. Addition of new beneficiaries

For ERC actions, the rules on addition of beneficiaries are in principle the same as in the General MGA *(see Article 56 General MGA).*

However, unlike the General MGA, ERC ***mono*-beneficiary** grants can **become *multi*-beneficiary** grants, by addition of a new beneficiary.

The procedure to be followed is that of Article 56 of the General MGA.

ARTICLE 56a — TRANSFER OF THE AGREEMENT TO A NEW BENEFICIARY — PORTABILITY OF THE GRANT

56a.1 Conditions

[The][A] principal investigator may request the transfer of the action (or his/her part of it) to a new beneficiary, provided that the objectives of the action remain achievable.

The principal beneficiary *[OPTION for SyG: or, where applicable, his/her beneficiary]* may object only on the basis that the transfer is not possible under national law.

56a.2 Procedure

The principal beneficiary must formally notify a request for amendment to the Agency (see Article 55).

The former beneficiary must agree with the principal investigator and the new beneficiary on a plan to transfer the intellectual property rights under the Agreement to the new beneficiary

The Agency will request the former beneficiary to transfer to the new beneficiary any part of the pre-financing (see Article 21) not covered by an approved financial report.

Upon request by the principal investigator, the Agency may require the former beneficiary to transfer to the new beneficiary the equipment purchased and used exclusively for the action (against reimbursement of the costs that have not yet been depreciated). The former beneficiary may object only on the basis that the transfer is not possible under national law.

1. Transfer of the GA (portability)

Portability makes it possible to transfer ERC grants — at any time during the action implementation.

The PI may **request a transfer** of his/her grant to any other entity based in an EU Member State or associated country ('new host institution'), if doing so is beneficial for the PI and supports achieving the action's objectives.

Specific case:

For **ERC Synergy Grants**, each PI maintains the right to transfer their part of the action. They must inform and consult the other PIs, to ensure that the action's objectives can still be achieved.

If **certain team members** or **equipment remain** with the former host institution, that institution may remain party to the GA (as an additional beneficiary); the new beneficiary that hosts and employs the PI will become the new host institution.

The former host institution may **oppose** a transfer only if it is not allowed under national law.

It may however **negotiate** the transfer conditions (including transfer of team members, intellectual property rights and equipment) with the new host institution, taking into account the view of the PI.

Thus, both host institutions must agree on the transfer of intellectual property, in conformity with the GA and after consulting the PI. The transfer plan should cover:

- the results produced under the action and the access rights to them and
- the PI's and new host institution's access rights to background held by the former host institution but necessary for implementing the rest of the action.

2. Procedure

The PI should first contact the beneficiary that signed the GA (i.e. the former host institution).

Best practice: Beneficiaries and PIs are advised to keep records of the consultation and decision-making process for each portability case.

The former host institution must then submit a **request for amendment** to the Agency.

For the amendment, the rules of the General MGA apply *(see Article 55 General MGA)*.

A change of beneficiary usually takes effect on the first day of the month.

This date may be retroactive, but only in very exceptional circumstances. This should be discussed on a case by case basis with the Agency.

⚠ The request should be made well in advance, to allow sufficient time for the amendment procedure.

⚠ The GA cannot be transferred without the explicit agreement by the Agency *and* the amendment of the GA. Any partial or full transfers made without a formal amendment to the grant agreement are considered in breach of contractual obligations and may result in costs being declared ineligible and/or the Agency terminating the action early.

3. Effects

After the amendment, the Agency will **calculate** the **eligible costs** of the former host institution and instruct it to **transfer** all **remaining pre-financing** (not covered by eligible costs) to the new host institution.

⚠ If the former host institution spent all the pre-financing payment *(see Article 21.2)*, the Agency will not pay out any additional pre-financing to the new host institution. The new host institution will have to advance the funds and its eligible costs will only be reimbursed up to the maximum grant amount.

Financial reporting periods will be **adapted** to take into account the exact date of the transfer (if necessary).

⚠ Scientific reporting periods will usually remain unchanged as they are linked to the action's scientific development and must be submitted by the PI, who holds this position for the whole duration of the GA.

If the PI's requests it, the Agency may require the former host institution to **transfer** the **equipment** purchased and used exclusively for the action.

The former host institution may oppose this only if it is not possible under national law.

It may however negotiate the transfer conditions with the new host institution, taking into account the view of the PI.

Thus, the new host institution should make its best effort to buy the equipment fully used for the project. If it does so, it may in principle declare the costs of this reimbursement and any other related costs (i.e. dismantling, transfer and installation), if they fulfil the eligibility conditions set out in Article 6.

II.2 ERC PoC: Annotations

⚠ The ERC PoC MGA is very similar to the ERC General MGA.

Like the ERC frontier research grants, the ERC PoC grants have a principal beneficiary (who is also the host institution) and a principal investigator.

There are however no specific provisions on the working conditions of the PI and his/her team, no supplementary agreement and no grant portability

The following annotations will only highlight the biggest differences. For the rest, the annotations to the ERC General MGA apply mutatis mutandis.

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** ('**action**'), as described in Annex 1.

[OPTION for complementary grants if foreseen in the work programme: *The grant is a '**complementary grant**' to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].**]***

[OPTION for joint actions (joint call with a third country or an international organisation)*: The action is a '**jointly funded action**' which must be coordinated with the 'joint action' called [insert the name of the third country or international organisation action], as described in Annex 1.**]***

1. ERC PoC actions

ERC PoC actions are actions with the following activities:

– verifing the innovation potential of ideas arising from ERC funded projects

What? Any activities (that were not scheduled to be funded by the initial ERC frontier research grant) but that develop research output towards new commercial or societal applications.

ERC PoC grants can cover very diverse activities *(e.g. making a 'business plan', technical issues and overall direction, intellectual property rights positioning and strategy, budgeting and other commercial parameters; connections to later stage funding; establishing a company; demonstration, testing, prototyping, piloting, design).*

What not? ERC PoC grants cannot cover activities under the ERC frontier research grant (*e.g. dissemination or publications of the results of the ERC frontier research action; pure research, especially research with no commercial potential*) or activities which are the result of research not performed under the ERC actions (*e.g. results of research not found by the ERC action*).

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual, the ERC home page or the ERC calls conditions of the ERC Work Programme and the call and topics pages of your call.

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The principal beneficiary must submit to the Agency (see Article 52) report(s), including requests for payment.

The report(s) must be drawn up using the forms and templates provided by the Agency in the electronic exchange system (see Article 52).

[OPTION by default (for actions with one RP):

20.2 Reporting period

The action has one reporting period:

- RP: from month 1 to month [X]

20.3 Report — Request for payment of the balance

The principal beneficiary must — within 60 days following the end of the reporting period — submit a report to the Agency.

*The **report** must include the following:*

(a) a summary for publication by the Agency;

*(b) an **overview of the results** of the action, including the deliverables identified in Annex 1 and explanations justifying the differences between the work expected to be carried out in accordance with Annex 1 and that actually carried out;*

*(c) detailed information on the costs declared, including a '**breakdown of direct costs table**';*

*(d) an **'individual financial statement'** (see Annex 4) from each beneficiary [and from each linked third party].*

The individual financial statement must detail the eligible costs (actual costs, unit costs, flat-rate costs [and lump sum costs]; see Article 6) for each budget category (see Annex 2).

The beneficiaries [and linked third parties] must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the Agency.

*The individual financial statements must also detail the **receipts of the action** (see Article 5.3.3).*

*Each beneficiary [and each linked third party] must **certify** that:*

- *the information provided is full, reliable and true;*
- *the costs declared are eligible (see Article 6);*
- *the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22), and*
- *that all the receipts have been declared (see Article 5.3.3).*

*(e) **[OPTION if the JRC is a beneficiary:** information on the amount of each interim payment and payment of the balance to be paid by the Agency to the Joint Research Centre (JRC);**][OPTION:** not applicable;**]***

(f) *a '**summary financial statement**' (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements for the reporting period concerned and including the **request for payment of the balance**;*

(g) *a '**certificate on the financial statements**' (drawn up in accordance with Annex 5) for each beneficiary [and linked third party], if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2, Point A)**]***

[OPTION for actions with several RPs: 20.2 Reporting periods

The action is divided into the following reporting periods:

- RP1: from month 1 to month [X]

***[**- RP2: from month [X+1] to month [Y]*

- RP3: from month [Y+1] to month [Z]

[same for other RPs]

*- RPN: from month [N+1] to [the last month of the project].**]***

20.3 Periodic reports — Requests for interim payments and payment of balance

The principal beneficiary must — within 60 days following the end of each reporting period — submit a periodic report to the Agency.

*The **periodic report** must include the following:*

(a) *a summary for publication by the Agency;*

(b) *an **overview of the progress of work** towards the objectives of the action, including the deliverables identified in Annex 1 and explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out;*

(c) *detailed information on the costs declared, including a '**breakdown of direct costs table**' and a '**budget follow-up table**';*

(d) *an **'individual financial statement'** (see Annex 4) from each beneficiary [and from each linked third party], for the reporting period concerned.*

The individual financial statement must detail the eligible costs (actual costs, unit costs and flat-rate costs [and lump sum costs]; see Article 6) for each budget category (see Annex 2).

The beneficiaries [and linked third parties] must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the Agency.

If an individual financial statement is not submitted for a reporting period, it may be included in the periodic report for the next reporting period.

*The individual financial statements of the last reporting period must also detail the **receipts of the action** (see Article 5.3.3).*

*Each beneficiary [and each linked third party] must **certify** that:*

- *the information provided is full, reliable and true;*
- *the costs declared are eligible (see Article 6);*
- *the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22), and*
- *for the last reporting period: that all the receipts have been declared (see Article 5.3.3);*

*(e) a '**periodic summary financial statement**' (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements for the reporting period concerned and including the **request for interim payment** (or — for the last reporting period — the **request for payment of the balance**);*

(f) for the last reporting period only:

- *an **overview of the results** of the action, including the deliverables identified in Annex 1 and explanations justifying the differences between the work expected to be carried out in accordance with Annex 1 and that actually carried out;*
- *a '**certificate on the financial statements**' (drawn up in accordance with Annex 5) for each beneficiary [and linked third party], if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2, Point A).**]***

20.4 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

Beneficiaries *[and linked third parties]* with accounting established in a currency other than the euro must convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of the Official Journal of the European Union, calculated over the corresponding reporting period.

If no daily euro exchange rate is published in the Official Journal of the European Union for the currency in question, it must be converted at the average of the monthly accounting rates published on the Commission's website, calculated over the corresponding reporting period.

Beneficiaries *[and linked third parties]* with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

20.5 Language of reports

The report(s) (including financial statements) must be submitted in the language of the Agreement.

20.6 Consequences of non-compliance — Suspension of the payment deadline — Termination

If the reports submitted do not comply with this Article, the *Agency* may suspend the deadline for payment (see Article 47) and apply any of the other measures described in Chapter 6.

If the principal beneficiary breaches its obligation to submit the reports and if it fails to comply with this obligation within 30 days following a written reminder sent by the *Agency*, the Agreement may be terminated (see Article 50).

1. Report(s)

When & What ?

For ERC PoC actions, the principal beneficiary must submit reports — only one 'report' if there is one reporting period, otherwise one 'periodic report' at the end of each reporting period.

The report (or periodic reports) must include the all of the following:

- a summary for publication by the Agency

  The summary is a brief description of the action, presenting its objectives and the results achieved. It must be easy to read and understandable to a non-specialised audience. This will enable the Agency to publish it on the Commission's website right away.

  ⚠ The principal beneficiary must ensure that material submitted to the Agency for publication does not include any confidential material.

- an overview of progress towards the action's objectives (or an overview of the action's results for the last reporting period)

- information on the eligible costs, including a table showing the breakdown of direct costs and a budget follow-up table

- an individual financial statement.

In addition, a '(periodic) summary financial statement', which counts as the request of payment, will be created automatically by the system, on the basis of all financial statements submitted by the beneficiaries and linked third parties for each reporting period.

⚠ Only at the moment of the submission of the last reporting period, the 'certificate on the financial statements' will have to be added.

How?

All reports mut be prepared and submitted directly in the electronic exchange system (i.e. 'My Area' section of the Participant Portal; *see Article 52*).

2. Reporting period(s)

ERC PoC actions normally have only **one reporting period** (with one pre-financing payment; *see Article 21*).

As a general rule, this single reporting period (and thus the duration of the action) lasts **18 months**.

If provided in the GA, an ERC PoC action may however also have more reporting periods.

IV. SME Instrument

IV.1 Background information and approach

The Model Grant Agreements for the SME Instrument ('SME Instrument MGAs') are used for grants for **SME Instrument actions only** *(see General Annex D to the Main Work Programme)*.

The SME Instrument funds actions in different phases.

The minimum requirement for participation is one for-profit SME (as defined in the SME Recommendation 2003/361/EC), established in an EU Member State or associated country

'For profit' means not a non-profit legal entity (i.e. not an entity that is by its legal form non-profit-making or has a legal or statutory obligation not to distribute profits to its share-holders or members).

⚠ If the Work Programme/call, exceptionally foresees SME Instrument Ph2 actions that predominantly concern research activities, they will be considered 'research and innovation action (RIA)' actions and will be funded with a GA based on the General MGA (instead of the SME Instrument Ph2 MGA).

ⓘ For more information on SME Instrument actions, see Article 2 SME Instrument MGAs.

ⓘ For information on SME Instrument funding opportunities, see the 'Search Topic' function on the Participant Portal.

ⓘ For information on SME Instrument standard eligibility criteria, see General Annex C to the Main Work Programme.

ⓘ For more information on the procedure for SME status validation, see the H2020 Online Manual.

The SME Instrument MGAs **follow the General MGA** for numbering and content, **except** for the following:

Introductory remark SME Instrument Ph1 MGA

The SME Instrument Phase 1 Model Grant Agreement deviates from the General Model Grant Agreement as follows:

- Article 4.1 (SME Instrument Ph1 estimated budget of the action)
- Article 5.1-5.3 (SME Instrument Ph1 maximum grant amount, specific reimbursement rate and form of costs, no Step 2 'limit to maximum grant amount', no Step 3 'reduction due to the no-profit rule')
- Article 6 (SME Instrument Ph1 specific conditions for eligibility of costs)
- Article 7 SME Instrument Ph1 consequences of improper implementation)
- Articles 8, 11, 12, 14, 15, 16, 23a - 33, 37, 39 (not applicable)
- Article 10 (SME Instrument Ph1 specific provision for purchases)
- Article 13 (SME Instrument Ph1 specific provision for subcontracting)
- Article 18 (SME Instrument Ph1 specific provision for record-keeping)
- Article 20 (SME Instrument Ph1 specific reporting provisions)
- Article 21 (SME Instrument Ph1 specific payment provisions)
- Article 36 (SME Instrument Ph1 specific provision on confidentiality)

- Article 38 (SME Instrument Ph1 specific provision on promoting the action)
- Article 42.2 (SME Instrument Ph1 specific provision for lump-sum
- Article 50.1.2, 50.3.3 (SME Instrument Ph1 specific provision for lump-sum

- Annex 2 Model for the estimated budget for the action
- Annex 4 Model for the financial statement
- Annexes 5 and 6 (not applicable)

Introductory remark SME Instrument Ph2 MGA

The SME Instrument Phase 2 Model Grant Agreement deviates from the General Model Grant Agreement as follows:

- Article 5.2 (SME Instrument Ph2 specific provisions on reimbursement rate)
- Article 13 (SME Instrument Ph2 specific provisions on subcontracting)
- Article 26.3 (SME Instrument Ph2 ownership of results, rights of third parties)

The annotations will concentrate on differences in substance and interpretation that require explanation.

Parts that are not applicable or differ only in presentation *(e.g. Articles 11, 12, 14, 15, 16, 23a - 33, 37, 39 SME Instrument Ph1 MGA, Annexes)* will not be shown.

By contrast, provisions that do not deviate from the General MGA, but that require clarification or a specific explanation or interpretation for SME Instrument actions are added:

for SME Instrument Ph1:

- Article 2 (SME Instrument Ph1 actions)
- Article 8 (SME Instrument Ph1 rules on third party involvement)

For SME Instrument Ph2:

- Article 2 (SME Instrument Ph2 actions)
- Article 4.1 (SME Instrument Ph2 budget categories)
- Article 6 (SME Instrument Ph2 eligible and ineligible costs)
- Article 8 (SME Instrument Ph2 rules on third party involvement)
- Article 20 (SME instrument Ph2 reporting)

The annotations (for both Ph1 and Ph2) are based on the mono-beneficiary version, since that is most common for SME Instrument actions. The differences between mono and multi-beneficiary versions are marginal.

IV.2 SME Instrument Phase 1: Annotations

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** (‘**action’**), as described in Annex 1.

[OPTION for complementary grants if foreseen in the work programme: *The grant is a ‘**complementary grant**’ to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]]**.]***

[OPTION for joint actions (joint call with a third country or an international organisation)*: The action is a ‘**jointly funded action**’ which must be coordinated with the ‘joint action’ called [insert the name of the third country or international organisation action], as described in Annex 1.**]***

1. SME Instrument Ph1 actions

SME Instrument Ph1 actions are mono- or multi-beneficiary actions with the following activities:

– making a feasibility study for an innovation idea (i.e. a ‘proof of concept’ or ‘business plan’ for new, altered or improved product, process or service)

What? The innovation idea must have considerable novelty to the sector in which it is presented (for technological innovation ideas, this means a ‘technology readiness level’ of 6 or above*; see General Annex G to the Main Work Programme*).

The feasibility study of Phase 1 should cover all topics that are necessary to assess quality and potential of the innovation idea *(e.g. risk assessment, market study, user involvement, intellectual property management, innovation strategy development, partner search, feasibility of concept etc).*

⚠ The implementation in Phase 2 must then focus on innovation activities *(e.g. demonstration, testing, prototyping, piloting, scaling-up, miniaturisation, design, market replication)* but may also include some research.

Exception:

If provided for in the Work Programme/call, an SME Instrument Ph2 action may exceptionally concern pre-dominantly *research* activities. In this case, it will be funded with a GA based on the General MGA (instead of the SME Instrument Ph2 MGA).

What not? Ideas without commercial potential or ideas without considerable novelty to the sector will not be funded by the SME Instrument.

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual or the General Annexes to the Main Work Programme, and the call and topics pages of your call.

ⓘ For more information on SME Instrument Ph2 actions, see Article 2 SME Instrument Ph2 MGA.

ARTICLE 4 — ESTIMATED BUDGET

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the form of costs (see Articles 5 and 6).

1. Budget category

The SME Instrument does **not** use the **budget categories** of the **General MGA**.

Since SME Instrument Ph1 grants consist in a single lump sum, there is only one budget category.

Budget category of the SME Instrument Ph1 MGA:

- costs for the feasibility study (direct and indirect costs)

⚠ The budget category is relevant for the estimated budget *(Article 4 and Annex 2)*, forms of costs *(Article 5)*, cost eligibility rules *(Article 6.2)* and the cost declarations (i.e. financial statements; *Article 20 and Annex 4*).

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATE AND FORM OF COSTS

5.1 Maximum grant amount

The **maximum grant amount** is EUR 50 000 (fifty thousand euros).

5.2 Form of grant, reimbursement rate and form of costs

The grant reimburses 70 % of the action's eligible costs (see Article 6) ('**reimbursement of eligible costs grant**') (see Annex 2).

The estimated eligible costs of the action are EUR 71 429 (seventy one thousand four hundred and twenty nine).

Eligible costs (see Article 6) for the costs for the feasibility study must be declared as the lump sum set out in Annex 2 (i.e. under the form of 'lump sum costs').

1. Maximum grant amount — Reimbursement rate — Cost forms

How much & Which form? The grant amount for SME Instrument Ph1 actions is fixed as a **lump sum** of **EUR 50 000**.

The lump sum is provided for by Commission Decision C(2013) 8198[76], for all SME Instrument Ph1 actions.

The amount of EUR 50 000 stays the same, both for multi-beneficiary and mono-beneficiary actions.

It is deemed to reimburse 70 % of the action's total eligible costs (that are in turn set by this Decision at EUR 71 429).

If the action is correctly implemented, the beneficiaries are entitled to receive this fixed amount of EU funding (lump sum).

⚠ No other costs will be reimbursed; the lump sum is deemed to cover all (direct or indirect) costs that may have been incurred for the feasibility study.

⚠ The SME Instrument Ph1 MGA does not use any of the **unit costs** and **flat-rates** of the General MGA.

The conditions for eligibility are set out in Article 6.

[76] Commission Decision C(2013) 8198 of 10 December 2013 authorising the reimbursement on the basis of a lump sum for SME instrument phase 1 actions under the Horizon 2020 Framework Programme. Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_sme-ph1_en.pdf

5.3 Final grant amount — Calculation

The final grant amount depends on the proper implementation of the action in accordance with the Agreement's terms and conditions.

This amount is calculated by the *[Commission][Agency]* — when the payment of the balance is made (see Article 21) — in the following steps:

Step 1 — Application of the reimbursement rate

Step 2 — Reduction due to breach of obligations

5.3.1 Step 1 — Application of the reimbursement rates to the eligible costs

The reimbursement rate (see Article 5.2) is applied to the eligible costs (lump sum costs; see Article 6) declared by the beneficiary and approved by the *[Commission][Agency]* (see Article 21).

5.3.2 Step 2 — Reduction due to improper implementation or breach of other obligations — Reduced maximum grant amount — Calculation

If the grant is reduced (see Article 43), the *[Commission][Agency]* will calculate the reduced maximum grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the action or to the seriousness of the breach of obligations in accordance with Article 43.2) from the maximum grant amount set out in Article 5.1.

In this case, the final grant amount will be the lower of the following two:

- the amount obtained in Step 1 or
- the amount obtained in Step 2.

[…]

1. Calculation of the final grant amount

For SME Instrument Ph1 grants, the rules on the calculation of the final grant amount are in principle the same as in the General MGA *(see Article 5.3 General MGA)*.

However, since they are lump sum grants (and the amount declared is pre-filled by the system), there is no:

- limit to the maximum grant amount or
- reduction due to the no-profit rule.

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

6.1 Eligible costs

A. Costs for the feasibility study (direct and indirect costs) are eligible ('eligible costs'), if they correspond to the lump sum set out in Annex 2 and if the corresponding tasks or parts of the action have been properly implemented in accordance with Annex 1.

1. Eligible costs

The SME Instrument Ph1 MGA has its **own budget category**, with its own **types of costs**, **conditions for eligibility** and rules for **calculation**.

2. Costs for the feasibility study: Types of costs — Cost form — Conditions for eligibility — Calculation

2.1 The budget category 'costs for the feasibility study' **covers** the costs for the feasibility study for the innovation idea *(see Article 2)*.

2.2 These costs must be **declared as** the lump sum fixed by Commission Decision C(2013) 8198[77] and set out in Annex 2 of the GA (currently **EUR 71 429** per action).

This lump sum is deemed to cover all (direct and indirect) eligible costs that may have been incurred for the feasibility study.

2.3 They must fulfil the following **eligibility conditions**:

- the action tasks must have been carried out as described in Annex 1.

2.4 No **calculation** is necessary.

The beneficiaries must declare the amount of EUR 71 429 as the total eligible costs of the action; they cannot declare the costs actually incurred. The final financial report and individual financial statement are therefore automatically pre-filled by the system *(see Article 20)*.

6.2 Ineligible costs

'Ineligible costs' are:

(a) costs that do not comply with the conditions set out above (see Article 6.1) and

(b) costs reimbursed under another EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the *[Commission][Agency]* for the purpose of implementing the EU and Euratom budget.

6.3 Consequences of declaration of ineligible costs

Declared costs that are ineligible will be rejected (see Article 42).

This may also lead to any of the other measures described in Chapter 6.

ARTICLE 7 — GENERAL OBLIGATION TO PROPERLY IMPLEMENT THE ACTION

7.1 General obligation to properly implement the action

The beneficiary must implement the action as described in Annex 1 and in compliance with the provisions of the Agreement and all legal obligations under applicable EU, international and national law.

7.2 Consequences of non-compliance

If the beneficiary does not properly implement the action (or part of it), the corresponding costs will be ineligible (see Article 6) and will be rejected (see Article 42).

If the beneficiary breaches any other obligation, the grant may be reduced (see Article 43).

1. Consequences of improper implementation

Since the SME Instrument Ph1 grant consists in a reimbursement of lump sum costs, improper implementation does not always lead to the reduction of the grant, but leads to the ineligibility of the costs (namely, if the improper implementation consists in non-compliance with Annex 1; *see Article 6*).

If the action is not carried out as described in Annex 1, costs will be rejected proportionally to the tasks or parts of the action not implemented *(see Article 42)*.

⚠ If the feasibility study is incomplete and thus does not meet the intended objective or is of insufficient quality *(e.g. does not permit to assess the quality and potential of the innovation idea)*, *all* costs will be declared ineligible and there will be no financial contribution from the EU.

By contrast, if other provisions of the GA or provisions of EU, international and national law are not complied with, the grant may be reduced.

[77] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_sme-ph1_en.pdf

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

Not applicable

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

The rules of the General MGA on third party involvement are only partly applicable.

Third party involvement in SME Instrument Ph1 actions is limited to purchases (Article 10) and subcontracting (Article 13).

⚠ The costs for purchases and subcontracts are covered by the lump sum.

⚠ In-kind contributions (Articles 11 and 12) and linked third parties (Article 14) are **not** allowed.

ARTICLE 10 — PURCHASE OF GOODS, WORKS OR SERVICES

10.1 Rules for purchasing goods, works or services

If necessary to implement the action, the beneficiary may purchase goods, works or services.

The beneficiary must make such purchases ensuring the best value for money or, if appropriate, the lowest price. In doing so, it must avoid any conflict of interests (see Article 35).

The beneficiary must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their contractors.

10.2 Consequences of non-compliance

If the beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Purchase of goods, works or services

The rules on contracts for the purchase of goods, works or services for SME Instrument Ph1 actions are almost identical to the General MGA *(see Article 13 General MGA).*

Since SMEs are not contracting authorities, there is however no obligation as regards compliance with the EU public procurement Directives 2004/17/EC and 2004/18/EC (or national legislation implementing them).

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 Rules for subcontracting action tasks

If necessary to implement the action, the beneficiary may award subcontracts covering the implementation of certain action tasks described in Annex 1.

The beneficiary must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, it must avoid any conflict of interests (see Article 35).

The beneficiary must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their subcontractors.

The beneficiary must ensure that its obligations under Articles 35, 36, 38 and 46 also apply to the subcontractors.

13.2 Consequences of non-compliance

If the beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Subcontracting

The rules on subcontracting for SME Instrument Ph1 actions are similar to the General MGA *(see Article 13 General MGA).*

Subcontracting is however not restricted to a limited part of the action.

Moreover, the estimated costs do **not** have to be included in Annex 1or shown in the table of estimated costs of Annex 2 (since they are covered by the lump sum).

Since SMEs are not contracting authorities, there is also no obligation as regards compliance with the EU public procurement Directives 2004/17/EC and 2004/18/EC (or national legislation implementing them).

Finally, the obligations in Article 13.1 are **not** considered to be additional eligibility conditions, but *other obligations*. In case of breach, the Commission/Agency may therefore reduce the grant in proportion to the seriousness of the breach (instead of rejecting the costs).

ⓘ For more information on the differences between contracts and subcontracts, see Article 8 General MGA.

ⓘ For more information on the characteristics of subcontracting and best value for money, see Article 13 General MGA.

ARTICLE 18 — KEEPING RECORDS — SUPPORTING DOCUMENTATION

18.1 Obligation to keep records and other supporting documentation to support the costs declared

The beneficiary must — for a period of three years after the balance is paid — keep adequate **records and other supporting documentation** to prove that the corresponding tasks or part of the action as described in Annex 1 have been implemented properly. The beneficiary does not need to identify the actual eligible costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared as the lump sum.

It must make them available upon request (see Article 17) or in the context of checks, reviews, audits or investigations (see Article 22).

If there are on-going checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement (including the extension of findings; see Articles 22), the beneficiary must keep the records and other supporting documentation until the end of these procedures.

The beneficiary must keep the original documents. Digital and digitalised documents are considered originals if they are authorised by the applicable national law. The *[Commission][Agency]* may accept non-original documents if it considers that they offer a comparable level of assurance

18.2 Consequences of non-compliance

If the beneficiary breaches any of its obligations under this Article, costs insufficiently substantiated will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Records and other supporting documentation

For SME Instrument Ph1 actions, beneficiaries do not need to keep full records on their actual costs; they only need to keep the evidence (documentation, records) that the action's tasks (as described in Annex 1) were properly carried out.

> ***Examples:*** *Evidence means documentation that proves that the tasks were carried out. Describing all the tasks relating to the feasibility study is usually enough.*

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit the report

The beneficiary must submit to the *[Commission][Agency]* (see Article 52) the **final report**, including a request for payment.

The report must be drawn up using the forms and templates provided by the *[Commission][Agency]* in the electronic exchange system (see Article 52).

20.2 Reporting period

The action has one reporting period:

- RP1: from month 1 to month [X]

20.3 Periodic reports — Requests for interim payments

Not applicable

20.4 Final report — Request for payment of the balance

The beneficiary must submit to the *[Commission][Agency]* (see Article 52) — within 60 days following the end of the reporting period — a final report, which includes the request for payment of the balance.

The **final report** must include the following:

(a) a '**final technical report**' containing a **summary** with:

(i) an overview of the results;

(ii) the conclusions on the action;

(iii) the answers to the '**questionnaire**', covering issues related to the action implementation and the economic and societal impact, notably in the context of the Horizon 2020 key performance indicators and the Horizon 2020 monitoring requirements.

(b) a '**final financial report**' containing an '**individual financial statement**' (see Annex 4), which includes the **request for payment of the balance**.

The individual financial statement must detail the eligible costs (lump sum costs; see Article 6 and Annex 2).

Amounts which are not declared in the individual financial statement will not be taken into account by the *[Commission][Agency]*.

The beneficiary must **certify** that:

- the information provided is full, reliable and true;
- the costs declared are eligible (i.e. that the action has been properly implemented; see Article 6);
- the costs (i.e. the proper implementation of the action) can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22).

20.5 Information on cumulative expenditure incurred

Not applicable

[…]

1. Report

When & What? At the end of the action, the beneficiary (for multi-beneficiary actions: the coordinator) must submit a final report, containing a:

- final technical report
- final financial report.

2. Reporting period

SME instrument Ph1 actions have only one reporting period (with one pre-financing payment; *see Article 21*).

3. Final financial report

The final financial report and statement are automatically pre-filled by the system (with EUR 50 000 as final grant amount and EUR 71 429 as the total eligible costs of the action; *see Article 5*).

 For multi-beneficiary actions, each beneficiary must fill in an individual financial statement (in order to certify conformity of the costs declared). This does not however change the EU contribution requested (which remains one single lump sum of EUR 50 000 for the whole consortium).

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the beneficiary:

- one **pre-financing payment**;
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20).

21.2 Pre-financing payment — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiary with a float.

It remains the property of the EU until the payment of the balance.

The amount of the pre-financing payment will be EUR [**insert amount** (insert amount in words)].

The *[Commission][Agency]* will — except if Article 48 applies — make the pre-financing payment to the beneficiary within 30 days from the starting date of the action (see Article 3) or from the entry into force of the Agreement (see Article 58), whichever is the latest.

An amount of EUR [**insert amount** (insert amount in words)], corresponding to 5% of the maximum grant amount (see Article 5.1), is retained by the *[Commission][Agency]* from the pre-financing payment and transferred into the '**Guarantee Fund**'

21.3 Interim payments — Amount — Calculation

Not applicable

[…]

21.5 Notification of amounts due

The *[Commission][Agency]* will formally notify to the beneficiary the amount due and specify the final grant amount.

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 43 and 44.

[…]

1. Payments to be made — No interim payments

For SME Instrument Ph1 actions have only one reporting period *(see Article 20.2)*, with one pre-financing payment.

There are no interim payments.

The balance is paid when the action ends.

2. Amount of pre-financing payment

How much? The pre-financing payment for SME Instrument Ph1 actions is up to 50% of the maximum grant amount (i.e. up to EUR 25 000).

ARTICLE 36 — CONFIDENTIALITY

36.1 General obligation to maintain confidentiality

The parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed ('**confidential information**').

They may use confidential information to implement the Agreement.

The confidentiality obligations no longer apply if:

(f) the disclosing party agrees to release the other party;

(g) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;

(h) the recipient proves that the information was developed without the use of confidential information;

(i) the information becomes generally and publicly available, without breaching any confidentiality obligation, or

(j) the disclosure of the information is required by EU or national law.

36.2 Consequences of non-compliance

If the beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Confidential information

The SME Instrument Ph1 MGA foresees lighter provisions on confidentiality than the General MGA.

ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING

38.1 Communication activities by beneficiaries

The beneficiary must promote the action and its results.

Any communication activity related to the action must:

(e) display the EU emblem and

(f) include the following text:

"This project has received funding from the *[European Union's Horizon 2020 research and innovation programme][Euratom research and training programme 2014-2018]* under grant agreement No [number]".

Any communication activity related to the action must indicate that it reflects only the author's view and that the *[Commission][Agency]* is not responsible for any use that may be made of the information it contains.

38.2 Communication activities by the *[Commission][Agency]*

Not applicable

38.3 Consequences of non-compliance

If the beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Promoting the action — Visibility of EU funding

The SME Instrument Ph1 MGA foresees lighter requirements for promoting the action and acknowledgment of EU funding.

ARTICLE 42 — REJECTION OF INELIGIBLE COSTS

[…]

42.2 Ineligible costs to be rejected — Calculation — Procedure

Ineligible costs will be rejected proportionally to the tasks or parts of the action not implemented.

If the *[Commission][Agency]* rejects costs **without reduction of the grant** (see Article 43) or **recovery of undue amounts** (see Article 44), it will formally notify the beneficiary the rejection of costs, the amounts and the reasons why (if applicable, together with the notification of amounts due; see Article 21.5). The beneficiary may — within 30 days of receiving notification — formally notify the *[Commission][Agency]* of its disagreement and the reasons why.

If the *[Commission][Agency]* rejects costs **with reduction of the grant** or **recovery of undue amounts**, it will formally notify the rejection in the '**pre-information letter**' on reduction or recovery set out in Articles 43 and 44.

[…]

1. Calculation of the ineligible costs to be rejected

Since the SME Instrument Ph1 grant consists in a reimbursement of lump sum costs, improper implementation leads to the ineligibility of the costs *(see Article 7)*.

If the action is not carried out as described in Annex 1, the costs will be considered ineligible and rejected proportionally to the tasks or parts of the action not implemented.

⚠ If the feasibility study is incomplete and thus does not meet the intended objective or is of insufficient quality *(e.g. does not permit to assess the quality and potential of the innovation idea)*, *all* costs will be declared ineligible and there will be no financial contribution from the EU.

ARTICLE 50 — TERMINATION OF THE AGREEMENT

[…]

50.1 Termination of the Agreement, by the beneficiary

50.1.2 Effects

The beneficiary must submit — within 60 days from when termination takes effect — the final report (see Article 20).

If the *[Commission][Agency]* does not receive the report within the deadline (see above), no costs will be reimbursed.

The *[Commission][Agency]* will **calculate the final grant amount** (see Article 5.3) and the balance (see Article 21), on the basis of the report submitted, the eligible costs and compliance with other obligations under the Agreement.

In case of **improper termination**, the grant will be reduced by 100% (see Article 43).

[…]

50.3 Termination of the Agreement, by the *[Commission][Agency]*

50.3.3 Effects

The beneficiary must — within 60 days from when termination takes effect — submit the final report (see Article 20).

If the *[Commission][Agency]* does not receive the report within the deadline (see above), no costs will be reimbursed.

The *[Commission][Agency]* will calculate the final grant amount (see Article 5.3) and the balance (see Article 21), on the basis of the report submitted, the eligible costs and compliance with other obligations under the Agreement.

This does not affect the *[Commission's][Agency's]* right to reduce the grant (see Article 43) or to impose administrative and financial penalties (Article 45).

The beneficiary may not claim damages due to termination by the *[Commission][Agency]* (see Article 46).

1. Termination of the Agreement

For SME Instrument Ph1 actions, the same rules on termination apply as in the General MGA *(see Article 50 General MGA)*.

⚠ Improper termination by the beneficiary will however lead to a 100% reduction of the grant.

IV.3 SME Instrument Phase 2: Annotations

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** (‘**action’**), as described in Annex 1.

[OPTION for complementary grants if foreseen in the work programme: *The grant is a ‘**complementary grant**’ to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].**]***

[OPTION for joint actions (joint call with a third country or an international organisation)*: The action is a ‘**jointly funded action**’ which must be coordinated with the ‘joint action’ called [insert the name of the third country or international organisation action], as described in Annex 1.**]***

1. SME Instrument Ph2 actions

SME Instrument Ph2 actions are actions with the following activity:

– implementing an innovation idea (including, prototyping, testing, demonstrating, piloting, large-scale product validation and market replication).

What? The innovation idea must have considerable novelty to the sector in which it is presented (for technological innovation ideas, this means a ‘technology readiness level’ of 6 or above; *see General Annex G to the Main Work Programme*).

The implementation of Phase 2 must focus on innovation activities *(e.g. demonstration, testing, prototyping, piloting, scaling-up, miniaturisation, design, market replication)* but may also include some research.

⚠ An project may be funded in Phase 2 even if it was not funded in Phase 1.

What not? Ideas without commercial potential or ideas without considerable novelty to the sector will not be funded by the SME Instrument.

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual or the General Annexes to the Main Work Programme, and the call and topics pages of your call.

ⓘ For more information on SME Instrument Ph1 actions, see Article 2 SME Instrument Ph1 MGA.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary *[(and linked third party)]* and **budget category** (see Articles 5, 6, *[and 14]*). ***[OPTION to be used if Article 9 applies:*** *It also contains the estimated costs of the beneficiaries not receiving EU funding (see Article 9).]*

[…]

1. Budget categories

The SME Instrument Ph2 MGA uses the **same budget categories as** the **General MGA**.

Budget categories of the SME Instrument Ph2 MGA:

- direct personnel costs
- subcontracting costs
- other direct costs
- indirect costs

Differences compared to the General MGA:

- No 'direct costs of providing financial support to third parties'
- No 'specific categories of costs'

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATE AND FORMS OF COSTS

[…]

5.2 Form of grant, reimbursement rate and forms of costs

The grant reimburses **70%** of the action's eligible costs (see Article 6) ('**reimbursement of eligible costs grant**') (see Annex 2).

The estimated eligible costs of the action are EUR **[insert amount** (insert amount in words)**]**.

Eligible costs (see Article 6) must be declared under the following forms ('**forms of costs**'):

(k) for **direct personnel costs** *[(excluding personnel costs for the activities in Point (f))]*[1]:

- as actually incurred costs ('**actual costs**') or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

Personnel **costs for SME owners** or **beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points A.4 and A.5) must be declared on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(l) for **direct costs of subcontracting** *[(excluding subcontracting costs for the activities in Point (f))]*[1]: as actually incurred costs (**actual costs**);

(m) ***[OPTION to be used if Article 15 applies**: for **direct costs of providing financial support to third parties** [(excluding costs of financial support given under the activities in Point (f))]*[1]*: as actually incurred costs (**actual costs**);][**OPTION**: not applicable;]*

(n) for **other direct costs** *[(excluding other direct costs for the activities in Point (f))]*: as actually incurred costs (**actual costs**);

(o) for **indirect costs** *[(excluding indirect costs for the activities in Point (f))]*[1]: on the basis of a flat-rate of 25% of the eligible direct costs, from which are excluded the costs set out in Article 6, Point E ('**flat-rate costs**')*[;][.]*

***[**(f) [**OPTION for specific categories of costs if unit costs foreseen by Commission decision:** for **costs of [insert cost category or activity**[1]*]:*

- *on the basis of the amount(s) per unit set out in Annex 2 (**unit costs**) [or]*
- *[as actually incurred costs (**actual costs**)]*[1]*[or*
- *as a combination of the two].]*

*[**OPTION for specific categories of costs if lump sum costs foreseen by Commission decision:** for **costs of [insert cost category or activity**]: as the lump sum set out in Annex 2 ('**lump sum costs**').]]*

1. Reimbursement rate

How much? For SME Instrument Ph2 actions, the reimbursement rate is normally set at 70% *(see General Annex D to the Main Work Programme).*

Exception:

If provided for in the Work Programme/call, an SME Instrument Ph2 action may exceptionally be funded at 100%, with a GA based on the General MGA (instead of the SME Instrument Ph2 MGA).

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

[…]

6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

A. direct personnel costs;
B. direct costs of subcontracting;
C. *not applicable*;
D. other direct costs;
E. indirect costs.
.

'Direct costs' are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point E below).

'Indirect costs' are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

[…]

1. Eligible costs — Ineligible costs

The SME Instrument Ph2 MGA uses the **same budget categories** (covering the same **types of costs)** as the General MGA and the same **conditions for eligibility** and rules for **calculation** apply *(see Article 6 General MGA)*.

Exception:

The SME Instrument Ph2 MGA does not reimburse:

- 'direct costs of providing financial support to third parties'
- 'specific categories of costs'.

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

The beneficiaries must have the appropriate resources to implement the action.

If it is necessary to implement the action, the beneficiaries may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the *[Commission][Agency]* and the other beneficiaries for implementing the action.

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

For SME Instrument Ph2 actions, the same rules on third party involvement apply as in the General MGA *(see Article 8 General MGA)*.

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 Rules for subcontracting action tasks

13.1.1 If necessary to implement the action, the beneficiary may award subcontracts covering the implementation of certain action tasks described in Annex 1.

The beneficiary must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, it must avoid any conflict of interests (see Article 35).

[OPTION for actions involving PCP or PPI: *In addition, for the pre-commercial procurement (PCP) or procurement of innovative solutions (PPI), the beneficiary must follow a transparent and non-discriminatory procedure, including at least the following:*

*(a) an '**open market consultation**' published in the Official Journal of the European Union via a '**prior information notice (PIN)**' and promoted and advertised widely;*

*(b) a '**contract notice**' allowing for a time-limit for receipt of tenders of at least 2 months, published in the Official Journal of the European Union and promoted and advertised widely;*

*(c) a '**request for tenders**' based on functional or performance-based specifications (that take into account the outcome of the open market consultation) and describing the practical set-up for the implementation of the subcontract(s);*

*(d) an objective and non-discriminatory **evaluation** of the tenders and **award** of subcontract(s);*

*(e) a '**contract award notice**' published in the Official Journal of the European Union.*

The beneficiary must also ensure that every prior information notice, contract notice or contract award notice published in relation to the subcontracting includes the following disclaimer:

*'This procurement receives funding under the European Union's Horizon 2020 research and innovation programme under the grant agreement No [number]). The EU is however not participating as a contracting authority in this procurement.' **]***

[OPTION only for actions involving PPI: *Participation in PPI tendering procedures must be open on equal terms to tenderers from EU Member States, associated countries and other countries with which the EU has an agreement in the field of public procurement. If the WTO Government Procurement Agreement applies, PPI subcontracts must also be open to tenderers from States that have ratified this agreement.*

*If the procurement of the innovative solution (PPI) consists (and is limited to) buying a set of prototypes and/or test products that were developed during a preceding PCP Cofund action, the beneficiary does not need to make an open market consultation, contract notice and contract award notice under Points (a), (b) and (e) above. In this case, it must make a **request for offers** from at least **three providers** (including the providers that participated in the preceding PCP), in accordance with the negotiated procedure without publication under Directives 2004/18/EC and 2004/17/EC [1].**]***

[OPTION only for actions involving PCP: *Subcontracts for pre-commercial procurement must provide for the following:*

- *the ownership, by the subcontractors, of the intellectual property rights on the results that they generate;*
- *the right of the buyer to access results as well as the background necessary to use the results — on a royalty-free basis — for its own use;*
- *the right of the buyer to grant (or to require the subcontractors to grant) non-exclusive licences to third parties to exploit the results — under fair and reasonable conditions — (without the right to sub-licence);*

- *the obligation of the subcontractors to transfer back to the buyer the ownership of intellectual property generated by subcontractors during the PCP, if subcontractors fail to commercially exploit the results within the period set out in the subcontract;*

- *the right of the buyer to publish — at the time of the contract award notice — the identity of the winning tenderers and a project summary provided by the winning tenderers, and to publish — after R&D has finished and after consulting the subcontractors — summaries of the results as well as the identities of the subcontractors that successfully completed the last phase of the PCP.*

*The beneficiary must ensure that the majority of the research and development work done by the subcontractor(s) (including the work of the main researchers) is located in the EU Member States or associated countries ('place of performance obligation').**]***

The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1 and the total estimated costs of subcontracting per beneficiary must be set out in Annex 2. The *[Commission][Agency]* may however approve subcontracts not set out in Annex 1 and 2 without amendment according to Article 55, if:

- they are specifically justified in the periodic technical report, and

- they do not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

[OPTION for classified deliverables:** Classified deliverables may be subcontracted only after explicit approval (in writing) from the [Commission][Agency] (see Article 37).**]

The beneficiary must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Article 22 and 23 also towards its subcontractors.

13.1.2 The beneficiary must ensure that its obligations under Articles 35, 36 38 and 46 also apply to the subcontractors.

13.2 Consequences of non-compliance

If the beneficiary breaches any of its obligations under Article 13.1.1, the costs related to the subcontract concerned will be ineligible (see Article 6) and will be rejected (see Article 42).

If the beneficiary breaches any of its obligations under Article 13.1.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Subcontracting

The rules on subcontracting for SME Instrument Ph2 actions are similar to those of the General MGA *(see Article 13 General MGA).*

However, subcontracting is not restricted to a limited part of the action.

Moreover, for the SME Instrument Ph2, the Commission/Agency will assess compliance with best value for money during the evaluation of the proposal (and therefore be able to give higher security on subcontracts that are part of the proposal).

Assurance can only be given on subcontracts that are described in sufficient detail in the proposal.

⚠ If you know the subcontractor, include the key information on the award procedure for the subcontract in the proposal (name of subcontractor, price and object), together with the action task(s) that will be subcontracted and an explanation why the subcontractor and the price are appropriate.

⚠ If you do not know the subcontractor, your proposal should set out the task(s) to be subcontracted, the estimated budget and the procedure you will follow to ensure best value for money.

Annex 1 will explicitly identify the subcontracts for which assurance is given by the Commission/Agency. For these subcontracts, beneficiaries have assurance that compliance with best value for money will not be challenged in audits (unless it turns out that the beneficiary did not follow the procedure described or concealed information for the purpose of the approval).

ⓘ *For more information on evaluation, see the H2020 Online Manual.*

Finally, for SME Instrument Ph2 actions, subcontracts should provide for the right of the beneficiaries to commercially exploit the results generated by subcontractors during the subcontract implementation (by way of transfer of the intellectual property rights, licence or other; *see Article 26.3*).

ⓘ *For more information on the differences between contracts and subcontracts, see Article 8 General MGA.*

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The coordinator must submit to the *[Commission][Agency]* (see Article 52) technical and financial reports, including requests for payment.

The reports must be drawn up using the forms and templates provided by the *[Commission][Agency]* in the electronic exchange system (see Article 52).

20.2 Reporting periods

The action is divided into the following '**reporting periods**':

- RP1: from month 1 to month [X]
- ***[****- RP2: from month [X+1] to month [Y]*
- *RP3: from month [Y+1] to month [Z]*
- *[same for other RPs]*
- *RPN: from month [N+1]to [the last month of the project].****]***

[…]

1. Reporting periods

The reporting periods for SME Instrument Ph2 actions are normally the same as for the General MGA *(see Article 20.2 General MGA).*

The reporting periods may however be adapted to reflect the duration of the action. Thus, if considered necessary, SME instrument Ph2 actions may include shorter and more frequent reporting periods.

ARTICLE 26 — OWNERSHIP OF RESULTS

26.3 Rights of third parties (including personnel)

If third parties (including personnel) may claim rights to the results, the beneficiary must ensure that it complies with its obligations under the Agreement.

If a third party generates results for a beneficiary, the beneficiary must obtain all necessary rights (transfer, licences or other) from the third party, in order to be able to respect its obligations as if those results were generated by the beneficiary itself and ensure its possibility to commercially exploit the results ('**freedom to operate**').

For this purpose, it must:

- in agreements with employees or third parties involved in the action (such as, for instance, subcontractors): retain the right to commercially exploit the results (at least for the forms of exploitation set out in the 'commercialisation plan'; see Annex 1), if necessary by agreeing to a licence and
- in all other cases: take measures to obtain, from the third parties, licences for the exploitation.

If obtaining the rights is impossible, the beneficiary must refrain from using third parties to generate the results.

1. Freedom to operate

'Freedom to operate' means being able to fully commercially exploit the action's results.

The beneficiaries must safeguard their freedom to operate in all agreements with employees and third parties involved in the action *(see Article 8 General MGA).*

> ***Example:*** *in their agreements with subcontractors, beneficiaries must ensure their right to commercially exploit the results of work subcontracted, even if this involves using the subcontractor's IPR background.*

In addition, they may have to obtain licenses to commercially exploit the results from other third parties (i.e. third parties that are not participating in the action implementation).

> ***Example****: if a third party that is not involved in the action owns IPRs that may stand in the way of commercially exploiting the results, the beneficiary must obtain the license for commercial exploitation.*

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V. ERA-NET Cofund

V.1 Background information and approach

The Model Grant Agreement for ERA-NET Cofund ('ERA-NET Cofund MGA) is used for grants for **ERA-NET Cofund actions only**.

⚠ ERA-NET Cofund grants are open only to **research funders** (i.e. legal entities owning or managing research and innovation programmes).

'Programme owners' are typically national/regional ministries or authorities responsible for defining, financing or managing national/regional research programmes.

'Programme managers' are typically research councils, funding agencies or other national/regional organisations that implement research programmes under the supervision of the programme owners.

The minimum requirements for participation are 3 independent research funders established in different Member States or associated countries.

ⓘ For more information on ERA-NET Cofund actions, see Article 2.

ⓘ For information on ERA-NET Cofund funding opportunities, see the 'Search Topic' function on the Participant Portal.

ⓘ For information on ERA-NET Cofund standard eligibility criteria, see General Annex C to the Main Work Programme.

The ERA-NET Cofund MGA follows the General MGA for numbering and content, except for the following:

Introductory remark

The Model Grant Agreement for ERA-NET Cofund deviates from the General Model Grant Agreement as follows:

- Article 3 (duration of ERA-NET Cofund actions: 60 months)
- Article 5.2 (ERA-NET Cofund specific reimbursement rate and forms of costs)
- Article 6.2 (ERA-NET Cofund specific conditions for eligibility of costs)
- Articles 8, 10, 11, 12, 13 (reference to 'transnational projects' instead of 'action')
- Article 15 (provisions for support to or implementation of trans-national projects for the co-funded call)
- Article 16 (provision on access to research infrastructures not applicable)
- Article 19 (ERA-NET Cofund specific deliverables)
- Article 20.1 – 20.5 (ERA-NET Cofund specific reporting provisions)
- Article 21.1 – 21.3, 21.5 (ERA-NET Cofund specific payment provisions)
- Annex 2 Model for the estimated budget for the action
- Annex 4 Model for the financial statement
- Annex 7 Model for the commitment on availability of funds
- Annex 8 Model for the statement on the use of the previous pre-financing instalment

The annotations will concentrate on differences in substance and interpretation that require explanation.

Parts that are not applicable or differ only in presentation *(e.g. Articles 10-13, Annexes)* will not be shown.

By contrast, provisions that do not deviate from the General MGA, but that require clarification or a specific interpretation for ERA-NET Cofund actions are added:

- Article 2 (ERA-NET Cofund actions)
- Article 4.1 (ERA-NET Cofund budget categories)
- Article 8 (ERA-NET Cofund rules on third party involvement).

V.2 ERA-NET Cofund Annotations

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** (‘**action**’), as described in Annex 1.

[OPTION for complementary grants if foreseen in the work programme: *The grant is a ‘**complementary grant**’ to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].**]***

[OPTION for joint actions (joint call with a third country or an international organisation)*: The action is a ‘**jointly funded action**’ which must be coordinated with the ‘joint action’ called [insert the name of the third country or international organisation action], as described in Annex 1.**]***

1.ERA-NET Cofund actions

ERA-NET Cofund actions are actions with the following activities:

- the preparation, implementation and follow-up of a single joint call for proposals for trans-national research and/or innovation projects

  ⚠ Only one co-funded call per GA.

  There are two ways of implementing the joint call:

  - by **providing financial support to third parties**

    This is normally the case if the beneficiaries are research funders and cash contributions are received from national programmes. In this case, the beneficiaries launch a call for proposals, resulting in grants for third parties.

    Most ERA-NET Cofund actions are implemented in this way.

  - by **implementation of the trans-national projects by the beneficiaries**

    This is normally the case for governmental research organisations implementing a research programme based on institutional funding (i.e. not project-based funding). In this case, the co-funded call for proposals is based on in-kind contributions from their institutional funding. Beneficiaries then carry out the selected trans-national projects themselves, either fully or partially.

- optional: additional activities related to the coordination of national/regional research and innovation programmes.

  What? The additional activities must relate to the coordination of public research and innovation programmes and should focus on preparing and implementing joint activities (including other joint calls without EU co-funding; *see General Annex D to the Main Work Programme*).

  ⚠ These activities must be *in addition* to implementing a joint call.

⚠ If the additional activities consist in additional calls without top-up funding from the EU, the requirements set out in Article 15 do not apply.

Normally, ERA-NET Cofund grants are multi-beneficiary grants; exceptionally they can be *mono*-beneficiary grants for sole participants *(see General Annex D to the Main Work Programme)*.

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual or the General Annexes to the Main Work Programme and the call and topics pages of your call.

ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION

The **duration of the action** will be **60 months** as of *[the first day of the month following the date the Agreement enters into force (see Article 58)] [insert date]*[4] ('starting date of the action').

[4] This date must always be the first day of a month and it must be later than the date of entry into force of the agreement unless authorised otherwise by the authorising officer, if the applicant can demonstrate the need to start the action before the entry into force of the grant agreement. In any case, the starting date should not be earlier than the date of the submission of the grant application (Article 130 FR).

1. Duration of the action

For ERA-NET Cofund actions, the duration is usually **60 months**.

⚠ This time is needed because these actions include call preparation, launch of the call, proposal submission and evaluation, the selection decision, and implementation of the selected transnational projects, which typically takes 36 months.

If implementation of the action is justifiably delayed, the consortium may request an extension (i.e. request an amendment extending the duration; *see Article 55*).

⚠ Normally, the action's duration cannot exceed **72 months**.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary *[(and linked third party)]* and **budget category** (see Articles 5, 6, *[and 14]*). ***[OPTION to be used if Article 9 applies:*** *It also contains the estimated costs of the beneficiaries not receiving EU funding (see Article 9).]*

[…]

1. Budget categories

The ERA-NET Cofund MGA uses its **own budget categories**.

Budget categories of the ERA-NET Cofund MGA:

- direct costs related to trans-national projects
- direct costs of providing financial support to third parties implementing trans-national projects
- direct costs for the implementation of trans-national projects by the beneficiaries:
  - direct personnel costs for the implementation of trans-national projects by the beneficiaries
  - direct subcontracting costs for the implementation of trans-national projects by the beneficiaries
  - other direct costs for the implementation of trans-national projects by the beneficiaries
- direct coordination costs for additional activities
- indirect costs

Differences (compared to General MGA):

- No 'personnel costs for SME owners without salary or beneficiaries that are natural persons without salary'
- No 'costs for providing trans-national or virtual access to research infrastructure'
- No 'specific categories of costs'

⚠ These budget categories are relevant for the estimated budget (Article 4 and Annex 2), forms of costs (Article 5), cost eligibility rules (Article 6.2) and the cost declarations (i.e. financial statements; Article 20 and Annex 4).

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATE AND FORMS OF COSTS

[…]

5.2 Form of grant, reimbursement rate and forms of costs

The grant reimburses *[…%] of the action's eligible costs* (see Article 6) ('**reimbursement of eligible costs grant**') (see in Annex 2)**.**

The estimated eligible costs of the action are EUR [**insert amount** (insert amount in words)].

Eligible costs (see Article 6) must be declared under the following forms ('**forms of costs**'):

(a) for **costs of financial support to third parties implementing trans-national projects**: as actually incurred costs ('**actual costs**');

(b) for **direct personnel costs for the implementation of trans-national projects by the beneficiaries**:

- as actually incurred costs (**actual costs**) or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

(c) for **direct costs of subcontracting for the implementation of trans-national projects by the beneficiaries**: as actually incurred costs (**actual costs**);

(d) for **other direct costs for the implementation of trans-national projects by the beneficiaries**: as actually incurred costs (**actual costs**);

(e) for **coordination costs for additional activities**: on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(f) for **indirect costs**: on the basis of a flat-rate applied as set out in Point C of Article 6.2 ('**flat-rate costs**').

[…]

1. Reimbursement rate

How much? For ERA-NET Cofund actions, the reimbursement rate is currently set at **33 %** *(see General Annex D to the Main Work Programme)*.

2. Cost forms

The ERA-NET Cofund MGA, uses the same **cost forms** as the **General MGA** (i.e. actual costs, unit costs and flat rate costs; *see Article 5 General MGA*).

Cost forms of the ERA-NET Cofund MGA:

- **actual costs** for:
  - costs of providing **financial support**
  - direct **personnel** costs for implementing the trans-national projects (unless declared as unit cost)
  - s**ubcontracting** costs for implementing the trans-national projects

- **other direct costs** for implementing the trans-national projects

❖ **unit costs** for:

- direct personnel costs calculated by the beneficiaries in accordance with their usual cost accounting practices (‘**average personnel costs**’)
- direct **coordination costs** for additional activities[78]

❖ **flat-rate costs** for:

- **indirect costs**

[78] Commission Decision C(2013) 8200 of 10 December 2013 authorising the use of reimbursement on the basis of unit costs for ERA-NET Cofund actions under the Horizon 2020 Framework Programme. Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_era-net_cofund_en.pdf.

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

[…]

6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

A. direct costs related to trans-national projects;
B. direct coordination costs for of additional activities;
C. indirect costs.

'Direct costs' are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point C below).

'Indirect costs' are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

1. Specific conditions for costs to be eligible

Article 6.2 refers to specific eligibility conditions applicable per budget category.

The ERA-NET Cofund MGA has its **own budget categories**. Some of them **cover** however the **same types of costs** as the General MGA, with the same **conditions for eligibility** and rules for **calculation** *(see Article 6 General MGA)*.

For ease of reference, the annotations for Article 6.2 will summarise — **for each budget category** — the information necessary to establish the eligible costs, i.e.

1. types of costs covered by the budget category
2. cost form under which the costs must be declared (i.e. actual costs, unit costs, flat rate)
3. conditions for eligibility
4. how the costs must be calculated.

A. Direct costs related to trans-national projects

A.1 **Direct costs of providing financial support to third parties implementing trans-national projects** are eligible if the conditions set out in Article 15.1.1 are met.

A.2 **Direct costs for the implementation of trans-national projects by the beneficiaries** are eligible, if they comply with the conditions set out in Article 15.1.1 and the following:

A.2.1 **Direct personnel costs for the implementation of trans-national projects by the beneficiaries**

Types of eligible personnel costs

A.2.1.1 **Personnel costs** are eligible if they are related to personnel working for the beneficiary under an employment contract (or equivalent appointing act) and assigned to the implementation of trans-national projects. They must be limited to salaries (including during parental leave), social security contributions, taxes and other costs included in the remuneration, if they arise from national law or the employment contract (or equivalent appointing act).

Beneficiaries that are non-profit legal entities[5] may also declare as personnel costs **additional remuneration** for personnel assigned to the implementation of trans-national projects (including payments on the basis of supplementary contracts regardless of their nature), if:

(a) it is part of the beneficiary's usual remuneration practices and is paid in a consistent manner whenever the same kind of work or expertise is required;

(b) the criteria used to calculate the supplementary payments are objective and generally applied by the beneficiary, regardless of the source of funding used.

Additional remuneration for personnel assigned to the implementation of trans-national projects is eligible up to the following amount:

(d) if the person works full time and exclusively on the implementation of trans-national projects during the full year: up to EUR 8 000;

(e) if the person works exclusively on the implementation of trans-national projects but not full-time or not for the full year: up to the corresponding pro-rata amount of EUR 8 000, or

(f) if the person does not work exclusively on the implementation of trans-national projects: up to a pro-rata amount calculated as follows:

{{EUR 8 000

divided by

the number of annual productive hours (see below)},

multiplied by

the number of hours that the person has worked on the trans-national projects during the year**}**.

A.2.1.2 The **costs for natural persons working under a direct contract** with the beneficiary other than an employment contract are eligible personnel costs, if:

(d) the person works under the beneficiary's instructions and, unless otherwise agreed with the beneficiary, on the beneficiary's premises;

(e) the result of the work carried out belongs to the beneficiary, and

(f) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

A.2.1.3 The **costs of personnel seconded by a third party against payment** are eligible personnel costs if the conditions in Article 11 are met.

Calculation

Personnel costs must be calculated by the beneficiaries as follows:

{{hourly rate

multiplied by

number of actual hours worked on the implementation of trans-national projects},

plus

for non-profit legal entities: additional remuneration to personnel assigned to the implementation of trans-national projects under the conditions set out above (Point A.2.1.1)**}**.

The number of actual hours declared for a person must be identifiable and verifiable (see Article 18).

The total number of hours declared in EU or Euratom grants, for a person for a year, cannot be higher than the annual productive hours used for the calculations of the hourly rate:

{number of annual productive hours for the year (see below)

minus

total number of hours declared by the beneficiary, for that person for that year, for other EU or Euratom grants}.

The '**hourly rate**' is one of the following:

(a) for personnel costs declared as **actual costs**: the hourly rate is the amount calculated as follows:

{actual annual personnel costs (excluding additional remuneration) for the person

divided by

number of annual productive hours}.

The beneficiaries must use the annual personnel costs and the number of annual productive hours for each financial year covered by the reporting period concerned. If a financial year is not closed at the end of the reporting period, the beneficiaries must use the hourly rate of the last closed financial year available.

For the 'number of annual productive hours', the beneficiaries may choose one of the following:

(i) 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);

(ii) the total number of hours worked by the person in the year for the beneficiary, calculated as follows:

{annual workable hours of the person (according to the employment contract, applicable labour agreement or national law)

plus

overtime worked

minus

absences (such as sick leave and special leave)}.

'Annual workable hours' means the period during which the personnel must be working, at the employer's disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation.

If the contract (or applicable collective labour agreement or national working time legislation) does not allow to determine the annual workable hours, this option cannot be used.

(iii) the standard number of annual hours generally applied by the beneficiary for its personnel in accordance with its usual cost accounting practices. This number must be at least 90% of the 'standard annual workable hours'.

If there is no applicable reference for the standard annual workable hours, this option cannot be used.

For all options, the actual time spent on **parental leave** by a person assigned to the implementation of trans-national projects may be deducted from the number of annual productive hours;

(b) for personnel costs declared on the basis of **unit costs calculated in accordance with the beneficiary's usual cost accounting practices**: the hourly rate calculated by the beneficiary in accordance with its usual cost accounting practices**,** if:

- the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
- the hourly rate is calculated using the actual personnel costs recorded in the beneficiary's accounts, excluding any ineligible cost or costs included in other budget categories.

  The actual personnel costs may be adjusted by the beneficiary on the basis of budgeted or estimated elements. Those elements must be relevant for calculating the personnel costs, reasonable and correspond to objective and verifiable information, and
- the hourly rate is calculated using the number of annual productive hours (see above).

A.2.2 **Direct costs of subcontracting for the implementation of trans-national projects by the beneficiaries** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if the conditions in Article 13 are met.

A.2.3 **Other direct costs for the implementation of trans-national projects by the beneficiaries**

A.2.3.1 **Travel costs and related subsistence allowances** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if they are in line with the beneficiary's usual practices on travel.

A.2.3.2 The **depreciation costs of equipment, infrastructure or other assets** (new or second-hand) as recorded in the beneficiary's accounts are eligible, if they were purchased in accordance with Article 10 and written off in accordance with international accounting standards and the beneficiary's usual accounting practices.

The **costs of renting or leasing** equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.

The costs of equipment, infrastructure or other assets **contributed in-kind against payment** are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 11 are met.

The only portion of the costs that will be taken into account is that which corresponds to the duration of the trans-national projects implemented by the beneficiary and rate of actual use for the purposes of the transnational projects implemented by the beneficiary.

A.2.3.3 **Costs of other goods and services** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible, if they are:

(a) purchased specifically for the trans-national projects implemented by the beneficiary and in accordance with Article 10 or

(b) contributed in kind against payment and in accordance with Article 11.

Such goods and services include, for instance, consumables and supplies, dissemination (including open access), protection of results, certificates on the financial statements (if they are required by the Agreement), certificates on the methodology, translations and publications.

A.2.3.4 ***[OPTION by default:*** *The* ***capitalised and operating costs of 'large research infrastructure'***[6] *directly used for the trans-national projects implemented by the beneficiary are eligible, if:*

(a) the value of the large research infrastructure represents at least 75 % of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure[7]*);*

*(b) the beneficiary's methodology for declaring the costs for large research infrastructure has been positively assessed by the Commission ('**ex-ante assessment**');*

(c) the beneficiary declares as direct eligible costs only the portion which corresponds to the duration of the trans-national projects implemented by the beneficiary and the rate of actual use for the purposes of the trans-national projects implemented by the beneficiary, and

*(d) they comply with the conditions as further detailed in the Horizon 2020 Grant Manual.**]***

[OPTION to be used if foreseen in the work programme: *not applicable.**]***

5 For the definition, see Article 2.1(14) of Rules for Participation: '**non-profit legal entity**' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

6 '**Large research infrastructure**' means research infrastructure of a total value of at least EUR 20 million, for a beneficiary, calculated as the sum of historical asset values of each individual research infrastructure of that beneficiary, as they appear in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure.

7 For the definition see Article 2(6) of Rules for Participation: '**Research infrastructure**' are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructures such as data and computing systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructures may be 'single-sited', 'virtual' or 'distributed'

1. Direct costs related to trans-national projects: Types of costs — Cost form —Conditions for eligibility — Calculation

1.1 The budget category 'direct costs related to trans-national projects' **covers** the following **types of costs**:

- direct costs of providing financial support to third parties implementing trans-national projects
- direct costs for the implementation of trans-national projects by the beneficiaries:
  - direct personnel costs for the implementation of trans-national projects by the beneficiaries:
    - basic remuneration — basic salary and complements
    - for non-profit legal entities: additional remuneration ('bonus payments')
    - costs for natural persons working under a direct contract and
    - costs of personnel seconded by a third party against payment
  - direct costs of subcontracting for the implementation of trans-national projects by the beneficiaries

- other direct costs for the implementation of trans-national projects by the beneficiaries:
  - travel and related subsistence allowances
  - equipment
  - other goods and services and
  - costs of large research infrastructure.

What not? The ERA-NET Cofund MGA does not reimburse:

- 'personnel costs for SME owners without salary or beneficiaries that are natural persons without salary'
- 'costs for providing trans-national or virtual access to research infrastructure'
- 'specific categories of costs'

⚠ No indirect costs for providing financial support to third parties.

1.2 All costs (except direct personnel costs) must be **declared as** actual costs *(see Article 5.2(b))*.

Direct personnel costs may be declared as unit cost (in accordance with the usual cost accounting practices).

1.3 The same **conditions for eligibility** apply as in the General MGA *(see Article 6 General MGA)*.

In some Articles, the conditions in the General MGA must however be read as referring to 'trans-national projects' (instead of 'action').

For financial support to third parties, there are moreover additional eligibility conditions in Article 15 *(e.g. selection procedure, compliance with national funding rules)*.

⚠ For financial support to third parties, costs are usually eligible only after the trans-national projects have ended.

1.4 The same rules for **calculation** apply as in the General MGA *(see Article 6 General MGA*).

B. Direct coordination costs of additional activities are eligible if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual years in which the beneficiary has carried out the 'additional activities' described in Annex 1.

Beneficiaries that implement transnational projects (partially or fully) themselves cannot declare coordination costs for additional activities.

1. Direct coordination costs of additional activities: Types of costs — Cost form — Conditions for eligibility — Calculation

1.1 This budget category **covers** the costs for additional activities related to the coordination of national/regional research and innovation programmes *(see Article 2)*.

1.2 These costs must be declared on the basis of the **unit cost** fixed by Commission Decision C(2013) 8200[79] and set out in Annex 2 of the GA (currently **EUR 29 000** per beneficiary per year).

⚠ If the beneficiaries do not properly implement the additional activities set out in Annex 1, the grant may be reduced *(see Article 43)*.

Example: *Beneficiaries make only two meetings on general strategy.*

1.3 The costs must fulfil the following **conditions for eligibility**:

- fulfil the general conditions for unit costs to be eligible (i.e. units used during the action duration, necessary, linked to the action, etc.; *see Article 6.1(b)*)
- be declared for the additional activities described in Annex 1.

Coordination costs for additional activities are limited to the beneficiaries that carry out such activities.

⚠ Beneficiaries that implement trans-national projects cannot declare coordination costs for additional activities.

1.4 They must be **calculated** as follows:

amount per unit (EUR 29 000) **x** number of years in which additional activities were carried out

According to General Annex D to the Main Work Programme, the EU contribution to coordination costs should not exceed 20 % of the maximum grant amount.

[79] Commission Decision C(2013) 8200 of 10 December 2013 authorising the use of reimbursement on the basis of unit costs for ERA-NET Cofund actions under the Horizon 2020 Framework Programme. Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_era-net_cofund_en.pdf.

C. Indirect costs

Indirect costs are eligible if they are declared on the basis of the flat-rate of 25 % of the eligible direct costs (see Article 5.2 and Points A and B above), from which are excluded:

(a) costs of subcontracting for the implementation of trans-national projects by the beneficiaries;

(b) costs of in-kind contributions provided by third parties which are not used on the beneficiary's premises and

(c) costs of financial support to third parties implementing trans-national projects.

Beneficiaries receiving an operating grant[8] financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

[…]

[8] For the definition, see Article 121(1)(b) of the Financial Regulation: '**operating grant**' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

1. Indirect costs: Types of costs — Cost form — Conditions for eligibility — Calculation

For this budget category, the same rules apply as in the General MGA *(see Article 6 General MGA)*.

The eligible direct costs (on which the flat-rate is calculated) include:

– direct costs for the implementation of trans-national projects by the beneficiaries

– direct coordination costs for additional activities.

⚠ They do not include direct costs of providing financial support to third parties implementing trans-national projects.

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

The beneficiaries must have the **appropriate resources** to implement the action.

If it is necessary for the implementation of the trans-national projects by the beneficiaries, they may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the *[Commission][Agency]* and the other beneficiaries for implementing the action.

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

For ERA-NET Cofund actions, in principle the same rules on third party involvement apply as in the General MGA *(see Article 8 General MGA).*

Use of **third party resources** (i.e. purchasing of goods, works or services (Article 10), in-kind contributions (Articles 11 and 12) or subcontractors (Article 13)) is however **only** allowed for **beneficiaries that implement trans-national projects**.

Linked third parties may participate in all action activities *(see Article 2).*

ARTICLE 15 — SUPPORT TO OR IMPLEMENTATION OF TRANS-NATIONAL PROJECTS

15.1 Rules for providing support to or implementation of trans-national projects

15.1.1 The beneficiaries must **provide financial support** to trans-national projects or **implement** such **projects** (partially or fully) themselves, in accordance with the following conditions:

(f) types of activity that qualify for financial support and persons or categories of persons that may receive financial support:

The projects must be trans-national projects, involving at least two independent entities from two different EU Member States or associated countries;

(g) **selection procedure** and criteria:

The projects must be selected following a single joint transnational call for proposals.

The beneficiaries must make the selection through a two-step procedure:

- Step 1: review at national or trans-national level
- Step 2: single international peer review.

Only entities that are eligible for funding under the national programmes involved in the joint call may be invited to Step 2.

In Step 2, the beneficiaries must evaluate proposals with the assistance of at least three **independent experts**, on the basis of the following award criteria:

(a) excellence;

(b) impact;

(c) quality and efficiency of the implementation.

Proposals must be ranked according to the evaluation results. The selection must be made on the basis of this **ranking**;

(h) other conditions:

In the case of support to entities that are third parties, the beneficiaries must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Article 22 and 23 also towards the third parties receiving financial support.

Financial support to entities that are third parties must comply with **national funding rules**.

The **maximum amount of financial support** to a third party and the **criteria for** determining the **exact amount** under national funding rules are set out in Annex 1.

15.1.2 In addition, the beneficiaries must:

- publish a joint call on a dedicated webpage and promote it at national/regional level via their usual channels of communications to potential proposers;
- keep the joint call open for at least 60 days;
- take all lawful steps to ensure confidentiality of information and documents obtained during the evaluation and selection procedures of the joint call.

15.2 Consequences of non-compliance

If a beneficiary breaches its obligations under Article 15.1.1, the costs of the beneficiary for its financial support to the trans-national projects or for the implementation of its trans-national projects will be ineligible (see Article 6) and will be rejected (see Article 42).

If the beneficiary breaches its obligations under Article 15.1.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Providing financial support — Implementing trans-national projects

For ERA-NET Cofund actions, the beneficiaries may provide financial support to third parties (i.e pass on the EU support they receive via the ERA-NET Cofund grant to third parties ('cascade grants')).

⚠ In this case, the beneficiaries' activity consists in providing financial support, while it is the third parties that actually implement research and/or innovation projects.

The beneficiaries may however also choose to implement the projects themselves.

2. Additional eligibility condition: Two-step selection procedure

A two-step procedure is necessary to ensure that:

- only entities that are eligible for funding under the national funding rules are invited to Step 2 and
- consortia can balance the requested funding and available funding per participating Member State and associated country between Steps 1 and 2.

3. Additional eligibility condition: Independent experts — Observer

In addition to the expert evaluators, the consortium must appoint an independent expert as an observer, to verify that the selection procedure (and, in particular, the peer review evaluation and the ranking) meets the requirements of Article15.

The observer's report must be submitted by the coordinator, as part of the periodic report *(see Article 20.3)*.

4. Additional eligibility condition: Ranking list(s) — Joint selection list

The selection of trans-national projects ('**joint selection list**') must be based on the order of the ranking list (or the ranking lists, if there are different topics).

⚠ If proposals have identical scores, the proposals coming from participating Member States or associated countries with still available funding can be given precedence, in order to maximise the number of selected projects.

The ranking list(s) and the joint selection list must be submitted by the coordinator, as part of the periodic report *(see Article 20.3)*.

⚠ The obligations in Article 15.1.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs concerned *(see Article 6.2.D.3 and 6.6)*.

5. Additional eligibility condition: Compliance with national funding rules

Financial support to third parties must comply with the applicable national funding rules.

The trans-national projects must have been implemented (by the third parties) in compliance with those rules.

Moreover, the beneficiaries must ensure that costs are checked and that their payments are made in compliance with those rules (and certify this; *see Article 20.4*).

6. Additional eligibility condition: Conditions for support set out in Annex 1 — Maximum amount of financial support

The beneficiaries must comply with the maximum amount and the criteria for determining the exact amount under national funding rules that are set out in Annex 1.

⚠ This information must already be part of your proposal *(see Table 4.1 of the Standard proposal template ERA-NET)*. If national funding rules do not specify a maximum amount, the beneficiaries should enter the amount of their part of the call budget.

ARTICLE 19 — SUBMISSION OF DELIVERABLES

19.1 Obligation to submit deliverables

The coordinator must submit:

- at least 30 days before the expected date of publication of the joint call: **information on the call** and its content;
- at the end of the selection: **information on each selected project** (including data on each participant and abstracts of the project proposal, in a format specified by the *[Commission][Agency]*), for publication and evaluation purposes;
- ***[OPTION by default (two pre-financing payments):*** *The coordinator must submit: in month 36 a '**progress report**' containing:*
  - *an **explanation of the work** carried out by the beneficiaries;*
  - *an **overview of the progress** towards the objectives of the action, including milestones and other deliverables identified in Annex 1.*

    This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out;
  - *a **summary** for publication by the [Commission][Agency]**]***

  [OPTION in case of three pre-financing payments: *not applicable;**]***
- at the end of the action: **information on each implemented project** (including data on each participant and overview of the results, in a format specified by the *[Commission][Agency]*), for publication and evaluation purposes, and
- any **other deliverables** identified in Annex 1, in accordance with the timing and conditions set out in it.

19.2 Consequences of non-compliance

If the coordinator breaches any of its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

1. Deliverables: Information on each selected project — Information on each implemented project

When & What? For ERA-NET Cofund actions, the coordinator must — once the trans-national projects have been selected — submit to the Commission/Agency a list of all the projects, with the required information.

Example: *data on each participant and abstracts of the project proposals.*

This information must be updated by the coordinator at the end of the action, by submitting a list of all implemented projects.

Example: *data on each participant and an overview of the results.*

⚠ The Commission/Agency will contact you to give you information on the format to be used (and where to find it) and how to submit the deliverables.

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The coordinator must submit to the *[Commission][Agency]* (see Article 52) reports, including requests for payments.

The reports must be drawn up using the forms and templates provided by the *[Commission][Agency]* in the electronic exchange system (see Article 52).

20.2 Reporting periods

[OPTION by default (two pre-financing payments): *The action is divided into the following '**reporting periods**':*

- *RP1: from month 1 to month [X[16]]*
- *RP2: from month [X+1] to [the last month of the project]**]***

[OPTION in case of three pre-financing payments: *The action is divided into the following '**reporting periods**':*

- *RP1: from month 1 to month [X[17]]*
- *RP2: from month [X+1] to month [36]*
- *RP3: from month [37] to [the last month of the project]**]***

20.3 Periodic reports — Requests for second *[and third]* pre-financing payment*[s]*

The coordinator must submit a periodic report within 60 days following the end of the first reporting period.

The periodic report must include the following:

(a) a **periodic technical report** containing:

(i) an **explanation of the work carried out** by the beneficiaries;

(ii) an **overview of the progress** towards the objectives of the action, including milestones and other deliverables identified in Annex 1.

This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out.

The report must also detail the exploitation and dissemination of the results and — if required in Annex 1 — an updated '**plan for the exploitation and dissemination of the results**';

(iii) a **summary** for publication by the *[Commission][Agency];*

(iv) the answers to the '**questionnaire**' covering issues related to the action implementation and the economic and societal impact, notably in the context of the Horizon 2020 key performance indicators and the Horizon 2020 monitoring requirements.

(b) the **ranking list(s)** of the projects;

(c) the **observers' report on the evaluation**;

(d) the **joint selection list** of the projects to be funded;

(e) from each beneficiary participating in the joint call, a formal and duly signed '**commitment on availability of funds**' (see Annex 7), and

(f) a '**statement on the use of the first pre-financing instalment**' (see Annex 8), including the **request for a second pre-financing payment.**

The coordinator must certify that the information provided is full, reliable and true and that it can be substantiated by adequate supporting documentation that will be produced upon request or in the context of checks, reviews, audits and investigations (see Articles 17, 18 and 22).

[OPTION in case of three pre-financing payments: *The coordinator must submit a periodic report within 60 days following the end of the second reporting period.*

The periodic report must include the following:

(a) a ***periodic technical report*** *(see point (a) above) and*

(b) a ***statement on the use of the second pre-financing instalment*** *(see Annex 8), including the* ***request for a third pre-financing payment****.*

The coordinator must certify that the information provided is full, reliable and true and that it can be substantiated by adequate supporting documentation that will be produced upon request or in the context of checks, reviews, audits and investigations (see Articles 17, 18 and 22). ***]***

20.4 Final report — Request for payment of the balance

The coordinator must submit the final report within 60 days following the end of the last reporting period.

The **final report** must include the following:

(a) a '**final technical report**' with a **summary** for publication containing:

(i) an overview of the results and their exploitation and dissemination;

(ii) the conclusions on the action, and

(iii) the socio-economic impact of the action;

(b) a '**final financial report**' containing:

(i) an '**individual financial statement**' (see Annex 4) from each beneficiary *[and from each linked third party]*, for all reporting periods.

The individual financial statement must detail the eligible costs (actual costs, unit costs and flat-rate costs; see Article 6) for each budget category (see Annex 2).

The beneficiaries *[and linked third parties]* must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the *[Commission][Agency]*.

The individual financial statements must also detail the **receipts of the action** (see Article 5.3.3).

Each beneficiary *[and each linked third party]* must certify that:

- the information provided is full, reliable and true;
- the costs declared are eligible (in particular, in case of financial support to third parties, that it has been paid in compliance with the applicable national funding rules; see Article 15);

- the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22), and

- all the receipts have been declared (see Article 5.3.3);

(ii) an **explanation of the use of resources** and the information on subcontracting (see Article 13) and in-kind contributions provided by third parties (see Articles 11 and 12) from each beneficiary *[and from each linked third party*;

(iii) ***[OPTION if the JRC is a beneficiary:*** *information on the amount of payment of the balance to be paid by the Commission to the Joint Research Centre (JRC)*;***][OPTION:*** *not applicable;**]***

(iv) a '**summary financial statement**' (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements and including the **request for payment of the balance**;

(v) a '**certificate on the financial statements**' (drawn up in accordance with Annex 5) for each beneficiary *[and for each linked third party]*, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Point A.2.1 of Article 6.2).

20.5 Information on cumulative expenditure incurred

In addition to the reporting requirements set out above (Article 20.1 to 20.3), the coordinator must inform the *[Commission][Agency]* by *[31 December][30 November]* each year of the cumulative expenditure incurred by the beneficiaries from the start date of the action.

This information is required for the *[Commission's][Agency's]* accounting purposes and will not be used to calculate the final grant amount.

[…]

[16] Month X should be the expected end of the selection procedure referred to in Article 15.1.1.
[17] Month X should be the expected end of the selection procedure referred to in Article 15.1.1.

1. Reports

When & What? For ERA-NET Cofund actions, the coordinator has to submit — after the first reporting period (and, if there are three pre-financing payments, also after the second reporting period) — a periodic report, with information on the technical implementation.

⚠ No financial reporting during the action (i.e. no financial statements before the final report).

At the end of the action, the coordinator has to submit a final report, with both a technical and a financial part.

2. Reporting periods

When? Normally, ERA-NET Cofund actions are divided into **2 reporting periods** (with two pre-financing payments; *see Article 21*).

Exception:

Actions will be divided into three reporting periods (with three pre-financing payments), if the Commission/Agency has insufficient payment credits to pay the entire amount as a second pre-financing payment.

⚠ The first (and, if there are two pre-financing payments, also the second) reporting period triggers a periodic report.

3. Information on cumulative expenditure incurred

Since reporting periods in ERA-NET Cofund actions will normally exceed 18 months and ERA-NET Cofund grants are normally above EUR 5 000 000 with a pre-financing payment, all ERA-NET grants contain this clause.

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the coordinator:

- a **first pre-financing** payment;
- a **second pre-financing** payment, on the basis of the request for a second pre-financing payment (see Article 20);
- *[a **third pre-financing** payment, on the basis of the request for a third pre-financing payment (see Article 20);]*
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20)

21.2 Pre-financing payments — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiaries with a float.

It remains the property of the EU until the payment of the balance.

The *[Commission][Agency]* will — within 30 days from the starting date of the action (see Article 3) or from the entry into force of the Agreement (see Article 58), whichever is the latest — make a first pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)][18], except if Article 48 applies.

From this amount, an amount of EUR [**insert amount** (insert amount in words)], corresponding to 5 % of the maximum grant amount (see Article 5.1), is retained by the *[Commission][Agency]* and transferred into the '**Guarantee Fund**'.

The *[Commission][Agency]* will — within 60 days after receiving the request (see Article 20) — make a second pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)] [19], except if Articles 47 or 48 apply.

[OPTION in case of three pre-financing payments:** The [Commission][Agency] will — within 60 days after receiving the request (see Article 20) — make a third pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)], except if Articles 47 or 48 apply.**]

If the statement on the use of the previous pre-financing instalment shows that less than 70 % of the previous instalment paid has been used to cover the costs of the action, the amount of the new pre-financing to be paid will be reduced by the difference between the 70 % threshold and the amount used.

[OPTION if the JRC is a beneficiary:** The parts of the pre-financing payments related to the Joint Research Centre (JRC) ([**insert amounts** (insert amounts in words)] are not paid to the coordinator, but kept by the [Commission][Agency] for the JRC.**]

21.3 Interim payments — Amount — Calculation

Not applicable

[…]

21.5 Notification of amounts due

When making payments, the *[Commission][Agency]* will formally notify to the coordinator the amount due, specifying whether it concerns the second *[or third]* pre-financing payment or the payment of the balance.

For the payment of the balance, the notification will also specify the final grant amount.

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 43 and 45.

[…]

[18] Should correspond to 10% of the maximum grant amount (see Article 5.1).
[19] Should be 80%, unless option with three pre-financing payments is used.

1. Payments — No interim payments

Normally, ERA-NET Cofund actions are divided into two reporting periods *(see Article 20.2)*, with two pre-financing payments.

Exception:

The action will be divided into three reporting periods (with three pre-financing payments), if the Commission/Agency has insufficient payment credits to pay the entire amount as a second pre-financing payment.

There are no interim payments, but the second pre-financing payment (after the end of the first reporting period, i.e. after the evaluation of the trans-national projects) provides beneficiaries with the necessary funds to support or implement the trans-national projects.

The balance is paid when the action ends.

2. Amount of pre-financing payments

How much? The amounts of the pre-financing payments for ERA-NET Cofund actions are as follows:

- the first pre-financing payment is 10 % of the maximum grant amount
- the second pre-financing payment is 80 % of the maximum grant amount.

Exception:

If the GA provides for a third pre-financing payment, then the amount is divided as follows:

- 10 % for the first pre-financing payment
- 40 % for the second pre-financing payment
- 40 % for the third pre-financing payment.

⚠ The second/third pre-financing payment will be reduced, if — according to the statement on use of the previous pre-financing instalment — the previous pre-financing was insufficiently used:

- if 70% or more of the first/second pre-financing has been used: the second/third pre-financing is paid in full

– if less than 70% of the first/second pre-financing has been used: the second/third pre-financing will be reduced by an amount equal to the difference between the percentage actually used and 70%.

VI. PCP-PPI Cofund

VI.1 Background information and approach

The Model Grant Agreement for PCP-PPI Cofund ('PCP-PPI Cofund MGA') is used for grants for **PCP-PPI Cofund actions only**.

⚠ PCP-PPI Cofund grants are only open to **actions** that have as main objective to implement a **pre-commercial procurement or a public procurement of innovative solution**. The minimum requirements for participation are 3 independent legal entities established in different Member States or associated countries and 2 independent legal entities that are public procurers from different Member States or associated countries (unless they are sole participants; *see General Annex D to the Work Programme*).

ⓘ *For more information on PCP-PPI Cofund actions, see Article 2.*

ⓘ *For information on PCP or PPI Cofund funding opportunities, see the 'Search Topic' function on the Participant Portal.*

ⓘ *For information on PCP-PPI Cofund standard eligibility criteria and specific provisions, see General Annex C, D and E to the Main Work Programme.*

The PCP-PPI MGA follows the General MGA for numbering and content, except for the following:

Introductory remark

The Model Grant Agreement for PCP-PPI Cofund deviates from the General Model Grant Agreement as follows:

- Article 5.2 (PCP-PPI Cofund specific reimbursement rate and forms of costs)
- Article 6.2 (PCP-PPI Cofund specific conditions for eligibility of costs)
- Article 13 (specific provisions for subcontracting of the PCP R&D services/PPI innovative solutions)
- Article 15 (financial support to third parties not applicable)
- Article 19 (PCP-PPI Cofund specific deliverables)
- Article 20.1 – 20.5 (PCP-PPI Cofund specific reporting provisions)
- Article 21.1 – 21.3, 21.5 (PCP-PPI Cofund specific payment provisions)
- Article 23 (PCP-PPI Cofund specific impact evaluation provisions)

- Annex 2 Model for the estimated budget for the action
- Annex 4 Model for the financial statement
- Annex 7 *[Model for the PCP prior information notice (PIN) for the open market consultation] [Model for the PPI prior information notice (PIN) for an open market consultation]*
- Annex 8 Model for the PCP contract notice
- Annex 9 *[Model for the PCP request for tenders] [Model for the PPI request for tenders]*
- Annex 10 Model for the PCP contract award notice
- Annex 11 Model for the commitment on availability of financial resources
- Annex 12 Model for the statement on the use of the previous pre-financing instalment

The annotations will concentrate on differences in substance and interpretation that require explanation.

Parts that are not applicable or differ only in presentation *(e.g. Article 15, Annexes)* will not be shown.

By contrast, provisions that do not deviate from the General MGA, but that require clarification or a specific interpretation for PCP-PPI Cofund actions are added:

- Article 2 (PCP-PPI Cofund actions)
- Article 4.1 (PCP-PPI Cofund budget categories)
- Article 8 (PCP-PPI Cofund rules on third party involvement).

VI.2 PCP/PPI Cofund Annotations

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** (‘**action**’), as described in Annex 1.

***[OPTION for complementary grants if foreseen in the work programme:** The grant is a ‘**complementary grant**’ to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].]*

***[OPTION for joint actions (joint call with a third country or an international organisation):** The action is a ‘**jointly funded action**’ which must be coordinated with the ‘joint action’ called [insert the name of the third country or international organisation action], as described in Annex 1.]*

1. PCP/PPI Cofund actions

PCP/PPI Cofund actions are actions with both of the following activities:

– a single joint public procurement of research and development (R&D) services (in the case of PCP) or innovative solutions (in the case of PPI) and its implementation

⚠ For the purposes of the GA, the suppliers selected as a result of the PCP/PPI call for tender are considered ‘subcontractors’ and the contracts with them are ‘subcontracts’.

The suppliers do not become beneficiaries of the GA.

‘Implementation’ means implementation of the subcontracts (‘subcontract implementation stage’)

⚠ Only one co-funded PCP or PPI per GA.

– related additional coordination and networking activities.

What? The additional activities must relate to the call for tender, including coordination and networking activities needed to prepare, manage and follow-up the PCP/PPI procurement and other coordination and networking activities to embed the PCP/PPI into a wider set of demand side activities *(see General Annex D to the Main Work Programme).*

***Examples:** activities that aim to remove barriers to introducing an innovative solution on the market (including standardisation, certification and regulation); activities that prepare the ground for cooperation on future PCP or PPI projects.*

⚠ It is mandatory (both for PCP and PPI Cofund actions) to include not only a PCP/PPI itself, but also those coordination activities that are needed to coordinate the PCP/PPI procurement. Other additional activities are optional *(e.g. other coordination and networking activities to embed the PCP/PPI into a wider set of demand side activities).*

ⓘ *For more information on which activities are required and which ones are optional, see General Annex D and E to the Main Work Programme.*

Normally, PCP-PPI Cofund grants are multi-beneficiary grants; exceptionally they can be *mono*-beneficiary grants for 'sole participants' *(see General Annex C and D to the Main Work Programme).*

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual or the General Annexes to the Main Work Programme and the call and topics pages of your call.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary *[(and linked third party)]* and **budget category** (see Articles 5, 6, *[and 14]*). ***[OPTION to be used if Article 9 applies:*** *It also contains the estimated costs of the beneficiaries not receiving EU funding (see Article 9).]*

[…]

1. Estimated budget

When submitting the proposal with the estimated eligible costs for PCP-PPI actions, the consortium must decide who will pay the PCP/PPI subcontracts (and who may — by consequence — declare the subcontracting costs), i.e.:

- either the lead procurer (centralised payment; the lead procurer he pays all subcontractors)

  ⚠ This implies that the consortium must have a common jointly-committed budget and that the lead procurer is mandated to sign the subcontracts *(see Article 13)*.

- or the members of the buyers group.

  ⚠ This implies that the individual members of the buyers group pay the subcontractors pro rata *(see Article 13)*.

2. Budget categories

The PCP-PPI Cofund MGA uses its **own budget categories**.

Budget categories of the PCP-PPI Cofund MGA:

- direct costs of PCP/PPI subcontracting

  These are the costs for procuring the R&D services (in the case of PCP) or the innovative solutions (in the case of PPI) (i.e. the estimated procurement price).

  ⚠ Only the beneficiary(ies) that pay the PCP/PPI suppliers can declare 'PCP/PPI subcontracting costs'. Who pays the PCP/PPI suppliers depends on the choice made by the consortium when submitting the estimated eligible costs: either the lead procurer or the members of the buyers group *(see Article 4)*.

- costs of related additional coordination and networking activities:
  - direct personnel costs for related additional coordination and networking activities
  - direct subcontracting costs for related additional coordination and networking activities
  - other direct costs for related additional coordination and networking activities
  - indirect costs for related additional coordination and networking activities
  - specific categories of costs for related additional coordination and networking activities (if option applies).

Differences (compared to General MGA):

- No ‘direct costs of providing financial support to third parties’.

⚠ These budget categories are relevant for the estimated budget *(Article 4 and Annex 2)*, forms of costs *(Article 5)*, cost eligibility rules *(Article 6.2)* and the cost declarations (i.e. financial statements; *Article 20 and Annex 4*).

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATE AND FORMS OF COSTS

[…]

5.2 Form of grant, reimbursement rate and forms of costs

The grant reimburses ***[OPTION (reimbursement rate foreseen in the work programme)****: [**…%**] of the action's eligible costs]* (see Article 6) ('**reimbursement of eligible costs grant**'), (see Annex 2)**.**

The estimated eligible costs of the action are EUR [**insert amount** (insert amount in words)].

Eligible costs (see Article 6) must be declared under the following forms ('**forms of costs**'):

(a) for **direct costs of *[PCP][PPI]* subcontracting**: as actually incurred costs ('**actual costs**');

(b) for **direct personnel costs for related additional coordination and networking activities** *[(excluding personnel costs for the activities in Point (f))]*[5]:

- as actually incurred costs (**actual costs**) or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

Personnel **costs for SME owners** or **beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points B.1.4 and B.1.5) must be declared on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(c) for **direct costs of subcontracting for related additional coordination and networking activities** *[(excluding subcontracting costs for the activities in Point (f))]*[6]: as actually incurred costs (**actual costs**);

(d) for **other direct costs for related additional coordination and networking activities** *[(excluding other direct costs for the activities in Point (f))]*[7]: as actually incurred costs (**actual costs**);

(e) for **indirect costs for related additional coordination and networking activities** *[(excluding indirect costs for the activities in Point (f))]*[8]: on the basis of a flat-rate applied as set out in Point B.4(a),(b) and (c) of Article 6.2 ('**flat-rate costs**');

[*(f) [**OPTION for specific categories of costs if unit costs foreseen by Commission decision:** for **costs of [insert cost category or activity**[9]**]:***

- *on the basis of the amount(s) per unit set out in Annex 2 (**unit costs**) [or]*
- *[as actually incurred costs (**actual costs**)]*[10] *[or*
- *as a combination of the two].]*

***[OPTION for specific categories of costs if lump sum costs foreseen by Commission decision:** for **costs of [insert cost category or activity]**: as the lump sum set out in Annex 2 ('**lump sum costs**').]]*

[…]

5 To be used only if option in Point (f) is used.
6 To be used only if option in Point (f) is used.
7 To be used only if option in Point (f) is used.
8 To be used only if option in Point (f) is used.
9 Insert precise name of the costs as in the Commission decision authorising the use of the unit cost or lump-sum. For example: costs of 'access costs for providing transnational access to research infrastructures'; costs of 'clinical studies'; costs of 'energy efficiency measures in buildings'.
10 To be used only if the Commission decision authorising the use of the unit cost allows that the beneficiary chooses between actual or unit cost.

1. Reimbursement rates

How much? The Work Programme *(see General Annex D to the Main Work Programme)* sets the reimbursement rate currently at:

- **70%** for PCP Cofund actions
- **20 %** for PPI Cofund actions.

2. Cost forms

The PCP-PPI Cofund MGA uses the **same cost forms** as the **General MGA** (i.e. actual costs, unit costs and flat rate costs; *see Article 5 General MGA*).

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

[…]

6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

A. Direct costs of *[PCP][PPI]* subcontracting
B. Costs of related additional coordination and networking activities

'Direct costs' are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point B.4 below).

'Indirect costs' are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

1. Specific conditions for costs to be eligible

Article 6.2 refers to specific eligibility conditions applicable per budget category.

The PCP-PPI Cofund MGA has its **own budget categories.** Some of them **cover** however the **same types of costs** as the General MGA, with the same **conditions for eligibility** and rules for **calculation** *(see Article 6 General MGA).*

For ease of reference, the annotations for Article 6.2 will summarise — for each budget category — the information necessary to establish the eligible costs, i.e.

1. types of costs covered by the budget category
2. cost form under which the costs must be declared (i.e. actual costs, unit costs, flat rate)
3. conditions for eligibility
4. how the costs must be calculated.

A. Direct costs of *[PCP][PPI]* subcontracting (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if the conditions in Article 13.1 are met.

1. Direct costs of PCP/PPI subcontracting: Types of costs — Cost form — Conditions for eligibility — Calculation

1.1 This budget category **covers** the costs of the PCP/PPI procurement (i.e. the price paid and the related taxes; for VAT, *see Article 6.5*).

⚠ Only costs of R&D services or innovative solutions *subcontracted* by the beneficiaries are eligible. Costs related to R&D and innovation activities carried out by the beneficiaries *themselves* are not eligible under PCP-PPI Cofund actions.

What not? Indirect costs for the PCP subcontracting are not reimbursed.

1.2 These costs must be **declared as** actual costs (i.e. on the basis of the prices actually paid) *(see Article 5.2(a))*.

1.3 They must fulfil the following **eligibility conditions**:

- fulfil the general conditions for costs to be eligible (i.e. incurred during the action duration, necessary, linked to the action, etc.; *see Article 6.1(a)*)
- be incurred for the PCP/PPI subcontracting described in Annex 1 *(see Article 13)*
- fulfil the additional eligibility conditions set out in Article 13.1.1.

1.4 There is no specific **calculation** method. The costs must correspond to the eligible costs actually incurred.

B. Costs of related additional coordination and networking activities are eligible up to EUR [(insert amount (insert amount in words)[11]], if they comply with the following:

B.1 **Direct personnel costs for related additional coordination and networking activities *[(not included in Point B.5]***

Types of eligible personnel costs

B.1.1 **Personnel costs** are eligible if they are related to personnel working for the beneficiary under an employment contract (or equivalent appointing act) and assigned to the related additional coordination and networking activities. They must be limited to salaries (including during parental leave), social security contributions, taxes and other costs included in the remuneration, if they arise from national law or the employment contract (or equivalent appointing act).

Beneficiaries that are non-profit legal entities[12] may also declare as personnel costs **additional remuneration** for personnel assigned to the related additional coordination and networking activities (including payments on the basis of supplementary contracts regardless of their nature), if:

(a) it is part of the beneficiary's usual remuneration practices and is paid in a consistent manner whenever the same kind of work or expertise is required;

(b) the criteria used to calculate the supplementary payments are objective and generally applied by the beneficiary, regardless of the source of funding used.

Additional remuneration for personnel assigned to the related additional coordination and networking activities is eligible up to the following amount:

(a) if the person works full time and exclusively on the related additional coordination and networking activities during the full year: up to EUR 8 000;

(b) if the person works exclusively on the related additional coordination and networking activities but not full-time or not for the full year: up to the corresponding pro-rata amount of EUR 8 000, or

(c) if the person does not work exclusively on the related additional coordination and networking activities up to a pro-rata amount calculated as follows:

{{EUR 8 000

divided by

the number of annual productive hours (see below)},

multiplied by

the number of hours that the person has worked on the action during the year**}.**

B.1.2 The **costs for natural persons working under a direct contract** with the beneficiary other than an employment contract are eligible personnel cost, if:

(a) the person works under the beneficiary's instructions and, unless otherwise agreed with the beneficiary, on the beneficiary's premises;

(b) the result of the work carried out belongs to the beneficiary, and

(c) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

B.1.3 The **costs of personnel seconded by a third party against payment** are eligible personnel costs if the conditions in Article 11 are met.

B.1.4 **Costs of owners** of beneficiaries that are small and medium-sized enterprises ('**SME owners**'), who are working on the related additional coordination and networking activities and who do not receive a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual hours worked on the related additional coordination and networking activities.

B.1.5 **Costs of** '**beneficiaries that are natural persons**' not receiving a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual hours worked on the related additional coordination and networking activities.

[**B.1.6 [**OPTION to be used for trans-national access to research infrastructure: Personnel costs for providing trans-national access to research infrastructure** are eligible only if also the conditions set out in Article 16.1.1 are met.] [**OPTION to be used for virtual access to research infrastructure: Personnel costs for providing virtual access to research infrastructure** are eligible only if also the conditions set out in Article 16.2 are met.]**]

Calculation

Personnel costs must be calculated by the beneficiaries as follows:

{{hourly rate

multiplied by

number of actual hours worked on the related additional coordination and networking activities},

plus

for non-profit legal entities: additional remuneration to personnel assigned to the related additional coordination and networking activities under the conditions set out above (Point B.1.1)**}**.

The number of actual hours declared for a person must be identifiable and verifiable (see Article 18).

The total number of hours declared in EU or Euratom grants, for a person for a year, cannot be higher than the annual productive hours used for the calculations of the hourly rate:

{number of annual productive hours for the year (see below)

minus

total number of hours declared by the beneficiary, for that person for that year, for other EU or Euratom grants}.

The '**hourly rate**' is one of the following:

(a) for personnel costs declared as **actual costs**: the hourly rate is the amount calculated as follows:

{actual annual personnel costs (excluding additional remuneration) for the person

divided by

number of annual productive hours}.

The beneficiaries must use the annual personnel costs and the number of annual productive hours for each financial year covered by the reporting period concerned. If a financial year is not closed at the end of the reporting period, the beneficiaries must use the hourly rate of the last closed financial year available.

For the 'number of annual productive hours', the beneficiaries may choose one of the following:

(i) 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);

(ii) the total number of hours worked by the person in the year for the beneficiary, calculated as follows:

{annual workable hours of the person (according to the employment contract, applicable labour agreement or national law)

plus

overtime worked

minus

absences (such as sick leave and special leave)}.

'Annual workable hours' means the period during which the personnel must be working, at the employer's disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation.

If the contract (or applicable collective labour agreement or national working time legislation) does not allow to determine the annual workable hours, this option cannot be used;

(iii) the 'standard number of annual hours' generally applied by the beneficiary for its personnel in accordance with its usual cost accounting practices. This number must be at least 90% of the 'standard annual workable hours'.

If there is no applicable reference for the standard annual workable hours, this option cannot be used.

For all options, the actual time spent on **parental leave** by a person assigned to the related additional coordination and networking activities may be deducted from the number of annual productive hours;

(b) for personnel costs declared on the basis of **unit costs**: the hourly rate is one of the following:

- for SME owners or beneficiaries that are natural persons: the hourly rate set out in Annex 2 (see Points B.1.4 and B.1.5 above), or
- for personnel costs declared on the basis of the beneficiary's usual cost accounting practices: the hourly rate calculated by the beneficiary in accordance with its usual cost accounting practices**,** if:
  - the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
  - the hourly rate is calculated using the actual personnel costs recorded in the beneficiary's accounts, excluding any ineligible cost or costs included in other budget categories.

    The actual personnel costs may be adjusted by the beneficiary on the basis of budgeted or estimated elements. Those elements must be relevant for calculating the personnel costs, reasonable and correspond to objective and verifiable information, and
  - the hourly rate is calculated using the number of annual productive hours (see above).

B.2 **Direct costs of subcontracting for related additional coordination and networking activities *[(not included in Point B.5)]*** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if the conditions in Article 13.2 are met.

[OPTION to be used for trans-national access to research infrastructure: *Subcontracting costs* ***for providing trans-national access to research infrastructure*** *are eligible only if also the conditions set out in Article 16.1.1 are met.**]***

[OPTION to be used for virtual access to research infrastructure: *Subcontracting costs* ***for providing virtual access to research infrastructure*** *are eligible only if also the conditions set out in Article 16.2 are met.**]***

B.3 **Other direct costs for related additional coordination and networking activities *[(not included in Point B.5)]***

B.3.1 **Travel costs and related subsistence allowances** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if they are in line with the beneficiary's usual practices on travel.

[OPTION to be used for trans-national access to research infrastructure: *Travel costs* ***for providing trans-national access to research infrastructure*** *are eligible only if also the conditions set out in Article 16.1.1 are met.**]***

B.3.2 ***[OPTION by default**: The **depreciation costs of equipment, infrastructure or other assets** (new or second-hand) as recorded in the beneficiary's accounts are eligible, if they were purchased in accordance with Article 10 and written off in accordance with international accounting standards and the beneficiary's usual accounting practices.*

*The **costs of renting or leasing** equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.*

*The costs of equipment, infrastructure or other assets **contributed in-kind against payment** are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 11 are met.*

*The only portion of the costs that will be taken into account is that which corresponds to the duration of the related additional coordination and networking activities and rate of actual use for the purposes of the related additional coordination and networking activities.**]***

***[OPTION (alternative to option above) to be used if foreseen in the work programme[1]:** The **cost of purchasing equipment**, **infrastructure** or **other assets** (new or second-hand) (as recorded in the beneficiary's accounts) are eligible if the equipment, infrastructure or other assets was purchased in accordance with Article 10.*

*The **costs of renting or leasing** equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.*

*The costs of equipment, infrastructure or other assets **contributed in-kind against payment** are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 11 are met.**]***

[OPTION (in addition to one of the two options above) for trans-national and virtual access to research infrastructure:** As an exception, the beneficiaries must not declare such costs (i.e. costs of renting, leasing, purchasing depreciable equipment, infrastructure and other assets) for providing trans-national or virtual access to research infrastructure (see Article 16).**]

B.3.3 **Costs of other goods and services** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible, if they are:

(a) purchased specifically for the related additional coordination and networking activities and in accordance with Article 10 or

(b) contributed in kind against payment and in accordance with Article 11.

Such goods and services include, for instance, consumables and supplies, dissemination (including open access), protection of results, certificates on the financial statements (if they are required by the Agreement), certificates on the methodology, translations and publications.

[OPTION to be used for trans-national access to research infrastructure:** Costs of other goods and services **for providing trans-national access to research infrastructure** are eligible only if also the conditions set out in Article 16.1.1 are met.**]

[OPTION to be used for virtual access to research infrastructure:** Costs of other goods and services **for providing virtual access to research infrastructure** are eligible only if also the conditions set out in Article 16.2 are met.**]

B.3.4 ***[OPTION by default:*** *The* ***capitalised and operating costs of 'large research infrastructure'***[1] *directly used for the related additional coordination and networking activities are eligible, if:*

(a) the value of the large research infrastructure represents at least 75% of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure[1]*);*

*(b) the beneficiary's methodology for declaring the costs for large research infrastructure has been positively assessed by the Commission ('**ex-ante assessment**');*

(c) the beneficiary declares as direct eligible costs only the portion which corresponds to the duration of the related additional coordination and networking activities and the rate of actual use for the purposes of the additional coordination and networking activities, and

*(d) they comply with the conditions as further detailed in the Horizon 2020 Grant Manual.**]***

[OPTION for all topics within calls under Part 'Research Infrastructure' (except for e-Infrastructure): *not applicable.**]***

[OPTION to be used if foreseen in the work programme: *not applicable.**]***

B.4 **Indirect costs for related additional coordination and networking activities *[(not included in Point B.5]***

Indirect costs are eligible if they are declared on the basis of the flat-rate of 25% of the eligible direct costs (see Article 5.2 and Points B.1 to B.3), from which are excluded:

(a) costs of subcontracting *[and][;]*

(b) costs of in-kind contributions provided by third parties which are not used on the beneficiary's premises*[;]* ***[****and*

(c) ***OPTION if Point B.5 applies and that unit or lump sum cost includes indirect costs:*** *[unit costs under Article 5.2(f) and Point B.5][lump sum costs under Article 5.2(f) and Point B.5]**]***.

Beneficiaries receiving an operating grant[1] financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

[*B.5* ***OPTION for specific categories of costs if unit costs foreseen by Commission decision: Costs of [insert cost category(ies) or activity(ies)]***

Costs of [insert cost category or activity]:

(a) declared as ***unit costs****: are eligible if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual units, and if [insert eligibility conditions];*

(b) [declared as ***actual costs****: are eligible, if they comply with the conditions set out above (Points B.1 to [B.3][B.4]) [and if [insert eligibility conditions];]*

(c) [declared as a ***combination of the two****: if the part declared as actual costs fulfils the conditions for actual costs and the part declared as unit costs fulfils the conditions for unit costs].*

[*same for each specific category of costs**]*

*[****OPTION for specific lump sum costs (i.e. costs which may be/have to be declared as lump sum costs) if foreseen by Article 5.2(f)): Costs of [insert cost category or activity]*** *are eligible if they correspond to the lump sum set out in Annex 2 and the corresponding tasks or parts of the related additional coordination and networking activities have been properly implemented in accordance with Annex 1.]**]***

[…]

[11] This amount must correspond to 30% for PCP and 50% for PPI of the estimated eligible costs set out in Article 5.2.

[12] For the definition, see Article 2.1(14) of the Rules for Participation: '**non-profit legal entity**' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

[13] To be used as an exception, only if justified by the nature of the action and the context of the use of the equipment or assets, if provided for in the work programme.

[14] '**Large research infrastructure**' means research infrastructure of a total value of at least EUR 20 million, for a beneficiary, calculated as the sum of historical asset values of each individual research infrastructure of that beneficiary, as they appear in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure.

[15] For the definition see Article 2(6) of the Rules for Participation: '**Research infrastructure**' are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructures such as data and computing systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructures may be 'single-sited', 'virtual' or 'distributed'.

[16] For the definition, see Article 121(1)(b) of the Financial Regulation: '**operating grant**' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

1. Costs of related additional coordination and networking activities: Types of costs —Cost form — Conditions for eligibility — Calculation

1.1 The budget category 'costs of related additional coordination and networking activities' **covers** the following **types of costs**:

- direct personnel costs for related additional coordination and networking activities:
  - basic remuneration — basic salary and complements
  - for non-profit legal entities: additional remuneration ('bonus payments')
  - costs for natural persons working under a direct contract
  - costs of personnel seconded by a third party
  - costs of 'beneficiaries that are SMEs for their owners not receiving a salary'
  - costs of 'beneficiaries that are natural persons not receiving a salary'
  - personnel costs for providing trans-national or virtual access to research infrastructure (if option applies).
- direct costs of subcontracting for related additional coordination and networking activities
- other direct costs for related additional coordination and networking activities:
  - travel and related subsistence allowances
  - equipment
  - other goods and services and
  - costs of large research infrastructure
- indirect costs for related additional coordination and networking activities
- specific categories of costs for related additional coordination and networking activities.

What not? The PCP-PPI Cofund MGA does not reimburse:

– 'costs for providing financial support to third parties'.

1.2 All costs — except direct personnel costs and personnel costs of SME owners or of beneficiaries that are natural persons not receiving a salary — must be **declared as** actual costs.

Direct personnel costs may be declared as unit cost (in accordance with the usual cost accounting practices).

Personnel costs of SME owners or of beneficiaries that are natural persons not receiving a salary must be declared on the basis of the unit cost fixed by Commission Decision C(2013) 8197[80] and set out in Annex 2 of the GA. (⚠ This concerns only beneficiaries that are SMEs, not PCP/PPI subcontractors that are SMEs.)

Examples: *Contracting authorities or contracting entities that are SMEs.*

1.3 The same **conditions for eligibility** apply as in the General MGA *(see Article 6 General MGA).*

The costs must be incurred by the beneficiaries for additional coordination and networking activities that are related to the call for tender *(e.g. coordination costs for preparing, managing and following-up the PCP/PPI procurement, costs for other coordination and networking activities to embed the PCP/PPI into a wider set of demand side activities).*

Examples:

The evaluation of the PCP or PPI tender is subcontracted or undertaken by in-house consultants under the responsibility of the consortium participants.

Resources or equipment for testing innovative solutions are made available by end-users of the targeted innovative solutions (in the form of action tasks undertaken by linked third parties or as in-kind contributions of third parties).

⚠ Costs incurred by the beneficiaries for validation and testing of solutions provided by the subcontractors are part of the follow-up and monitoring of the results of the PCP/PPI and as such considered eligible direct personnel costs.

1.4 The same rules for **calculation** apply as in the General MGA *(see Article 6 General MGA).*

The General Annex D to the Main Work Programme specifies that the costs of related additional coordination and networking activities are eligible up to a **maximum** amount of 30%/50% of the total requested grant amount (for PCP/PPI actions).

For each GA, this maximum amount is fixed in the GA *(see Article 6.2.B).*Thus, the amount of EU funding earmarked to finance related additional coordination and networking activities does not change, even if it the costs actually incurred for PCP/PPI subcontracting end up being less than initially estimated (*e.g. if the buyers group is able to procure at a better price than it had budgeted*). The EU funding is not automatically proportionally reduced.

[80] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_sme-owners_natural-persons-no-salary_en.pdf

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

The beneficiaries must have the **appropriate resources** to implement the action.

If it is necessary to implement the action, the beneficiaries may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the *[Commission][Agency]* and the other beneficiaries for implementing the action.

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

For PCP-PPI Cofund actions, generally the same rules on third party involvement apply as in the General MGA *(see Article 8 General MGA)*.

Certain **third party resources** (i.e. purchasing of goods, works or services *(Article 10)*, in-kind contributions *(Articles 11 and 12)*) are however **only** allowed for **related additional coordination and networking activities**.

> ***Example:*** *Equipment needed for testing and validating solutions is provided by a third party as in-kind contribution.*

By contrast, subcontracting *(Article 13)* is possible both for PCP/PPI subcontracting and related additional coordination and networking activities. Linked third parties *(Article 14)* can be part of the buyers group for subcontracting.

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 ***[OPTION for PCP: Rules for the pre-commercial procurement of research and development services***

13.1.1 The beneficiaries will award ***subcontracts*** *for the* ***PCP*** *research and development services (‘**PCP R&D services**’) that are necessary to address the ‘**common challenge**’ set out in Annex 1.*

The subcontracts must be awarded as one single joint procurement by the beneficiaries concerned (i.e. the ‘lead procurer’ and the ‘buyers group’).

The lead procurer must be a ‘contracting authority’ or ‘contracting entity’ within the meaning of Directives 2004/18/EC[20] and 2004/17/EC[21].

The buyers group must constitute a ‘total jointly committed budget’ for payment of the subcontracts.

The ‘buyers group’, the ‘lead procurer’, the services to be subcontracted (for each implementation phase (‘PCP phase’)), their estimated costs and the estimated financial contribution per beneficiary to the ‘total jointly committed budget’ ***must be set out in Annex 1****. The estimated costs of PCP subcontracting per beneficiary must be set out in Annex 2.*

[OPTION for classified deliverables: *Classified deliverables may be subcontracted only after explicit approval (in writing) from the [Commission][Agency] (see Article 37).**]***

The beneficiaries concerned must — throughout the action —:

- *guarantee equal treatment of tenderers and subcontractors and avoid any restrictions or distortions of competition;*
- *avoid any conflict of interest (see Article 35);*
- *allow for all communications to be made in English (and any additional language(s) they may have chosen).*

The subcontracts for pre-commercial procurement must provide for the following:

- *the ownership, by the subcontractors, of the intellectual property rights on the results that they generate;*
- *the right of the buyers to access results — on a royalty-free basis — for their own use;*
- *the right of the buyers to grant (or to require the subcontractors to grant) non-exclusive licences to third parties to exploit the results — under fair and reasonable conditions — (without the right to sub-licence);*
- *the obligation of the subcontractors to transfer back to the buyers the ownership of intellectual property generated by subcontractors during the PCP, if subcontractors fail to commercially exploit the results within the period set out in the subcontract;*
- *the right of the buyers to publish — at the time of the contract award notice — the identity of the winning tenderers and a project summary provided by the winning tenderers, and to publish — after R&D has finished and after consulting the subcontractors — summaries of the results as well as the identities of the subcontractors that successfully completed the last phase of the PCP.*

*The beneficiaries concerned must ensure that the majority of the research and development work done by the subcontractor(s) (including the work of the main researchers) is located in the EU Member States or associated countries (‘**place of performance obligation**’).*

The beneficiaries concerned must ***prepare****,* ***procure*** *and* ***implement*** *the subcontracts in accordance with the following* ***requirements****:*

*(a) For the '**preparation stage**':*

*(i) agree (in writing) on their internal procedures for carrying out the joint PCP procurement ('**joint procurement agreement**');*

*(ii) make an **open market consultation**, which:*

- *is published — two months in advance — in the Official Journal of the European Union (via a '**prior information notice (PIN)**', drawn up in accordance with Annex 7 in English and any additional language(s) chosen by the buyers group);*
- *is promoted and advertised widely;*
- *is summarised on the project website and other web-sites requested by the [Commission][Agency], together with a list of Q&As raised during the open market consultation;*

*(iii) prepare '**common procurement specifications**'*

*(b) For the '**procurement/tendering stage**':*

*(i) **Step 1**: make a '**contract notice**' (drawn up in accordance with Annex 8), which*

- *is published by the lead procurer in the Official Journal of the European Union (in English and any additional language(s) chosen by the buyers group);*
- *specifies that the procurement concerns a pre-commercial procurement that is exempted from Directives 2004/18 and 2004/17[22];*
- *specifies a time-limit for receipt of tenders of at least two months;*
- *allows for the submission of tenders in English (and any additional language(s) chosen by the buyers group);*
- *is promoted and advertised widely;*
- *indicates how potential tenderers can obtain the 'request for tenders';*

*and the **request for tenders** (drawn up in accordance with Annex 9) inviting all interested economic operators to tender, which:*

- *identifies the lead procurer, the buyers group and, if applicable, third parties involved in the PCP ;*
- *informs potential tenderers about the outcome and list of Q&As of the market consultation (see above);*
- *describes the common challenge (using functional or performance based specifications and taking into account the outcome of the open market consultation);*
- *describes the process for the evaluation and selection of the tenders for the first PCP phase and the intermediate evaluations after each following PCP phase;*
- *describes the practical set-up for the implementation of the subcontracts;*
- *describes the minimum requirements that subcontractors must comply with during the PCP;*
- *describes the arrangements for intellectual property rights, confidentiality, publicity (information about contract award and publication of summaries of R&D results) and rules on applicable law and dispute settlement;*

(ii) ***Step 2:*** *make an* ***evaluation of the tenders****, ranking them, on the basis of the common procurement specifications (see above), according to best value for money criteria and ensuring that the price corresponds to market conditions;*

(iii) ***Step 3: award the subcontracts*** *to a minimum of three tenderers offering* ***best value for money*** *and a* ***price corresponding to market conditions****.*

The ***framework agreements*** *(one agreement per selected tenderer) must be signed by the lead procurer and set out the terms and conditions that govern the specific contracts.*

The ***specific contracts*** *(one agreement per selected tenderer and PCP phase) must be signed by the lead procurer and set out the details of the PCP R&D services purchased by each buyer (in particular, their quantity and price);*

(iv) ***Step 4:*** *make a '****contract award notice****' (drawn up in accordance with Annex 10) which is published — within 48 days after conclusion of the framework agreements — by the lead procurer in the Official Journal of the European Union (in English and any additional language(s) chosen by the buyers group);*

*(c) For the '****contract implementation stage****':*

(i) monitor that the PCP R&D services are implemented in compliance with the objectives of the action set out in Annex 1;

(ii) ***ensure compliance with the planning of resources*** *set out in Annex 1 and the estimated budget indicated in Annex 2;*

(iii) ensure payment of the subcontractors.

The beneficiaries concerned must ensure that the right of the Commission [and the Agency], the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) to exercise their rights under Articles 22 and 23 also towards the subcontractors.

13.1.2 In addition, the beneficiaries concerned must ensure that their obligations under Articles 17.1, 18, 34, 35, 37, 36, 38, 39 and 46 also apply to the subcontractors.

The beneficiaries concerned must also ensure that every prior information notice, contract notice or contract award notice published in relation to the subcontracting includes the following disclaimer:

'This procurement receives funding under the European Union's Horizon 2020 research and innovation programme under the grant agreement No [number]). The EU is however not participating as a contracting authority in this procurement.' ***]***

[20] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

[21] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

[22] See Article 16(f) of Directive 2004/18/EC, Article 24(e) of Directive 2004/17/EC.

1. PCP subcontracting

For PCP Cofund actions, the beneficiaries will award subcontracts for the PCP research and development services ('PCP R&D services') that are necessary to address the 'common challenge' set out in Annex 1.

For the purposes of the GA, a 'PCP subcontract' is a contract for the purchase of R&D services that is identified in Annex 1 as action task.

Characteristics of subcontracting:

❖ Joint subcontracting by some or all of the beneficiaries (and linked third parties) ('**buyers group**'), with a joint procurement in **3 phases**

The 'buyers group' is the group that finances and undertakes together the joint PCP procurement.

For PCP/PPI Cofund actions, it must normally be made up of:

– a minimum of 2 public procurers (i.e. 'contracting authorities' or 'contracting entities' as defined in the EU public procurement Directives 2004/18/EC and 2004/17/EC — or any EU legislation that replaces these Directives[81])

– that are established in two different Member States or associated countries *(see General Annex D to the Main Work Programme).*

⚠ This is *in addition* to the general minimum requirements for participation for Horizon 2020 actions (i.e. minimum of 3 independent legal entities established in different Member States or associated countries; *see General Annex C to the Main Work Programme*)

Exceptionally, the Work Programme allows for the participation of sole participants *(see General Annex D to the Work Programme).*

Procurers that are not public procurers, but provide services of public interest and share the same procurement need may also be part of the buyers group.

Example: *a group of a minimum of two public hospitals from two different EU Member States or associated countries could be joined by a private hospital or NGO (e.g. Médecins sans frontiers).*

⚠ The buyers group is not open to other types of procurers that are not providing services of public interest, even if they may share the same procurement need *(e.g. private company procurers like IBM or EADS that are not providing hospital services cannot be funded as buyers in the above example of a consortium of hospital procurers, even if they would be interested to procure the same software system as the hospital procurers).*

Other entities may be involved in the action as:

– beneficiaries (or linked third parties) responsible for other action tasks related additional coordination and networking activities *(e.g. certification bodies, end-users)*

– third parties providing in-kind contributions

if they are not potential suppliers of solutions sought for by the procurement and have no other type of conflict of interest.

The PCP procurement is implemented in 3 phases.

The buyers group must select multiple competing subcontractors (with a minimum of three subcontractors for the first PCP phase). At the end of each phase, an intermediate evaluation will take place to identify the subcontractors that successfully completed the phase. A call-off will be made to select the subcontractors with the best value for money offers for the next phase.

[81] *See Directives 2014/24/EC and 2014/25/EC.*

In order to obtain a competitive supply chain as a result of the PCP, the buyers group must plan the budget distribution across the PCP phases so that there is enough budget for minimum two subcontractors in the last PCP phase 3.

⚠ The tenders for the PCP call for tender must therefore contain:

- a detailed offer for phase 1
- the goals, plans and unit price conditions for phases 2 and 3.

❖ Concerns **R&D services** addressing a '**common challenge**' (i.e. a specific procurement need that is part of the mid-to-long-term innovation plans of the buyers group).

⚠ The common challenge may have several facets or building blocks, as long as all the beneficiaries in the buyers group share the need for all of them and are willing to co-finance all of them.

If the common challenge is split in several sub-challenges on which different vendors can compete, the minimum requirements of 3 subcontractors for phase 1 and 2 for phase 3 applies per sub-challenge, in order to obtain a competitive supply chain for each sub-challenge.

The procurement must be for an 'R&D services contract' (i.e. a contract with the objective to provide R&D services; *see also General Annex E to the Main Work Programme*).

If required for the provisioning of the R&D services and required by the procurement need of the buyers group, the PCP may include the purchase of supplies *(such as the limited volume of prototypes or first test-products resulting from the R&D).*

Example: *A traffic authority may need to acquire more environmentally-friendly tarmac that was developed and installed during the PCP on a test strip of the road, because the old tarmac was destroyed during the PCP in order to test the new variant and the traffic authority needs to carry out further testing on the tarmac after the PCP is done.*

⚠ This does not extend to 'quantity production' or 'supply to establish commercial viability or to recover research and development costs' *(as used in the WTO GPA).*

⚠ Supplies cannot constitute the majority of the contract value.

❖ All subcontracts paid from one common budget for the procurement ('**common jointly-committed budget**')

This budget is based on the financial commitments of the beneficiaries in the buyers group and must correspond to the call-for-tender-budget (i.e. the estimated procurement price = estimated direct costs of PCP subcontracting; *see Articles 4 and 6.2.A*).

❖ J**oint procurement procedure** (i.e. joint call for tender, joint evaluation of offers and joint award) is **coordinated and led** by one beneficiary ('**lead procurer**')

The lead procurer may be part of the buyers group or not (i.e. it may also be a beneficiary that is not part of the buyers group).

Example: *the lead procurer can be a central purchasing body that carries out the procurement for the buyers group, but does not contribute financially to the common jointly committed budget).*

The lead procurer must be a 'contracting authority' or 'contracting entity' as defined in the EU public procurement Directives 2004/17/EC and 2004/18/EC (or any EU legislation that replaces these Directives[82]).

- S**ubcontracts signed** by the lead procurer, in the name and on behalf of the buyers group

  ⚠ The lead procurer must be mandated by the buyers group in the joint procurement agreement.

  The subcontracts to be signed are:

  - a framework contract with each selected subcontractor, covering the whole PCP and
  - specific contracts with each selected subcontractor, for each PCP phase.

- S**ubcontracts implemented** by the selected subcontractors ('PCP implementation')

- S**ubcontractors paid** either by the lead procurer or (pro rata) by the members of the buyers group (based on their individual financial contribution to the jointly-committed budget), depending on the choice of the consortium when it submitted the estimated eligible costs *(see Article 4)*.

⚠ PCP subcontracting is not restricted to a limited part of the action (since the PCP subcontracting is the main goal of PCP Cofund actions).

⚠ There can only be one PCP, per PCP Cofund action.

2. Additional eligibility condition: Procurers, tasks and costs set out in Annexes 1 and 2 — No approval without formal amendment

Annexes 1 and 2 must clearly identify the common challenge (types of R&D services to be procured), the lead procurer, the buyers group and the common jointly-committed budget and the estimated costs per beneficiary, already at the moment of the signature of the GA. Any changes at a later stage *(e.g. after the preparation stage of the project)* are only possible through an amendment; *see Article 55 General MGA*).

⚠ At the end of the preparation stage of the project, the consortium must confirm (in the periodic report; *see Article 20.3*) that the lead procurer has not changed and that the buyers group's commitments to the common jointly-committed budget are still valid (or whether changes are needed, based on the feedback of the preparation stage of the project *(e.g. the open market consultation))*.

For PCP subcontracting, there is no procedure for approval without amendment (contrary to the subcontracting of related additional coordination and networking activities; *see Article 13.2*).

3. Additional eligibility condition: Place of performance obligation

The majority (i.e. at least 50%) of the total amount of **work** done by the subcontractors for the PCP implementation (including the work of the main researchers) must be **performed in EU Member States or associated countries**.

⚠ This includes R&D and operational activities (*e.g. research, development, testing, certifying solutions, etc.).*

[82] *See Directives 2014/24/EC and 2014/25/EC.*

ⓘ *For more information on associated countries, see Article 25 General MGA.*

The beneficiaries must require subcontractors to comply with this place of performance obligation, including when subcontractors subcontract work out themselves.

⚠ This obligation must be clearly set out in the Framework Agreement *(see below).*

4. Additional eligibility condition: Procurement procedure — Best value for money— Price corresponding to market conditions

PCP subcontracts must be based on the **best value for money** criteria *(see Articles 10 and 13 General MGA).*

⚠ The tenders for the PCP call for tender must therefore contain:

- a detailed offer for phase 1
- the goals, plans and unit price conditions for phases 2 and 3.

⚠ The offers for the call-offs for phase 2 and 3 must contain the detailed offer for phase 2 respectively phase 3. The price offered for phase 2 and 3 must be based on the unit prices in the framework agreement

The GA foresees additional rules, i.e. that:

- the price must correspond to **market conditions**

  This means that the price must be lower than the exclusive development price (since subcontractors obtain intellectual property ownership rights (IPRs)).

- a **specific procurement procedure** must be followed

  The main elements of this procedure are as follows:

  - the buyers group and the lead procurer must formalise the PCP in a **joint procurement agreement** that:
    - specifies the working arrangements for the joint procurement *(e.g. division of tasks between the lead procurer and the buyers group; signature of the subcontracts, etc.)*
    - sets out the financial arrangements *(e.g. the contributions of each member of the buyers group to the common jointly-committed budget; arrangements for financial transfers between buyers group and/or lead procurer for carrying out the PCP)*
    - specifies in-kind contributions provided by third parties
    - sets out other rights and obligations of the buyers group and lead procurer *(e.g. allocation of IPR-related rights resulting from the PCP; commitment to provide test environments)*
  - the procurement must be preceded by an '**open market consultation**'

This open market consultation must be implemented as a 'technical dialogue' as defined in the EU public procurement Directives 2004/17/EC and 2004/18/EC (or any EU legislation that replaces these Directives[83]).

A prior information notice (PIN; *see Annex 7*) must be published in the *Official Journal of European Union (OJEU)* and must be promoted widely, in particular via the websites specified by the Commission/Agency and the National Contact Points (NCPs) for Horizon 2020.

– the procurement must be based on '**common procurement specifications**' prepared by the buyers group and the lead procurer

These specifications must be based on an analysis of the buyers group's needs (i.e. the common challenge) and take into account the feedback from the open market consultation (meaning that it should be refined based on this feedback, if needed).

They must describe the functionality and performance requirements (including minimum requirements) that solutions must meet, rather than prescribing a specific solution.

– the buyers group and the lead procurer must publish a **contract notice** *(see Annex 10)* to launch the **request for tenders** (see *Annex 9)*.

The request for tenders does not have to be published. It can be provided on request.

– the buyers group and the lead procurer must **jointly evaluate** the tenders and make a **joint award** decision.

⚠ The obligations in Article 13.1.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs of all the PCP subcontracts *(see Article 6.2.A and 6.6)*.

Beneficiaries have to demonstrate — upon request — that the selection of the subcontractors complied with these rules.

5. Additional eligibility condition: Minimum content of framework agreement and specific contracts

The **framework agreement** (with each selected subcontractor) must set out the framework conditions for all 3 phases of the PCP implementation, including:

– the practical set-up of the implementation of the subcontracts, in particular:

  – the number, duration and budget of the PCP phases

  – the minimum number of expected subcontractors per PCP phase

  – the procedure for the intermediate evaluations after each PCP phase (in particular, the evaluation criteria and the weightings)

  – the process for monitoring of on-going R&D work and reporting obligations of subcontractors

[83] *See Directives 2014/24/EC and 2014/25/EC.*

  - the procedures for accounting and payments
  - an exclusion of contract renegotiations
  - the role and the rights and obligations of third parties involved in the implementation of the subcontracts
- the minimum requirements that subcontractors must comply with during the PCP implementation, in particular:
  - compliance with the definition of R&D services *(see General Annex E to the Main Work Programme)*
  - the obligation of the subcontactors to ensure that the majority of the R&D work (including the work of the main researchers) is located in the EU Member States or associated countries ('place of performance obligation')
  - additional national requirements, ethical and/or security requirements (if applicable)
- the arrangements for intellectual property rights, in particular:
  - the ownership, by the subcontractors, of the intellectual property rights on the results that they generate
  - the right of the buyers to access to use the results — on a royalty-free basis — for their own internal use *(see General Annex E to the Main Work Programme)*
  - the right of the buyers to grant (or to require the subcontractors to grant) non-exclusive licences to third parties to exploit the results — under fair and reasonable conditions - and without the right to sub-licence
  - the obligation of the subcontractors to transfer results (generated by subcontractors during the PCP implementation) to the buyers, if they fail to commercially exploit the results within the period set out in the framework agreement or use the results to the detriment of the public interest, including security interests *(see General Annex E to the Main Work Programme)*
- the right of the buyers to publish:
  - at the time of the contract award notice: the identity of the winning tenderers and a project summary provided by the winning tenderers
  - after R&D has finished (and after consulting the subcontractors): summaries of the results as well as the identities of the subcontractors that successfully completed the last phase of the PCP

⚠ The framework agreement remains binding for as long as subcontractors remain in the PCP (i.e. normally until the PCP subcontractor is no longer selected to continue for the next PCP phase).

The **specific contracts** (with each selected subcontractor and for each PCP phase) must set out the specific conditions applicable to each PCP phase, in particular:

  - the details of the PCP R&D services purchased by each buyer

- quantity and
- price.

The phase 1 specific contract is signed (together with the framework agreement) with all the subcontractors selected for phase 1. After phase 1 is finished, a call-off to award the phase 2 specific contracts will be organised among the subcontractors who have successfully completed phase 1. After phase 2 is finished, a call-off to award at least two phase 3 contracts will be organised among the subcontractors who have successfully completed phase 2.

6. Additional eligibility condition: Compliance with the planning of resources

To ensure compliance with the resource planning (as set out in Annex 1), the buyers group must ensure the timely allocation of resources in order to implement the PCP.

⚠ This includes allocating sufficient time and resources for testing solutions in real-life operational end-user environments.

Example: *testing facilities or equipment to be provided by the buyers group (or other beneficiaries or third parties).*

7. Other obligation: Compliance with national procurement rules

The EU public procurement Directives 2004/17/EC and 2004/18/EC do not apply to the pre-commercial procurement of R&D services (because such services are exempted[84]).

However, beneficiaries that are 'contracting authorities' or 'contracting entities' (within the meaning of the EU public procurement Directives 2004/18/EC and 2004/17/EC — or any EU legislation that replaces these Directives[85]) must implement the PCP procurement in compliance with provisions in **national laws on public procurement** that may be applicable to this type of R&D services contracts.

⚠ Non-compliance with this obligation does not lead to the rejection of costs, but is considered improper implementation of the GA (breach of another obligation). The Commission/Agency may therefore reduce the grant in proportion to the seriousness of the breach.

ⓘ *For more information on this obligation, see Article 13 General MGA.*

[84] *See Article 16(f) of Directive 2004/18/EC and Article 24(e) of Directive 2004/17/EC.*

[85] *See Article 14 of Directive 2014/24/EC and Article 25 of Directive 2014/25/EC.*

[OPTION for PPI: Rules for procurement of the PPI innovative solution(s)

*13.1.1 The beneficiaries will award **subcontracts** for procuring the '**PPI** **innovative solution(s)**' that are necessary to address the '**common challenge**' set out in Annex 1.*

The subcontracts must be awarded in one single joint procurement procedure by the beneficiaries concerned (i.e. the 'buyers group' and the 'lead procurer').

The lead procurer must be a 'contracting authority' or 'contracting entity' within the meaning of Directives 2004/18/EC[23], 2004/17/EC[24].

*The 'buyers group', the 'lead procurer', the innovative solution(s) and their estimated cost **must be set out in Annex** 1. The estimated cost of PPI subcontracting per beneficiary must be set out in Annex 2.*

[OPTION for classified deliverables:** Classified deliverables may be subcontracted only after explicit approval (in writing) from the [Commission][Agency] (see Article 37).**]

The beneficiaries concerned must — throughout the action —:

- *guarantee equal treatment of tenderers and subcontractors and avoid any restrictions or distortions of competition;*
- *avoid any conflict of interest (see Article 35);*
- *allow for all communications (with potential tenderers, tenderers and subcontractors) to be made in English (and any additional language(s) they may have chosen).*

Participation in PPI tendering procedures must be open on equal terms to tenderers from EU Member States, associated countries and other countries with which the EU has an agreement in the field of public procurement. If the WTO Government Procurement Agreement applies, PPI subcontracts must also be open to tenderers from States that have ratified this agreement.

*The beneficiaries concerned must **prepare**, **procure** and **implement** the subcontracts in accordance with the following **requirements**:*

*(a) For the '**preparation stage**':*

*(i) identify and agree (in writing) on their internal procedures for carrying out the joint PPI procurement ('**joint procurement agreement**');*

*(ii) **[OPTION for PPI Cofund actions that are not limited to the procurement of the limited set of prototypes and/or test products developed during a preceding PCP Cofund action:** make an '**open market consultation**' inviting all interested economic operators to participate, which*

- *is published — two months in advance —by the lead procurer in the Official Journal of the European Union (via a '**prior information notice (PIN)**', drawn up in accordance with Annex 7 in English and any additional language(s) chosen by the buyers group);*
- *is promoted and advertised widely;*
- *is summarised on the project website and other web-sites requested by the [Commission][Agency], together with a list of Q&As raised during the open market consultation;**]***

[OPTION:** not applicable**]

*(iii) prepare **common procurement specifications**, based on the needs analysis of the buyers group;*

*(b) For the '**procurement/tendering stage**':*

[OPTION for PPI Cofund actions that are <u>not</u> limited to the procurement of a set of prototypes and/or test products developed during a preceding PCP cofund action:

*(i) **Step 1**: make a '**contract notice**', which:*

- *is published by the lead procurer in the Official Journal of the European Union (in English and any additional language(s) chosen by the buyers group);*
- *specifies a time-limit for receipt of tenders that is sufficient for the preparation of innovative bids.*

  The call for tender must remain open for at least 60 days.

  The restricted procedure with shortened time-limit for receipt of tenders may not be used;
- *allows for the submission of tenders in English (and any additional language(s) chosen by the buyers group),*
- *is promoted and advertised widely;*
- *indicates how potential tenderers can obtain the tender documentation and the 'PPI request for tenders';*

*and the **tender documentation** and **PPI request for tenders** (drawn up in accordance with Annex 9).*

*(ii) **Step 2**: make an **evaluation of the tenders**, ranking them, on the basis of the common procurement specifications (see above), according to **best value for money** criteria and ensuring that the price corresponds to **market conditions**;*

*(iii) **Step 3**: **award the subcontract(s)** to the tenderer(s) offering best value for money and a price corresponding to market conditions;*

*(iv) **Step 4**: make a '**contract award notice**', which is published by the beneficiary or lead procurer in the Official Journal of the European Union (in English and any additional language(s) chosen by the buyers group);]*

[OPTION for PPI Cofund actions that are limited to the procurement of the set of prototypes and/or test products developed during a preceding PCP action:

*(i) **Step 1**: make a **request for offers** from at least **three providers**, which — in accordance with the negotiated procedure without publication as provided for in Directives 2004/18/EC and 2004/17/EC[1] —:*

- *uses technical specifications that are functional or performance based;*
- *avoids selection criteria based on restrictive qualification requirements or disproportionate financial guarantees;*
- *specifies award criteria based on best value for money*

- *describes the practical set-up for the implementation of the subcontracts, in particular:*
  - *the types of subcontracts that will be concluded with successful tenderers (in particular whether a framework agreement with multiple economic operators will be used or not);*
- *describes the arrangements for intellectual property rights*
- *describes the arrangements for liability for damages;*

(iv) ***Step 2:*** *make an* ***evaluation of the tenders*** *ranking them, on the basis of the common procurement specifications (see above), according to* ***best value for money*** *criteria and ensuring that the price corresponds to* ***market conditions****;*

(v) ***Step 3: award the subcontracts*** *to a minimum of three tenderers offering best value for money and a price corresponding to market conditions.]*

*(c) For the '****contract implementation stage****':*

(i) *monitor that the PPI innovative solutions are implemented compliance with the objectives of the action set out in Annex 1;*

(ii) *ensure* ***compliance with the planning of resources*** *set out in Annex 1 and the estimated budget indicated in Annex 2.*

(iii) *ensure payment of the subcontractors.*

The beneficiaries concerned must ensure that the right of the Commission [and the Agency], the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) to exercise their rights under Articles 22 and 23 also towards the subcontractors.

13.1.2 In addition, the beneficiaries concerned must ensure that their obligations under Articles 17.1 18, 34, 35, 36, 37, 38, 39 and 46 also apply to the subcontractors.

Beneficiaries acting as contracting authorities within the meaning of Directive 2004/18/EC[1] or as contracting entities within the meaning of Directive 2004/17/EC[1] must comply with the applicable national law on public procurement.

The beneficiaries concerned must also ensure that every prior information notice, contract notice or contract award notice published in relation to the subcontracting includes the following disclaimer:

> *'This procurement receives funding under the European Union's Horizon 2020 research and innovation programme under the grant agreement No [number]). The EU is however not participating as a contracting authority in this procurement.'****]***

[23] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114)..

[24] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

1. PPI subcontracting

For PPI Cofund actions, the beneficiaries will award subcontracts for procuring the 'PPI innovative solution(s)' that are necessary to address the 'common challenge' set out in Annex 1.

For the purposes of the GA, a 'PPI subcontract' is a contract for the purchase of innovative solutions that is identified in Annex 1 as an action task.

The requirements for PPI subcontracting are generally similar as for PCP subcontracting.

Exceptions:

There is no requirement to split the PPI procurement procedure in **phases**.

The buyers group may select one or more subcontractors.

The common challenge does not concern R&D services, but the **supply** of **innovative goods** or **services**. The buyers group acts as a launch customer ('early adopter') of innovative solutions that are not yet available on a large-scale commercial basis.

⚠ PPI cannot include the procurement of R&D. Only procurement procedures that do not involve the procurement of R&D can be used for PPI *(e.g. innovation partnership procedure[86])*.

Each PPI Cofund action focuses on one concrete common challenge and requires innovative solutions that are to a significant extent similar across countries, making it sensible to procure them jointly (i.e. the core functionality and performance characteristics must be the same; there may be additional 'local' functionalities — due to differences in the local context of each individual procurer).

There is a common budget for the procurement ('**common jointly-committed budget**') only if the buyers group would like to centralise payments. Each buyer may alternatively manage a separate budget for the innovative solutions it buys.

The subcontracts are **not necessarily signed** by the **lead procurer**; there is not necessarily a **framework agreement**.

The buyers group may choose between direct subcontracts or a framework agreement with specific contracts (with each selected subcontractor).

The buyers group may mandate the lead procurer — in the joint procurement agreement — to sign the framework agreements and/or the specific contracts/direct subcontracts.

If there is no mandate, the general rule is that:

- framework agreement(s) must be signed by all members of the buyers group together
- specific contracts must be signed by each buyer individually (for the innovative solution(s) it buys).

⚠ PPI subcontracting is not restricted to a limited part of the action (since the PPI subcontracting is the main goal of PPI Cofund actions).

⚠ There can be only one PPI, per PPI Cofund action.

2. Additional eligibility condition: Procurers, tasks and costs set out in Annexes 1 and 2 — No approval without formal amendment

⚠ Annexes 1 and 2 must clearly identify the common challenge (type of innovative solutions to be procured), the lead procurer, the buyers group, and the estimated costs per beneficiary, already at the moment of the signature of the GA. Any changes at a later stage *(e.g. after the preparation stage of the project)* are only possible through an amendment; *see Article 55 General MGA*).

⚠ At the end of the preparation stage of the project, the consortium must confirm (in the periodic report; *see Article 20.3*) that lead procurer has not changed and that the buyers group's commitments to the budget for carrying out the PPI are still valid (or whether changes

[86] *See Article 31 of Directive 2014/24/EC and Article 49 in Directive 2014/25/EC.*

are needed, based on the feedback of the preparation stage of the project *(e.g. the open market consultation))*.

⚠ For PPI subcontracting, there is no procedure for approval without amendment (contrary to the subcontracting of related additional coordination and networking activities; *see Article 13.2*).

3. Additional eligibility condition: Procurement procedure — Best value for money— Price corresponding to market conditions

Like PCP subcontracts, PPI subcontracts must:

- be based on the **best price-quality ratio**,
- have a price that corresponds to **market conditions**
- must follow the **specific procurement procedure** set out in the GA.

  The main elements of this procedure are as follows:

  - the buyers group and lead procurer must formalise the PPI in a **joint procurement agreement** that:
    - specifies the working arrangements *(e.g. division of tasks between the lead procurer and the buyers group; use of a framework agreement or not; signature of subcontracts, etc.)*
    - sets out the financial arrangements *(e.g. budget for the procurement committed per member of the buyers group; arrangements for financial transfers — if any — between members of the buyers group and/or lead procurer for carrying out the PPI)*
    - specifies in-kind contributions provided by linked third parties
    - sets out other rights and obligations of the buyers group and lead procurer *(e.g. IPR-related rights, commitments to provide test environments)*
  - the procurement must normally be preceded by an '**open market consultation**'

    Exception:

    If the PPI is limited to procuring a limited set of prototypes or test products *resulting from a prior PCP Cofund action* carried out by the same procurers, there is no need for an open market consultation procedure.

    The open market consultation must be implemented as a 'technical dialogue' as defined in the EU public procurement 2004/17/EC and 2004/18/EC.

    A prior information notice (PIN; *see Annex 7*) must be published in the *Official Journal of the European Union* and must be promoted widely, in particular via the websites specified by the Commission/Agency and the National Contact Points (NCPs) for Horizon 2020.

    The PIN must contain information on:

    - the expected launch date for the call for tender

⚠ This date must give potential tenderers sufficient time to adapt their production chain to reach the required functionality or performance requirements.

- whether verification of the market's readiness to deliver the requested quality/price (*e.g. via conformance testing, certification or quality labelling of solutions*) is planned before committing to procure and, if so, at what point in the process.

- the buyers group and the lead procurer must prepare '**common procurement specifications**'

  The specifications must be based on an analysis of the buyers group's needs (i.e. the common challenge) and — if there was an open market consultation — take into account the feedback from that consultation.

  They must describe the functionality and performance requirements that solutions must meet, rather than prescribing a specific solution.

- the buyers group and the lead procurer must publish a **contract notice** to launch the **request for tenders** *(see Annex 9)*.

  Exception:

  If the PPI is limited to procuring a limited set of prototypes or test products *resulting from a prior PCP Cofund action* carried out by the same procurers, there is no need for contract notice and a request for tender; a request for offers from at least 3 providers suffices.

  ⚠ The request must also be addressed to the providers that successfully completed the last PCP phase in the pre-ceding PCP Cofund action.

  ⚠ Do not forget to specify in the request for tenders the arrangements for intellectual property rights (for these arrangements, *see below point 4*) and the buyers' right to publish summaries of the results and the subcontractors' identities.

  The request for tenders does not have to be published. It can be provided on request.

- the buyers group and the lead procurer must **jointly evaluate** the tenders and make a **joint award** decision.

  ⚠ In case of framework contracts/agreements there may be multiple award decisions for different specific contracts that may be taken at the appropriate points in time during the framework contract/agreement by the procurers concerned**.**

  Example: *for contracts with a number of phases (such as design and build contracts) or contracts where different parts of the solution corresponding to different lots need to be deployed at different times and/or by different procurers.*

⚠ The obligations in Article 13.1.1 are additional eligibility conditions. Non-compliance will therefore lead to the rejection (in full) of the costs of all the PPI subcontracts *(see Article 6.2.A and 6.6)*.

Beneficiaries have to demonstrate — upon request — that the selection of the subcontractor complied with these rules.

4. Additional eligibility condition: Minimum content of subcontracts

The subcontract(s) must specify:

- the practical set-up of the implementation of the subcontracts, in particular:
  - the process for monitoring of on-going work and reporting obligations of subcontractors
  - the role and the rights and obligations of third parties involved in the PPI
  - the procedures for accounting and payments
  - an exclusion of contract renegotiations
- the minimum requirements that subcontractors must comply with during the PPI implementation, in particular:
  - implementation of the innovative solutions in accordance with the objectives of the action
  - additional national requirements, ethical and/or security requirements (if applicable)
- the arrangements for intellectual property rights (IPRs), in particular:
  - the ownership by the subcontractor(s) of the intellectual property rights on the results they generate, unless in duly justified cases *(e.g. if the party that produced the results is not able to exploit them)*

  ⚠ The intellectual property provisions described here are the minimum requirements that must be respected. Beneficiaries may — if appropriate — specify additional intellectual property provisions (e.g. regarding access to background, licensing etc.) if these:
    - do not conflict with their obligations under other Articles and
    - maximise the incentives for both beneficiaries and subcontractors to use, widely exploit and commercialise the results
- the right of the buyers to publish:
  - at the time of the contract award notice: the identity of the winning tenderer(s) and a project summary provided by the winning tenderer(s)
  - after the contract(s) has(have) finished (and after consulting the subcontractor(s)): summaries of the results as well as the identities of the subcontractor(s)
- the specific conditions for each buyer, in particular:
  - details of the innovative solutions purchased by each buyer
  - quantity and
  - price.

⚠ If the buyers group choose a framework agreement with specific contracts (for the innovative solutions procured by each buyer), the specific conditions for each buyer must be in the specific contracts (and the rest in the framework agreement).

5. Additional eligibility condition: Compliance with the planning of resources

To ensure compliance with the resource planning (as set out in Annex 1), the buyers group must ensure the timely allocation of resources in order to implement the PPI.

⚠ This includes allocating sufficient time and resources for testing solutions in real-life operational end-user environments.

Example: *testing facilities or equipment to be provided by the buyers group (or other beneficiaries or third parties).*

6. Other obligation: Compliance with national procurement rules

Contrary to PCP, the EU public procurement Directives 2004/17/EC and 2004/18/EC (— or any EU legislation that replaces these Directives[87]) normally apply to PPI procurements.

Therefore, the lead procurer and the members of the buyers group that are 'contracting authorities' or 'contracting entities' (within the meaning of Directives 2004/18/EC and 2004/17/EC) must — like in the General MGA — **also** comply with the applicable **national law on public procurement**.

⚠ Non-compliance with this obligation does not lead to the rejection of costs, but is considered improper implementation of the GA (i.e. breach of another obligation). The Commission/Agency may therefore reduce the grant in proportion to the seriousness of the breach.

ⓘ *For more information on this obligation, see Article 13 General MGA.*

[87] *See Directives 2014/24/EC and 2014/25/EC.*

13.2 Rules for subcontracting of related additional coordination and networking activities

13.2.1 If necessary to implement the action, the beneficiaries may award subcontracts for the 'related additional coordination and networking activities' described in Annex 1.

The beneficiaries must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 35).

*[**OPTION:** In addition, if the value of the subcontract to be awarded exceeds EUR […], the beneficiaries must comply with the following rules: […].[1]]*

The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1 and the total estimated costs of subcontracting per beneficiary must be set out in Annex 2. The *[Commission][Agency]* may however approve subcontracts not set out in Annex 1 and 2 without amendment according to Article 55, if:

- they are specifically justified in the periodic technical report, and
- they do not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

*[**OPTION for classified deliverables:** Classified deliverables may be subcontracted only after explicit approval (in writing) from the [Commission][Agency] (see Article 37).]*

The beneficiaries must ensure that the Commission *[and the Agency]*, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their subcontractors.

13.2.2 In addition, the beneficiaries must ensure that their obligations under Articles 35, 36, 38, and 46 also apply to the subcontractors.

Beneficiaries acting as contracting authorities within the meaning of Directive 2004/18/EC[1] or as contracting entities within the meaning of Directive 2004/17/EC[1] must comply with the applicable national law on public procurement.

13.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 13.1.1 or 13.2.1, the costs related to the subcontract concerned will be ineligible (see Article 6) and will be rejected (see Article 42).

If a beneficiary breaches any of its obligations under Article 13.1.2 or 13.2.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

1. Subcontracting of related additional coordination and networking activities

For the subcontracting of related additional coordination and networking activities, the same rules apply as in the General MGA *(see Article 13 General MGA)*.

ARTICLE 19 — SUBMISSION OF DELIVERABLES

19.1 Obligation to submit deliverables

The coordinator must submit:

- 5 days before its publication: a copy of the prior information notice (PIN) (see Article 13);
- 30 days before its publication: a copy of the contract notice (see Article 13);
- at the end of the tender evaluation ***[OPTION for PCP:*** *(including after the intermediate evaluations before the start of each new PCP phase (see Article 13))****]***:

  (i) **information on the total number of bids received**, in particular the data on the winning tenderer(s) and abstracts of the winning tenders, for publication and evaluation purposes;

  (ii) **information on the evaluation of tenders**: the final ranking list of the selected projects, final scores and qualitative assessment per evaluation criterion for each received bid, minutes of the evaluation meeting;

  (iii) ***[OPTION for PCP: assessment by the buyers group of the results achieved by each participating tenderer*** *in the previous PCP phase (not applicable to the initial evaluation of tenders at the start of the PCP);****]***

- ***[OPTION by default (two pre-financing payments):*** *the coordinator must submit in month [Y] a progress report containing:*

  - *a '****periodic summary technical report****' for publication by the [Commission][Agency];*
  - *an* ***overview of the progress*** *towards the objectives of the action, including milestones and deliverables identified in Annex 1. This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out;****]***

  [OPTION in case of three pre-financing payments: *not applicable;****]***

- at the end of the action: **information on each project financed by the procurement**, including data on each contractor that participated in the procurement, an overview of the results (for publication and evaluation purposes) and an assessment by the buyers group of the final results of each participating tenderer (in terms of achieving the performance and functionality requirements of the initial tender specifications).
- any other deliverables identified in Annex 1, in accordance with the timing and conditions set out in it.

[*In addition, the beneficiaries must:*

- *[****OPTION for PCP:*** *at the end of the action: give a demonstration to the [Commission][Agency] of the test products resulting from the procured research and development services.]*
- *[****OPTION for PPI:*** *at the end of the action: give a demonstration to the [Commission][Agency] of the innovative solution(s).]****]***

19.2 Consequences of non-compliance

If the coordinator breaches any of its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

1. Deliverables: Information on the total number of bids received — Information on the evaluation of tenders — Information on each subcontract financed

When & What?

For PCP-PPI Cofund actions, the coordinator must — after the end of the tender evaluation (and, for PCP actions, also after each intermediate evaluation of each PCP phase) — submit to the Commission/Agency (via the electronic exchange system, i.e. the 'My Area' section of the Participant Portal):

- data on the total number of bids received
- the evaluation of tenders and its outcome (including the winning tenderer(s) and abstracts of the winning tenders)
- an assessment of the buyers group of the results achieved by each participating tenderer in the previous PCP phase.

This information must be updated by the coordinator at the end of the action, by submitting a list of all subcontracts financed (including data on each contractor that participated in the procurement and overview of the results)

⚠ Templates[hyperlink] are provided on the Participant Portal.

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The coordinator must submit to the *[Commission][Agency]* (see Article 52) reports, including requests for payments.

The reports must be drawn up using the forms and templates provided by the *[Commission][Agency]* in the electronic exchange system (see Article 52).

20.2 Reporting periods

[OPTION by default (two pre-financing payments): *The action is divided into the following '**reporting periods**':*

- *RP1: from month 1 to month [X[41]]*
- *RP2: from month [X+1] to [the last month of the project]**]***

[OPTION in case of three pre-financing payments: *The action is divided into the following '**reporting periods**':*

- *RP1: from month 1 to month [X[42]]*
- *RP2: from month [X+1] to month [Y]*
- *RP3: from month [Y+1] to [the last month of the project]**]***

20.3 Periodic reports — Requests for second *[and third]* pre-financing payment*[s]*

The coordinator must submit a periodic report within 60 days following the end of the first reporting period.

The periodic report must include the following:

(a) a **periodic technical report** containing:

(i) an **explanation of the work carried out** by the beneficiaries;

(ii) an **overview of the progress** towards the objectives of the action, including milestones and other deliverables identified in Annex 1.

This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out.

The report must also detail the exploitation and dissemination of the results and — if required in Annex 1 — an updated '**plan for the exploitation and dissemination of the results**';

[OPTION for providing access to trans-national access to research infrastructure: *The report must detail the access activity, indicating the members of the selection panel, the selection procedure, the exact amount of access provided to the user groups, the description of their work, and information on the users (including names, nationality and home institutions)**] [OPTION for providing access to virtual services:*** *The reports must detail the access activity, with statistics on the virtual access provided in the period, including quantity, geographical distribution of users and, whenever possible, information/statistics on scientific outcomes (publications, patents, etc.) acknowledging the use of the infrastructure**];***

(iii) a **summary** for publication by the *[Commission][Agency];*

(iv) the answers to the '**questionnaire**' covering issues related to the action implementation and the economic and societal impact, notably in the context of the Horizon 2020 key performance indicators and the Horizon 2020 monitoring requirements.

(b) **call for tender documents**, including the contract notice, invitation to tender, procurement contracts;

(c) a **report on the outcome of the preparation phase** of the procurement (e.g. the open market consultation) and their impact on the call for tender;

(d) from each beneficiary participating in the joint procurement, a formal and duly signed '**commitment on availability of funds**' (see Annex 11), and

(e) a '**statement on the use of the first pre-financing instalment**' (see Annex 12), including the **request for a second pre-financing payment**.

The coordinator must certify that the information provided is full, reliable and true; and it can be substantiated by adequate supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22).

[OPTION in case of three pre-financing payments: *The coordinator must submit a periodic report within 60 days following the end of the second reporting period.*

The periodic report must include the following:

*(a) a **periodic technical report** (see point (a) above) and*

*(b) a **statement on the use of the second pre-financing instalment** (see Annex 8), including the **request for a third pre-financing payment**.*

*The coordinator must certify that the information provided is full, reliable and true; and it can be substantiated by adequate supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22).**]***

20.4 Final report — Request for payment of the balance

The coordinator must submit the final report within 60 days following the end of the last reporting period.

The **final report** must include the following:

(a) a '**final technical report**' with a **summary** for publication containing:

(a) an overview of the results and their exploitation and dissemination;

(b) the conclusions on the action, and

(c) the socio-economic impact of the action;

(b) a '**final financial report**' containing:

(a) an '**individual financial statement**' (see Annex 4) from each beneficiary *[and from each linked third party]*, for all reporting periods.

The individual financial statement must detail the eligible costs (actual costs, unit costs and flat-rate costs; see Article 6) for each budget category (see Annex 2).

The beneficiaries *[and linked third parties]* must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the *[Commission][Agency]*.

The individual financial statements must also detail the **receipts of the action** (see Article 5.3.3).

Each beneficiary *[and each linked third party]* must **certify** that:

- the information provided is full, reliable and true;
- the costs declared are eligible (in particular, that the costs for subcontracts comply with the conditions in Article 13);
- the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22), and
- all the receipts have been declared (see Article 5.3.3);

(b) an **explanation of the use of resources** and the information on subcontracting (see Article 13) and in-kind contributions provided by third parties (see Articles 11 and 12) from each beneficiary *[and from each linked third party*;

(c) ***[OPTION if the JRC is a beneficiary:*** *information on the amount of payment of the balance to be paid by the Commission to the Joint Research Centre (JRC)****;][OPTION:*** *not applicable;****]***

(d) a '**summary financial statement**' (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements and including the **request for payment of the balance**;

(e) a '**certificate on the financial statements**' (drawn up in accordance with Annex 5) for each beneficiary *[and for each linked third party]*, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Point B.1 of Article 6.2).

[…]

1. Reports

When & What? For PCP-PPI Cofund actions, the coordinator has to submit — after the first reporting period (and, if there are three pre-financing payments, also after the second reporting period) — a periodic report with information on the technical implementation.

⚠ No financial reporting during the action (i.e. no financial statements before the final report).

At the end of the action, the coordinator has to submit a final report, with both a technical and a financial part.

2. Reporting periods

Normally, PCP-PPI Cofund actions are divided into **two** reporting periods (with two pre-financing payments; *see Article 21*). The first reporting period corresponds to the action's preparation stage (preparation of the joint procurement); the second reporting period corresponds to the action's execution stage (execution and follow-up of the joint procurement).

Exception:

Actions will be divided into three reporting periods (with three pre-financing payments), if the Commission/Agency has insufficient payment credits to pay the entire amount as a second pre-financing payment.

⚠ The first (and, if there are two pre-financing payments, also the second) reporting period triggers a periodic report.

3. Periodic reports: Call for tender documents — Report on the outcome of the preparation phase — Commitment on availability of funds — Statement on the use of the previous pre-financing instalment — Request for a further pre-financing payment

The coordinator must submit — as part of the periodic report —:

- the call for tender documents and
- a report on the outcome of the preparation phase.

In addition, the periodic report must include:

- for each member of the buyers group: a formal and signed commitment on availability of funds needed to pay the subcontracts*(see Annex 11)*

  This ensures that the PCP/PPI subcontracting costs are covered.

- a statement on use of the previous pre-financing instalment *(see Annex 12)*.

  ⚠ This document includes the request for a further pre-financing payment (only the first pre-financing payment is automatic).

  ⚠ It is moreover used to calculate the amount of the next pre-financing payment *(see Article 21)*.

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the coordinator:

- a **first pre-financing** payment;
- a **second pre-financing** payment, on the basis of the request for a second pre-financing payment (see Article 20);
- *[a **third pre-financing** payment, on the basis of the request for a third pre-financing payment (see Article 20);]*
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20)

21.2 Pre-financing payments — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiaries with a float.

It remains the property of the EU until the payment of the balance.

The *[Commission][Agency]* will — within 30 days from the starting date of the action (see Article 3) or from the entry into force of the Agreement (see Article 58), whichever is the latest — make a first pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)][44], except if Article 48 applies.

From this amount, an amount of EUR [**insert amount** (insert amount in words)], corresponding to 5 % of the maximum grant amount (see Article 5.1), is retained by the *[Commission][Agency]* and transferred into the '**Guarantee Fund**'.

The *[Commission][Agency]* will — within 60 days after receiving the request (see Article 20) — make a second pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)][451], except if Articles 47 or 48 apply.

[OPTION in case of three pre-financing payments:** The [Commission][Agency] will — within 60 days after receiving the request (see Article 20) — make a third pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)], except if Articles 47 or 48 apply.**]

If the statement on the use of the previous pre-financing instalment shows that less than 70 % of the previous instalment paid has been used to cover the costs of the action, the amount of the new pre-financing to be paid will be reduced by the difference between the 70 % threshold and the amount used.

[OPTION if the JRC is a beneficiary:** The parts of the pre-financing payments related to the Joint Research Centre (JRC) ([**insert amounts** (insert amounts in words)] are not paid to the coordinator, but kept by the [Commission][Agency] for the JRC.**]

21.3 Interim payments — Amount — Calculation

Not applicable

[…]

21.5 Notification of amounts due

When making payments, the *[Commission][Agency]* will formally notify to the coordinator the amount due, specifying whether it concerns the second *[or third]* pre-financing payment or the payment of the balance.

For the payment of the balance, the notification will also specify the final grant amount.

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 43 and 45.

[...]

[44] Should correspond to the percentage of the maximum grant amount that is foreseen for the related additional coordination and networking activities related to the preparation of the call for tender (see Article 5.1).

[45] Should correspond to a maximum of 90% minus the amount of the first pre-financing payment, unless option with three pre-financing payments is used.

1. Payments — No interim payments

Normally, PCP-PPI Cofund actions are divided into two reporting periods *(see Article 20.2)*, with two pre-financing payments.

Exception:

The action will be divided into three reporting periods (with three pre-financing payments), if the Commission/Agency has insufficient payment credits to pay the entire amount as a second pre-financing payment

There are no interim payments, but the second pre-financing payment (after the end of the first reporting period, i.e. after the evaluation of the preparation stage of the PCP/PPI procurement) provides beneficiaries with the necessary funds to launch the PCP/PPI procurement.

The balance is paid when the action ends.

2. Amount of pre-financing payments

How much? The amounts of the pre-financing payments for PCP-PPI Cofund actions are as follows:

- the first pre-financing payment amounts to the percentage of the maximum grant amount that is foreseen for the related additional networking and coordination activities related to the preparation of the call for tender
- the second pre-financing payment is a maximum of 90% (general limit for pre-financing payments; see Article 21) minus the amount of the first pre-financing payment).

Exception:

If the GA provides for a third pre-financing payment, the amounts will be adapted.

⚠ The second/third pre-financing payment will be reduced, if — according to the statement on use of the previous pre-financing instalment — the previous pre-financing was insufficiently used:

- if 70% or more of the first/second pre-financing has been used: the second/third pre-financing is paid in full
- if less than 70% of the first/second pre-financing has been used: the second/third pre-financing will be reduced by an amount equal to the difference between the percentage actually used and 70%.

ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS

22.1 Checks, reviews and audits by the Commission *[and the Agency]*

[…]

22.1.2 Right to carry out reviews

The Commission *[or the Agency]* may — during the implementation of the action or afterwards — carry out reviews on the proper implementation of the action (including assessment of deliverables and reports), compliance with the obligations under the Agreement and continued scientific or technological relevance of the action.

Reviews may be started **up to two years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the review is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The Commission *[or the Agency]* may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). The Commission *[or the Agency]* may request beneficiaries to provide such information to it directly.

The coordinator or beneficiary concerned may be requested to participate in meetings, including with external experts.

For **on-the-spot** reviews, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the review findings, a '**review report**' will be drawn up.

The Commission *[or the Agency]* will formally notify the review report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations ('**contradictory review procedure**').

Reviews (including review reports) are in the language of the Agreement.

[…]

1. Technical reviews

For PCP-PPI Cofund actions, the Commission/Agency may in particular carry out technical reviews at key milestone points during the action (*e.g. for PCP Cofund actions, at the transition from one PCP phase to the next).*

VII. EJP Cofund

VII.1 Background information and approach

The Model Grant Agreement for EJP Cofund ('EJP Cofund MGA') is used for grants for EJP Cofund actions only.

⚠ EJP Cofund grants are open mainly to **entities owning** or **managing research and innovation programmes** (and exceptionally other entities — if justified by the nature of the action —, in particular entities created to coordinate or integrate transnational research efforts, grouping funding from both national and private sources). The minimum number of participants is five independent legal entities from different Member States or associated countries (unless they are sole participants; *see General Annexes C and D to the Work Programme*).

ⓘ *For more information on EJP Cofund actions, see Article 2.*

ⓘ *For information on EJP Cofund funding opportunities, see the 'Search Topic' function on the Participant Portal.*

ⓘ *For information on eligibility criteria, see the Work Programmes.*

The EJP Cofund MGA follows the General MGA for numbering and content, except for the following:

Introductory remark

The Model Grant Agreement for EJP Cofund deviates from the General Model Grant Agreement as follows:

- Article 3 (duration of EJP Cofund actions: 60 months)
- Article 5.2 (EJP Cofund specific reimbursement rate)
- Article 16 (provision on access to research infrastructures not applicable)
- Article 19 (EJP Cofund specific deliverables)
- Article 20.2, 20.2a (EJP Cofund specific reporting provisions)
- Article 21.1, 21.2, 21.5 (EJP Cofund specific payment provisions)

- Annex 7 Model for the annual work plan
- Annex 8 Model for the statement on the use of the previous pre-financing instalment

The annotations will concentrate on differences in substance and interpretation that require explanation.

Parts that differ only in presentation *(e.g. Article 16, Annexes)* will not be shown.

By contrast, provisions that do not deviate from the General MGA, but that require clarification or a specific interpretation for EJP Cofund actions are added:

- Article 2 (EJP Cofund actions)
- Article 4.1 (EJP Cofund budget categories)
- Article 6 (EJP Cofund eligible and ineligible costs)
- Article 6.2.F (Fusion Cofund programme action specific categories of costs)
- Article 8 (EJP Cofund rules on third party involvement).

VII.2 EJP Cofund Annotations

ARTICLE 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT] [— JOINTLY FUNDED ACTION]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** ('**action**'), as described in Annex 1.

***[OPTION for complementary grants if foreseen in the work programme:** The grant is a '**complementary grant**' to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]] [the following complementary grant agreement(s) No(s):*

- *[insert number] [insert acronym]*
- *[insert number] [insert acronym]].]*

***[OPTION for joint actions (joint call with a third country or an international organisation)**: The action is a '**jointly funded action**' which must be coordinated with the 'joint action' called [insert the name of the third country or international organisation action], as described in Annex 1.]*

1. EJP Cofund actions

EJP Cofund actions are actions with the following activity:

– implementing a joint programme of activities of coordinated national research and innovation programmes.

What? The joint programme of activities may range from research and innovation activities to coordination activities, training activities, dissemination activities and financial support to third parties.

> ***Examples:*** *NFRP7–2015 Integrating radiation research in the European Union; Fusion programme Cofund action (FEJP) (see sections A and B.1 Euratom Work Programme 2014-2015)*

What not? The EJP only funds joint programmes, not individual projects or coordination networks.

Normally, EJP Cofund grants are multi-beneficiary grants; exceptionally they can be *mono*-beneficiary grants for 'sole participants' *(see General Annex D to the Main Work Programme).*

ⓘ For more information on the conditions for participation and funding, see the H2020 Online Manual or the Work Programmes, and the call and topics pages of your call.

ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION

The **duration of the action** will be **60 months** as of *[**OPTION by default:** the first day of the month following the date the Agreement enters into force (see Article 58)] [**OPTION if needed for the action:** insert date]*[4] (‘**starting date of the action**’).

[4] This date must always be the first day of a month and it must be later than the date of entry into force of the agreement unless authorised otherwise by the authorising officer, if the applicant can demonstrate the need to start the action before the entry into force of the grant agreement. In any case, the starting date should not be earlier than the date of the submission of the grant application, except in duly justified exceptional cases as provided for in the basic act and the work programme (Article 130 FR).

1. Duration of the action

For EJP Cofund actions, the duration is normally **60 months**.

If implementation of the action is justifiably delayed, the consortium may request an extension (i.e. request an amendment extending the duration; *see Article 55 General MGA*).

⚠ The action’s duration cannot exceed **72 months**.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary *[(and linked third party)]* and **budget category** (see Articles 5, 6, *[and 14]*). ***[OPTION to be used if Article 9 applies:*** *It also contains the estimated costs of the beneficiaries not receiving EU funding (see Article 9).]*

[…]

1. Budget categories

The EJP Cofund MGA uses the same **budget categories** as the **General MGA**.

Budget categories of the EJP Cofund MGA:

- direct personnel costs
- subcontracting costs
- costs of providing financial support to third parties (if option applies)
- other direct costs
- indirect costs
- specific categories of costs (if option applies).

Differences (compared to the General MGA):

- For the Fusion programme EJP Cofund action (FEJP; *see Article 2*), the 'specific categories of costs' of the General MGA are replaced by the following specific categories:
  - 'costs for mobility of personnel'
  - 'costs for fellowships for researchers'
  - 'access costs for research infrastructure'.

⚠ The budget categories are relevant for the estimated budget *(Article 4 and Annex 2)*, forms of costs *(Article 5)*, cost eligibility rules *(Article 6.2)* and the cost declarations (i.e. financial statements; *Article 20 and Annex 4*).

ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATE AND FORMS OF COSTS

[…]

5.2 Form of grant, reimbursement rate and forms of costs

The grant reimburses *[**OPTION (reimbursement rate foreseen in the work programme)**: [**…%**] of the action's eligible costs]* (see Article 6) ('**reimbursement of eligible costs grant**') (see Annex 2).

The estimated eligible costs of the action are EUR **[insert amount** (insert amount in words)**]**.

Eligible costs (see Article 6) must be declared under the following forms ('**forms of costs**'):

(a) for **direct personnel costs** *[(excluding personnel costs for the activities in Point (f))]*[1]:

- as actually incurred costs ('**actual costs**') or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

Personnel **costs for SME owners** or **beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points A.4 and A.5) must be declared on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(b) for **direct costs of subcontracting** *[(excluding subcontracting costs for the activities in Point (f))]*[1]: as actually incurred costs (**actual costs**);

(c) ***[OPTION to be used if Article 15 applies**: for **direct costs of providing financial support to third parties** [(excluding costs of financial support given under the activities in Point (f))]*[1]*: as actually incurred costs (**actual costs**);][**OPTION**: not applicable;]*

(d) for **other direct costs** *[(excluding other direct costs for the activities in Point (f))]*[1]: as actually incurred costs (**actual costs**);

(e) for **indirect costs** *[(excluding indirect costs for the activities in Point (f))]*[1]: on the basis of a flat-rate applied as set out in Article 6.2, Point E ('**flat-rate costs**');

*[(f) [**OPTION for specific categories of costs if unit costs foreseen by Commission decision:** for **costs of [insert cost category or activity**[1]**]**:*

- *on the basis of the amount(s) per unit set out in Annex 2 (**unit costs**) [or]*
- *[as actually incurred costs (**actual costs**)]*[1]*[or*
- *as a combination of the two].]*

*[**OPTION for specific categories of costs if lump sum costs foreseen by Commission decision:** for **costs of [insert cost category or activity**]: as the lump sum set out in Annex 2 ('**lump sum costs**').]]*

[…]

5 To be used only if option in Point (f) is used.
6 To be used only if option in Point (f) is used.
7 To be used only if option in Point (f) is used.
8 To be used only if option in Point (f) is used.
9 To be used only if option in Point (f) is used.
10 Insert precise name of the costs as in the Commission decision authorising the use of the unit cost or lump-sum. For example: costs of 'access costs for providing transnational access to research infrastructures'; costs of 'clinical studies'; costs of 'energy efficiency measures in buildings', costs of 'mobility of personnel', costs of 'researcher fellowships', costs of 'access to research infrastructures (EURATOM)'.
11 To be used only if the Commission decision authorising the use of the unit cost allows that the beneficiary chooses between actual or unit cost.

1. Reimbursement rate

How much? For EJP Cofund actions, the reimbursement rate is fixed — for each call or action — in the Work Programmes. It cannot exceed 70%[88].

2. Cost forms

For EJP Cofund actions, the **cost forms** are the **same** as in the **General MGA** (i.e. actual costs, unit costs and flat rate costs; *see Article 5 General MGA*).

Specific case:

For the Fusion programme EJP Cofund action (FEJP; *see Article 2*), there are **different unit costs** for three 'specific categories of costs':

- costs for **mobility** of personnel: daily subsistence allowance, monthly subsistence allowance and monthly family allowance
- costs for **fellowships** for researchers: monthly living allowance, mobility allowance and family allowance
- **access costs** for research infrastructure [89]

⚠ These unit costs replace the unit costs for the 'specific categories of costs' of the General MGA *(e.g. access costs for providing trans-national access to research infrastructures, costs of energy efficiency measures in buildings; see Article 5 General MGA).*

[88] *See Article 28(5) of the Rules for Participation.*

[89] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_fusion_en.pdf

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

[…]

6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

F. direct personnel costs;
G. direct costs of subcontracting;
H. **[*OPTION to be used if Article 15 applies:* direct costs of providing financial support to third parties;*] [OPTION:* not applicable;**]**
I. other direct costs;
J. indirect costs;
[F. OPTION for specific categories of costs if unit costs foreseen by Commission decision*: costs of [insert cost category or activity*[1]*]*]**.

'Direct costs' are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point E below).

'Indirect costs' are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

[…]

1. Specific conditions for costs to be eligible

Article 6.2 refers to specific eligibility conditions applicable per budget category.

The EJP Cofund MGA uses in principle the **same budget categories** (covering the same **types of costs)** as the General MGA and the same **conditions for eligibility** and rules for **calculation** apply *(see Article 6 General MGA).*

For one specific EJP Cofund action, i.e. the Fusion programme EJP Cofund action (FEJP; *see Article 2*), the 'specific categories of costs' of the General MGA are however replaced by the other categories.

For ease of reference, the annotations for Article 6.2 will be limited to these specific categories of costs and summarise — for each of them — the information necessary to establish the eligible costs, i.e.

1. types of costs covered by the budget category
2. cost form under which the costs must be declared (i.e. actual costs, unit costs, flat rate)
3. conditions for eligibility
4. how the costs must be calculated.

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION

The beneficiaries must have the appropriate resources to implement the action.

If it is necessary to implement the action, the beneficiaries may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the *[Commission][Agency]* and the other beneficiaries for implementing the action.

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

For EJP Cofund actions, the same rules on third party involvement apply as in the General MGA *(see Article 8 General MGA).*

ARTICLE 19 — SUBMISSION OF DELIVERABLES

19.1 Obligation to submit deliverables

The coordinator must submit:

- 90 days before the end of each reporting period:

  (g) the '**annual work plan for the next year**' (see Annex 7), for approval by the *[Commission][Agency]* and

  (h) a **summary progress report** *on* the activities carried out during the on-going reporting period.

  This report must show how the activities proposed in the annual work plan for the next year ensure continuity with the work already carried out.

  If the *[Commission][Agency]* considers that the annual work plan for the next year does not comply with Annex 1, the coordinator must submit a revised version within 30 days from receiving formal notification.

  If the *[Commission][Agency]* considers that the revised annual work plan for the next year still does not comply with Annex 1, it may terminate the Agreement (see Article 50.3).

- the other '**deliverables**' identified in Annex 1, in accordance with the timing and conditions set out in it.

19.2 Consequences of non-compliance

If the coordinator breaches any of its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.

1. Deliverable: Annual work plan

When & What? For EJP Cofund actions, the coordinator must submit to the Commission/Agency (via the electronic exchange system) — for each twelve-month period of the EJP — an annual work plan.

This plan contains a detailed description of the activities for that period, in line with the objectives and description of work set out in Annex 1.

⚠ Thus, while Annex 1 may include the targeted areas for research or other activities, it is the annual work plan that will define and specify the activities and the deliverables.

Example:

Annex 1 of a EJP contains a work package dedicated to a series of irradiation experiments in a large research facility. The annual work plan for the first reporting period provides a detailed description of the planned experiments on the related materials and the expected milestones.

As the programme develops, additional irradiation capacity becomes available in year 3. Alternatively, the validation of previous results requires further work or other materials become interesting. The consortium proposes an annual work plan with additional experiments commencing in that reporting period.

An EJP consortium therefore has a certain flexibility to develop activities and use the allocated budget (as long as the proposed activities remain in line with the EJP objectives and description of work (Annex 1) as initially evaluated)

The annual work plan must be drawn up using the template in Annex 7.

The periods of the annual work plans coincide with the reporting periods *(see Article 20)*.

⚠ However, since the annual work plan for the next period must be agreed with the Commission/Agency before the start of activities for the next reporting period, it must be submitted 3 months (i.e. 90 days) in advance.

⚠ The annual work plan for the first reporting period must already be included in your proposal.

If the Commission/Agency considers that the proposed annual work plan does not comply with Annex 1, it will ask the coordinator to submit a **revised annual work plan**.

⚠ The coordinator has **30 days** from the date of receipt of the request to submit a revised annual work plan.

2. Deliverable: Summary progress report

When & What? The annual work plan must be accompanied by a summary progress report.

The summary progress report should focus on how the activities proposed in the annual work plan ensure continuity with the work already carried out.

⚠ It should **not** contain an **analysis of *all* activities** carried out during the reporting period (since that is the purpose of two other documents that must be submitted as part of the periodic reports, i.e. the ‘explanation of the work carried out’ and the ‘overview of the progress’; *see Article 20.3*).

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 General obligation to submit reports

The coordinator must submit to the *[Commission][Agency]* (see Article 52) reports, including requests for payments.

The reports must be drawn up using the forms and templates provided by the *[Commission][Agency]* in the electronic exchange system (see Article 52).

20.2 Reporting periods

The action is divided into the following '**reporting periods**':

- RP1: from month 1 to month 12
- RP2: from month 13 to month 24
- RP3: from month 25 to month 36
- RP4: from month 37 to month 48
- RP5: from month 49 to month 60

20.2a Request for a second pre-financing payment

[OPTION in case of two pre-financing payments: *The coordinator must submit — within 30 days following the end of the first reporting period — a* ***request for a second pre-financing payment****.*

*The request must be included in a '****statement on the use of the previous pre-financing instalment****' (see Annex 8).**]***

[OPTION: *not applicable**]***

[…]

1. Reports

Like the General MGA, the EJP Cofund MGA foresees periodic reports and a final report, with both a technical and a financial part *(see Article 20 General MGA).*

2. Reporting periods

EJP Cofund actions are divided in **five** reporting periods of **12 months** each.

⚠ Each reporting period triggers a periodic report.

3. Request for a second pre-financing payment — Statement on the use of the previous pre-financing instalment

The GA may provide for this option for large EJPs that need a second pre-financing payment (at the beginning of the second reporting period; *see Article 21).*

⚠ Payment of the **second pre-financing** payment is not automatic. It must be **requested** in the statement on the use of the first pre-financing payment using the template in Annex 8.

ⓘ *For more information on the other provisions of this Article, see Article 20 General MGA.*

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the coordinator:

- one **pre-financing payment**;
- *[a* **second pre-financing payment**, *on the basis of the request for a second pre-financing payment (see Article 20);]*
- one or more **interim payments**, on the basis of the request(s) for interim payment (see Article 20), and
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20).

21.2 Pre-financing payment — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiaries with a float.

It remains the property of the EU until the payment of the balance.

The *[Commission][Agency]* will — within 30 days from the starting date of the action (see Article 3) or from the entry into force of the Agreement (see Article 58), whichever is the latest — make a pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)], except if Article 48 applies.

From this amount, an amount of EUR [**insert amount** (insert amount in words)], corresponding to ***[OPTION in case of a single pre-financing payment:*** *5%]**[OPTION in case of two pre-financing payments:*** 2,5%*]* of the maximum grant amount (see Article 5.1), is retained by the Commission and transferred into the '**Guarantee Fund**'.

[OPTION in case of a second pre-financing payment: *The [Commission][Agency] will — within 30 days from the request for a second pre-financing payment (see Article 20.2a) — make a second pre-financing payment to the coordinator of EUR [**insert amount** (insert amount in words)], except if Article 48 applies.*

*From this amount, an amount of EUR [**insert amount** (insert amount in words)], corresponding to 2.5% of the maximum grant amount (see Article 5.1), will be retained by the [Commission][Agency] and transferred into the Guarantee Fund.*

If the statement on the use of the previous pre-financing instalment shows that less than 70% of the previous instalment paid has been used to cover the costs of the action, the amount of the new pre-financing to be paid will be reduced by the difference between the 70 % threshold and the amount used. ***]***

[OPTION if the JRC is a beneficiary: *The parts of the pre-financing payments related to the Joint Research Centre (JRC) ([**insert amounts** (insert amounts in words)] are not paid to the coordinator, but kept by the [Commission][Agency] for the JRC.**]***

[…]

21.5 Notification of amounts due

When making payments, the *[Commission][Agency]* will formally notify to the coordinator the amount due, specifying whether it concerns a *[second pre-financing payment,]* interim payment or the payment of the balance.

For the payment of the balance, the notification will also specify the final grant amount.

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 43 and 44.

[…]

1. Payments

Normally, EJP Cofund actions are divided in 5 reporting periods *(see Article 20.2)*, with one pre-financing payment and interim payments for each reporting period.

Exception:

Large EJPs may benefit from a second pre-financing payment (at the beginning of the second reporting period).

Example (two pre-financing payments):

An EJP receives a grant with a maximum grant amount of EUR 30 million. A total pre-financing of EUR 8 million is agreed but is split into two pre-financings of EUR 4 million each.

First pre-financing = EUR 4 000 000 with a Guarantee Fund retention of EUR 30 million x 2.5% = EUR 750 000 ➔ net payment of EUR 3 250 000

Second pre-financing

***Example 1a:** The coordinator submits a statement showing that at least EUR 2 275 000 (70% of the EUR 3 250 000) has been used to cover the costs of the action ➔ the second pre-financing will be EUR 4 000 000 with a Guarantee Fund retention of EUR 30 million x 2.5% = EUR 750 000 = net payment of EUR 3 250 000*

***Example1b:** The coordinator submits a statement showing that EUR 1 950 000 (60% of the initial pre-financing) has been used to cover the costs of the action ➔ the second pre-financing will be EUR 4 000 000 – (EUR 2 275 000 – EUR 1 950 000) = EUR 3 675 000 with a Guarantee Fund retention of EUR 30 million x 2.5% = EUR 750 000 ➔ net payment of EUR 2 925 000*

The need for a second pre-financing payment will be assessed during the preparation of the GA.

⚠ If a second pre-financing payment is agreed, the Guarantee Fund retention (of 5% of the maximum amount of the grant) will be split between the two pre-financing payments.

The second pre-financing payment is not automatic but must be requested by the coordinator and supported by a statement on the use of the first pre-financing payment *(see Article 20)*.

The balance is paid when the action ends.

2. Amount of pre-financing payments

How much? The pre-financing for EJP Cofund actions is normally 20% of the maximum amount of the grant

Exception:

Depending on the size and the needs of the EJP, the reimbursement rate in the Work Programme and the availability of Union funds, the pre-financing may be higher or lower.

In case of two pre-financing payments, the second pre-financing payment will be reduced, if — according to the statement on use of the previous pre-financing instalment — the first pre-financing was insufficiently used:

- if 70% or more of the first pre-financing has been used: the second pre-financing is paid in full
- if less than 70% of the first pre-financing has been used: the second pre-financing will be reduced by an amount equal to the difference between the percentage actually used and 70%.

VIII. Framework Partnerships and Specific Agreements

VIII.1 Background information and approach

The Model Framework Partnership Agreement ('MFPA') and Model Specific Agreement ('MSGA') are used for framework partnerships (and specific grants under such framework partnerships) only.

Framework partnerships are **long-term co-operations** that:

- pursue a mutual interest and common general objectives (that coincide with EU policy)
- have an action plan with actions that were defined and agreed jointly on the basis of the common general objectives and
- have an ongoing formal arrangement to implement potential action (i.e. the FPA and SGAs).

They are established in a FPA and implemented by SGAs for specific actions. Both FPAs and SGAs are treated as grants for the purpose of the award procedure.

⚠ The minimum requirements for participation in FPAs will generally depend on the types of specific actions that are envisaged in the action plan.

For SGAs, the minimum number of partners will be explicitly indicated in the call for proposals (or — if there is no call for proposals in the Work Programme and in the invitation to submit a proposal —) *(see Article 4 MFPA and Article 14 MSGA).*

⚠ Currently, framework partnerships are only open to actions under the General MGA (i.e. all kinds of research and innovation actions (RIA), innovation actions (IA) and coordination and support actions (CSA)). Framework partnerships are currently not open to ERANET, PCP-PPI, EJP, ERC, MSC or SME Instrument specific actions.

ⓘ *For more information on framework partnerships and specific grants, see Article 2.*

ⓘ *For information on FPA funding opportunities, see the 'Search Topic' function on the Participant Portal.*

ⓘ *For information on standard eligibility criteria for different types of specific actions, see General Annex C of the Main Work Programme.*

The MFPA and MSGA generally follow the General MGA for content, but with a different numbering:

Table of correspondence

Title of Article	FPA Article	SGA Article	MGA Article
CHAPTER 1 GENERAL			
SUBJECT OF THE AGREEMENT	1	1	1
CHAPTER 2 FRAMEWORK PARTNERSHIP			

⚠ In addition, all references in the General MGA to 'beneficiary(ies)' are to be taken as referring to the 'partner(s)'.

The annotations will concentrate on differences in substance and interpretation that require explanation.

Parts that differ only in numbering or presentation *(e.g. Chapters 3 and 4; Annexes)* will not be shown.

By contrast, provisions that do not deviate from the General MGA, but that require clarification or a specific interpretation for the MFPA or MSGA are added:

- Article 9.1 (FPA-SGA budget categories)
- Article 10 (FPA-SGA maximum grant amount, form of grant, reimbursement rate, forms of costs, final grant amount, revised final grant amount)
- Article 11 (FPA-SGA eligible and ineligible costs)
- Article 13 (FPA-SGA rules on third party involvement).

VIII.2 Annotations

FRAMEWORK PARTNERSHIP AGREEMENT

NUMBER [insert number] — [insert acronym]

This '**Framework Partnership Agreement**' is between the following parties:

on the one part,

***[OPTION 1**: the **European Union** ('the EU', represented by the European Commission ('the Commission') ,]*

***[OPTION 2:** the **European Atomic Energy Community** ('Euratom'), represented by the European Commission ('the Commission'),]*

***[OPTION 3:** the [**Research Executive Agency (REA)**] [**European Research Council Executive Agency (ERCEA)**] [**Innovation and Networks Executive Agency (INEA)**] [**Executive Agency for Small and Medium-sized Enterprises (EASME)**] ('the Agency'), under the powers delegated by the European Commission ('the Commission'),]*

represented for the purposes of signature of this Framework Partnership Agreement by [[function, [Directorate-General, Directorate, Unit] [Department]], [forename and surname] [2],

and

on the other part,

1. 'the **coordinator**':

[full official name] [short name][legal form] [official registration No] established in [official address in full] [VAT number], represented for the purposes of signing the Framework Partnership Agreement by [function, forename and surname]

and the following other **partners** if they have signed their 'Accession Form' (see Annex 3 and Article 62):

2. **[full official name] [short name]** [legal form] [official registration No] [official address in full] [VAT number].

[same for each partner]

***[OPTION if the JRC is a partner:** and X. the **Joint Research Centre (JRC)** established in [official address in full], if it signs the administrative arrangement (see Annex 3b)]*.

Unless otherwise specified, references to 'partner' or 'partners' include the coordinator ***[OPTION if the JRC participates:** and the Joint Research Centre (JRC)]*.

The parties have agreed to enter into the Framework Partnership Agreement under the terms and conditions set out below.

The Framework Partnership Agreement is composed of:

Terms and Conditions

Annex 1 Action plan[3]

Annex 2 Model Specific Agreement

Annex 1 Description of the specific action

Annex 2 Estimated budget for the specific action

Annex 3 Model financial statements

Annex 4 Model for the certificate on the financial statements

Annex 3 Accession Forms

[OPTION to be used if Article 19 applies and if joint and several liability has been requested by the [Commission][Agency]: *3a Declaration on joint and several liability of linked third parties**]***

[OPTION if the JRC participates: *3b Administrative arrangement**]***

Annex 4 Model for the certificate on the methodology

[1] Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

[2] The person representing the *[Commission][Agency]* must be an authorising officer (by delegation or sub-delegation) designated in accordance with document 60008 of 22.02.2001 '*Mise en place de la Charte des ordonnateurs*'.

[3] The action plan should include the common objectives of the parties in compliance with the objectives stipulated in the Preamble and the types of activities covered under this Framework partnership, contributing to the achievement of those objectives.

1. Coordinator — Partners

The '**partners**' are the legal entities that have signed a framework partnership with the Commission/Agency.

Partners that have also signed an SGA become beneficiaries (i.e. a 'participant'[90] in an action supported by a grant).

Not all partners of a framework partnership must actively participate in all specific actions.

If you do not want to actively participate, you may participate as 'partner not carrying out action tasks under that Specific Agreement' (and will be identified as such in the preamble to the SGA).

This means that you will not have to comply with some of the obligations under that SGA *(see Preamble MSGA)*

Arrangements for signing the FPA are as follows:

– the coordinator signs the FPA directly

– the other partners sign the Accession Form *(see Article 62 MFPA and Annex 3)*.

[90] For the definition, see Article 2.1(15) of the Rules for Participation: '**participant**' means any legal entity carrying out an action or part of an action under Regulation (EU) No 1291/2013 having rights and obligations with regard to the Union or another funding body under the terms of this Regulation.

The documents must be signed electronically in the electronic exchange system (i.e. the 'My Area' section of the Participant Portal).

⚠ Any amendments to the FPA (and the SGAs) will be signed by the coordinator on behalf of the other partners.

Applicants who accept the partnership by signing the FPA become partners to the Agreement and are **bound by** its **terms and conditions**.

Other entities involved in the partnership which do not sign the FPA (including entities linked to the partners) are considered as '**third parties involved in the partnership**'.

They are not bound by the terms and conditions of the FPA and SGA; conversely, the Commission/Agency has no obligation vis-à-vis third parties.

Only linked third parties are normally involved in the framework partnership itself. Other third parties are normally only involved in the specific actions ('**third parties involved in the specific actions**').

CHAPTER 1 GENERAL

ARTICLE 1 — SUBJECT MATTER OF THE AGREEMENT

This Agreement establishes a long term cooperation ('**framework partnership**') and sets out its terms and conditions and the general terms and conditions and rights and obligations applicable to the specific grants that may be awarded by the *[Commission][Agency]* for the specific actions under the framework partnership.

CHAPTER 2 FRAMEWORK PARTNERSHIP

ARTICLE 2— ACTION PLAN — AWARD OF SPECIFIC GRANTS — SPECIFIC AGREEMENTS

2.1 Action plan

The objectives and activities under the **framework partnership** are set out in the '**action plan**' in Annex 1.

2.2 Award of specific grants for specific actions — Specific Agreements

The *[Commission][Agency]* may award '**specific grants**' for actions to be implemented under the framework partnership ('**specific actions**').

[OPTION by default:** In order to obtain proposals for specific grants, the [Commission][Agency] will consult the partners on the basis of [a **call for proposals**][an **invitation to submit a proposal**] [a call for proposals or an invitation to submit a proposal] that sets out the [selection and] award criteria it will apply. [This call will be [open to all the partners for which this type of activity is included in the action plan (see Annex 1))] [open to all applicants meeting the announced criteria]] The partners are not obliged to respond to such consultations and may choose not to submit any proposal.**]

[OPTION if foreseen in the work programme:** The partners must **submit the proposals for specific grants** (consisting of [insert documents to be submitted with proposal]) [for [insert the name(s) of the activity]] by [the date(s) specified in the action plan][insert date].**]

The Commission will decide on the award of the specific grants following an evaluation of the proposal *[and a competitive review across consortia of partners]*.

If the Commission decides to award a specific grant, it will propose the partners to conclude a '**Specific Agreement (SGA)**' (see Annex 2).

By entering into the Specific Agreement ***[OPTION if the JRC is a partner:** or the administrative arrangement]*, the partners accept the specific grant and agree to implement the specific action under their own responsibility and in accordance with the Framework Partnership Agreement and this Specific Agreement, with all the obligations and conditions they set out

Specific Agreements must be concluded before the end of the framework partnership (see Article 3).

After the end of the framework partnership or its termination, the Framework Partnership Agreement continues to apply to specific actions that are implemented under Specific Agreements which have entered into force before end of the duration.

[4] The invitation to submit a proposal is an option reserved:
- for monopoly situations or partners designated in the basic act;,
- for cases where work is carried out in a network with pre-determined partners under the conditions laid down in the basic acts or
- for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.

[5] Please use this option if you opt for an open call for proposals ('a call for proposals open to all applicants meeting the announced criteria').

1. Framework partnership — Action plan

Framework partnerships may in principle be awarded in all areas of the Horizon 2020 Framework Programme.

⚠ Currently, framework partnerships are however only open to actions under the General MGA (i.e. all kinds of research and innovation actions (RIA), innovation actions (IA) and

coordination and support actions (CSA)). Framework partnerships are currently not open to ERANET, PCP-PPI, EJP, ERC, MSC or SME Instrument specific actions.

The partnership is based on jointly agreed general objectives and a roadmap of actions ('**action plan**').

The action plan should normally include at least the following:

- the objectives of the partnership

  ⚠ For the objectives, please refer to the FPA call.

- the list of actions covered (including an indicative work plan)
- an explanation of how the actions will contribute to the achievement of the objectives
- the description of the partners
- key performance indicators
- information on the arrangements for intellectual property rights and open access (if relevant at FPA level)
- information on ethics and gender issues (if relevant).

The partnership is established in a FPA and implemented by SGAs for specific actions.

For this purpose, specific grants will be announced in the Work Programme.

⚠ Signing an FPA does not oblige the Commission/Agency to award specific grants.

Specific grants can be awarded only in line with the action plan.

⚠ The partners may continue to participate in other calls for proposals organised by the Commission/Agency, in order to receive grants outside the action plan.

2. Award of specific grants

The Specific grants are awarded to partners through one or more of the following procedures (depending on which options are inserted in the FPA):

- **calls for proposals open to all partners** for which this type of activity is included in the action plan

  ⚠ Such calls are restricted to the consortia that have signed a FPA and will be in competition.

  Example: *The Commission signs different FPAs for FET Flagships. In the call for proposals for specific grants, it establishes that participation is restricted to applicants who have already signed an FPA. Consortia A and B have signed FPAs with the Commission – FPA-1 in the case of Consortium A and FPA-2 in the case of Consortium B. Following submission of the proposal and a positive evaluation, Consortium B is awarded the grant and signs an SGA with the Commission in the framework of FPA-2.*

- **calls for proposals open to all applicants** meeting the criteria

  Such calls are open to any legal entity that satisfies the criteria set out in the call for proposals.

– **invitations to submit a proposal**

  Such invitations can only be issued in one of the following cases:

  – in monopoly situations or where partners are designated in the basic act

  – in if work is carried out in a network with pre-determined partners under conditions laid down in the basic acts

  – for actions with specific characteristics that require a particular type of body on account of its technical competence, high degree of specialisation or administrative capacity, and do not fall within the scope of a call for proposals.

– **submission** of a proposal **by a certain date**

  This option can be included in the FPA only if it is provided for in the Work Programme.

  The date must be set out in the action plan or in Article 2 of the FPA.

ARTICLE 3 — DURATION AND STARTING DATE OF THE FRAMEWORK PARTERNSHIP

The Framework Partnership Agreement shall be concluded for a period of [...][6] years as of its entry into force (see Article 64). This period cannot be extended.

[6] Not more than four years, except in duly justified exceptional cases (for instance, to align it with the duration of the framework programme) (Article 178 RAP).

1. Starting date of the framework partnership

The starting date of the framework partnership is fixed by the Commission/Agency in the FPA

It is usually the first day of the month following the date on which the FPA enters into force. The FPA enters into force when the last party signs it *(see Article 64 MFPA)*.

> ***Example:*** *The FPA is signed by the coordinator on 30 December 2014 and by the Commission on 5 January 2015. The starting date of the partnership is 1 February 2015.*

2. Duration of the framework partnership

The duration of framework partnerships may not exceed four years, except in duly justified exceptional cases *(e.g. to align it with the duration of the Horizon 2020 Framework Programme)*.

⚠ The duration of a framework partnership cannot be extended (i.e. it is not possible to request an amendment extending the duration).

⚠ SGAs must be signed before the end of the FPA.

ARTICLE 4 — RIGHTS AND OBLIGATIONS UNDER THE FRAMEWORK PARTNERSHIP

4.1 Obligation to properly implement the framework partnership

The partners must respect the objectives of the framework partnership and implement it as described in Annex 1 and endeavour to achieve those objectives also in the specific actions.

The partners must maintain relations of mutual co-operation and regular and transparent exchanges of information with the *[Commission][Agency]* on:

- the implementation and follow-up of the action plan and the specific grants and
- other matters of common interest related to the Framework Partnership Agreement.

The partners must implement the framework partnership in compliance with Articles 39, 40, 41, 42, 44, 45, 52 — *mutatis mutandis.*

***[OPTION to be used, unless the work programme specifies that there is no need for a consortium agreement**: The partners must have internal arrangements regarding their operation and co-ordination to ensure that the framework partnership and the specific actions are implemented properly. These internal arrangements must be set out in a written '**consortium agreement**' between the partners, which may cover:*

- *internal organisation of the consortium;*
- *management of access to the electronic exchange system;*
- *distribution of EU funding;*
- *additional rules on rights and obligations related to background and results (including whether access rights remain or not, if a partner is in breach of its obligations) (see Subsection 3);*
- *settlement of internal disputes;*
- *liability, indemnification and confidentiality arrangements between the partners.*

*The consortium agreement must not contain any provision contrary to the Framework Partnership Agreement and the Specific Agreements.**]***

[OPTION:** not applicable**]

1. Consortium agreement

As a general rule, FPA consortium agreements must ensure that the Framework Partnership and the specific actions are implemented properly.

⚠ If necessary, the consortium may decide to have — in addition to the consortium agreement under the FPA — specific consortium agreements for each SGA. In this case, the consortium will need to ensure a mechanism to settle possible conflicts between the different consortium agreements.

ⓘ *For more information on consortium agreements, see Article 41.3 General MGA.*

ARTICLE 5 — SUSPENSION OF FRAMEWORK PARTNERSHIP IMPLEMENTATION

The parties may **suspend the implementation of the framework partnership** on the grounds and according to the procedure — *mutatis mutandis* — set out in Article 55.

If the *[Commission][Agency]* suspends the framework partnership implementation, all specific actions are also deemed suspended (see Article 55), from the date of suspension of the framework partnership.

1. Suspension of framework partnership implementation

The rules on suspension of framework partnership implementation are similar to the General MGA *(see Article 49 General MGA).*

Exceptions:

Amendments made following suspension cannot have the effect of extending the duration of the FPA as set out in its Article 3.

ARTICLE 6 — TERMINATION OF THE FRAMEWORK PARTNERSHIP AGREEMENT OR OF PARTICIPATION OF ONE OR MORE PARTNERS

6.1 Termination of the Agreement

The parties may terminate the Framework Partnership Agreement at any time.

The party terminating the Framework Partnership Agreement must formally notify termination to the other party, stating the date the termination will take effect. This date must be after the notification.

Termination of the Framework Partnership Agreement does not release the parties from their obligations under Specific Agreements which have entered into force before the date on which the termination takes effect, unless they have been terminated.

Neither party may claim damages due to termination by the other party.

6.2 Termination of the participation of one or more partners

The parties may terminate participation of one or more partners in the framework partnership on the grounds and according to the procedures — *mutatis mutandis* — set out in Article 56.2.1, 56.3.1 and 56.3.2.

The coordinator must submit a request for amendment (see Article 61) to adapt Annex 1 and, if necessary, the addition of one or more new partners (see Article 62).

If the request for amendment is rejected by the *[Commission][Agency]*, the Framework Partnership Agreement may be terminated (see above).

Termination of participation in the framework partnership does not release the partner concerned from its obligations under Specific Agreements. It cannot however participate in specific actions awarded after the date on which the termination takes effect.

1. Termination of the Agreement

The FPA can be terminated at any time and on any grounds, without the need for a contradictory procedure between the parties**.**

⚠ Termination of the FPA has no effect on ongoing specific agreements (unless these are also terminated; *see Article 56 MFPA and Article 17 MSGA*)

ⓘ *For more information, see Article 50 General MGA.*

ARTICLE 9 — ESTIMATED BUDGET AND BUDGET TRANSFERS

9.1 Estimated budget

The estimated budget for the specific actions is set out in Annex 2 to the Specific Agreements.

It contains the estimated eligible costs and the forms of costs, broken down by partner *[and linked third party]* and **budget category** (Articles 4, 5 , 6 SGA *[and Article 19 FPA]* It also contains the estimated costs of the partners not receiving EU funding, if applicable (see Article 6 SGA)

[…]

1. Budget categories

The **budget categories** of the SGA will depend on the type of SGA used.

Example: *For RIA, IA and CSA specific actions, the SGA will use the* ***budget categories*** *of the General MGA:*

- *direct personnel costs*
- *subcontracting costs*
- *costs of providing financial support to third parties (if option applies)*
- *other direct costs*
- *indirect costs*
- *specific categories of costs (if option applies) (see Article 4 General MGA).*

ARTICLE 10 — GRANT MAXIMUM, FORM OF GRANT, REIMBURSEMENT RATES AND FORMS OF COSTS

10.1 Maximum grant amount

The maximum grant amount for the specific grants is set out in the Specific Agreements (see Article 4 SGA).

10.2 Form of grant, reimbursement rates and form(s) of costs

The form of the grant, reimbursement rate(s), estimated eligible costs and the form(s) of costs of the specific grants are set out in the Specific Agreements (see Article 4 SGA).

10.3 Final grant amount — Calculation

The final grant amount of a specific grant depends on the actual extent to which the specific action is implemented in accordance with the terms and conditions of the Framework Partnership Agreement and the Specific Agreement concerned.

This **amount** is calculated by the *[Commission][Agency]* — when the payment of the balance is made (see Article 14 SGA) — in the following steps:

Step 1 – Application of the reimbursement rates to the eligible costs

Step 2 – Limit to the maximum grant amount

Step 3 – Reduction due to the no-profit rule

Step 4 – Reduction due to improper implementation or breach of other obligations

10.3.1 Step 1 — Application of the reimbursement rates to the eligible costs

The reimbursement rate(s) (see Article 4 SGA) are applied to the eligible costs (actual costs, unit costs, flat-rate costs and lump sum costs; see Article 5 SGA) declared by the partners *[and the linked third parties]* (see Article 13 SGA) and approved by the *[Commission][Agency]* (see Article 14 SGA).

10.3.2 Step 2 — Limit to the maximum grant amount

If the amount obtained following Step 1 is higher than the maximum grant amount (see Article 4 SGA), it will be limited to the latter.

10.3.3 Step 3 — Reduction due to the no-profit rule

The specific grant must not produce a profit.

'Profit' means the surplus of the amount obtained following Steps 1 and 2 plus the specific action's total receipts, over the specific action's total eligible costs.

The **'specific action's total eligible costs'** are the consolidated total eligible costs approved by the *[Commission][Agency]*.

The **'specific action's total receipts'** are the consolidated total receipts generated during its duration (see Article 3 SGA).

The following are considered **receipts**:

(a) income generated by the specific action; if the income is generated from selling equipment or other assets purchased under the Specific Agreement, the receipt is up to the amount declared as eligible under the Specific Agreement;

(b) financial contributions given by third parties to the partner *[*or to a linked third party*]* specifically to be used for the specific action, and

(c) in-kind contributions provided by third parties free of charge specifically to be used for the specific action, if they have been declared as eligible costs.

The following are however not considered receipts:

(a) income generated by exploiting the specific action's results (see Article 34);

(b) financial contributions by third parties, if they may be used to cover costs other than the eligible costs (see Article 5 SGA);

(c) financial contributions by third parties with no obligation to repay any amount unused at the end of the period set out in Article 3 SGA).

If there is a profit, it will be deducted from the amount obtained following Steps 1 and 2.

10.3.4 Step 4 — Reduction due to improper implementation or breach of other obligations — Reduced grant amount — Calculation

If the specific grant is reduced (see Article 49), the *[Commission][Agency]* will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the specific action or to the seriousness of the breach of obligations in accordance with Article 49.2) from the maximum grant amount (see Article 4 SGA).

The final grant amount will be the lower of the following two:

- the amount obtained following Steps 1 to 3 or
- the reduced grant amount following Step 4.

10.4 Revised final grant amount — Calculation

If — after the payment of the balance (in particular, after checks, reviews, audits or investigations; see Article 28) — the *[Commission][Agency]* rejects costs (see Article 48) or reduces the specific grant (see Article 49), it will calculate the **'revised final grant amount'** for the partner concerned by the findings.

This **amount** is calculated by the *[Commission][Agency]* on the basis of the findings, as follows:

- in case of **rejection of costs**: by applying the reimbursement rate to the revised eligible costs approved by the *[Commission][Agency]* for the partner concerned;
- in case of **reduction of the specific grant**: by calculating the concerned partner's share in the grant amount reduced in proportion to its improper implementation of the specific action or to the seriousness of its breach of obligations (see Article 49.2).

In case of **rejection of costs and reduction of the specific grant**: the revised final grant amount for the partner concerned will be the lower of the two amounts above.

1. Form of grant — Reimbursement rates — Cost form(s)

The form of grant, reimbursement rates and cost form(s) of the SGA will depend on the type of SGA used.

> ***Example:*** *For RIA, IA and CSA actions, the SGA will use the form of grant, reimbursement rates and forms of costs of the General MGA (see Article 4 MSGA and Article 5 General MGA)*

2. Calculation of the final grant amount — Calculation of a revised final grant amount

Similarly, the rules on the calculation of the final grant amount and a revised final grant amount will depend on the type of SGA used.

ARTICLE 11 — ELIGIBLE AND INELIGIBLE COSTS

11.1 General and specific conditions for costs to be eligible

The general and specific conditions for costs to be eligible under the specific grants are set out in the Specific Agreements (see Article 5 SGA).

11.2 Ineligible costs

The conditions under which costs are considered ineligible under the specific grants are set out in the Specific Agreements (see Article 5 SGA).

11.3 Consequences of declaration of ineligible costs

Declared costs that are ineligible will be rejected (see Article 48).

This may also lead to any of the other measures described in Section 5.

1. Specific conditions for costs to be eligible

The specific eligibility conditions applicable per budget category are set out in Article 5 MSGA.

The SGA will use the budget categories that belong to the type of specific action, with the same types of costs, conditions for eligibility and rules for calculation.

> ***Example:*** *For RIA, IA or CSA specific actions, the budget categories, types of costs, conditions for eligibility and rules for calculation of the General MGA will apply (see Article 5 SGA and Article 6 General MGA).*

ARTICLE 13 — RESOURCES TO IMPLEMENT THE SPECIFIC ACTIONS

The rules on resources to implement the specific actions and third party involvement are set out in the specific agreements (see Article XX SGA).

1. Appropriate own resources — Use of third party resources — Third parties involved in the action

The rules on third party involvement will depend on the type of SGA used.

Example: *For RIA, IA and CSA specific actions, the SGA will use the rules on third party involvement of the General MGA (see Article 8 General MGA).*

⚠ The third parties are normally involved in the specific actions, not in the framework partnership.

Example: *Third parties making resources available against payment or free of charge (see Articles 16 and 17 FPA) must be identified in Annex I of the SGA.*

Partners must however — already at FPA proposal stage — indicate if they intend to use third parties or not.

Moreover, linked third parties must be identified already in the FPA *(see Article 19)*.

Example: *Linked third parties carrying out specific action task must be identified in the FPA and also in Annex I of the relevant SGAs*

ARTICLE 62 — ACCESSION TO THE FRAMEWORK PARTNERSHIP AGREEMENT AND THE SPECIFIC AGREEMENTS

62.1 Accession of the partners mentioned in the preamble

The other partners must accede to the Framework Partnership Agreement by signing the Accession Form (see Annex 3) in the electronic exchange system (see Article 58) — within 30 days after its entry into force (see Article 64).

All partners having acceded to the Framework Partnership Agreement must be part of the Specific Agreements. The partners will accede to the Specific Agreements by signature of the coordinator (see mandate in Annex 3).

[OPTION if Article 19 applies and joint and several liability has been requested: *If the [Commission][Agency] has requested joint and several liability of a linked third party, the partner to which it is linked must also submit — at accession to the Framework Partnership Agreement — a declaration on joint and several liability (see Annex 3a) signed by the third party.]*

They will assume the rights and obligations under the agreements with effect from the date of the entry into force (see Article 64 and Article 18 SGA).

If a partner does not accede to the Framework Partnership Agreement within the above deadline, the coordinator must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action plan. This does not affect the *[Commission's][Agency's]* right to terminate the agreements (see Articles 6 and 56).

1. Accession to the FPA and SGA

While the coordinator signs the FPA, the other partners must accede to the FPA by means of the Accession Forms.

In doing so, they mandate the coordinator:

- to submit and sign in their name and on their behalf any amendments to the framework
- to sign in their name and on their behalf any SGA that may be awarded.

⚠ Accession to SGAs is effected only by means of the signature of the coordinator. The other partners do not need to sign accession forms for the SGA.

62.2 Addition of new partners

In justified cases, the partners may request the addition of a new partner.

For this purpose, the coordinator must submit a request for amendment of the Framework Partnership and the Specific Agreements in accordance with Article 61. It must include an Accession Form (see Annex 3) signed by the new partner in the electronic exchange system (see Article 58).

New partners must assume the rights and obligations under the agreements with effect from the date of their accession specified in the Accession Form (see Annex 3).

1. Addition of a new partner

New partners can be added at any moment of the framework partnership.

Before any SGA has been concluded, only the FPA must be amended.

Once an SGA has already been concluded, both the FPA and the SGA must be amended.

The coordinator must submit the request(s) for amendments.

The request for amendment must include a proposal to amend Annex 1 to the FPA and the SGAs (if necessary).

⚠ Requests for amendment of the FPA and the SGA must be made in parallel. The SGA cannot be amended before the FPA.

ⓘ *For more information on the conditions for accepting new partners, see Article 56 General MGA.*

ⓘ *For more information on the procedure for amendments, see the H2020 Online Manual*

VIII.3 Model Specific Agreement specific annotations

SPECIFIC AGREEMENT

NUMBER [insert number] — [insert acronym]

This '**Specific Agreement**' is between the following parties:

on the one part,

***[OPTION 1**: the **European Union** ('the EU', represented by the European Commission ('the Commission'),]*

***[OPTION 2:** the **European Atomic Energy Community** ('Euratom'), represented by the European Commission ('the Commission'),]*

***[OPTION 3:** the [**Research Executive Agency (REA)**] [**European Research Council Executive Agency (ERCEA)**] [**Innovation and Networks Executive Agency (INEA)**] [**Executive Agency for Small and Medium-sized Enterprises (EASME)**] ('the Agency'), under the powers delegated by the European Commission ('the Commission'),]*

represented for the purposes of signature of this Specific Agreement by [[function, [Directorate-General, Directorate, Unit] [Department]], [forename and surname],

and

on the other part,

1. 'the coordinator':

[**full official name**] [**short name**] [legal form] [official registration No] established in [official address in full] [VAT number], represented for the purposes of signing the Specific Agreement by [function, forename and surname]

and the following other **partners**, represented for the purposes of signing the Specific Agreement by the coordinator (see the mandate in Annex 3a of the Framework Partnership Agreement and Article 62 of the Framework Partnership Agreement):

2. [**full official name**] [**short name**] [legal form] [official registration No] [official address in full] [VAT number].

***[OPTION for partners not carrying out action tasks under this Specific Agreement**: X. [**full official name (short name)**] [legal form], [official registration No], established in [official address in full] [VAT number]]*

***[OPTION for partners not receiving EU funding under this Specific Agreements:** X. [**full official name (short name)**] [legal form], [official registration No], established in [official address in full] [VAT number], as 'partners not receiving EU funding' (see Article 9),]*

[same for each partner]

***[OPTION if the JRC is a partner:** and X. the **Joint Research Centre (JRC)** established in [official address in full], if it signs the administrative arrangement (see Annex 3b)]*.

By entering into the Specific Agreement ***[OPTION if the JRC is a partner:*** *or the administrative arrangement]*, the partners accept the grant and agree to implement the specific action under their own responsibility and in accordance with the Framework Partnership Agreement and this Specific Agreement, with all the obligations and conditions they set out.

The Specific Agreement is composed of:

Terms and Conditions

Annex 1	Description of the action
Annex 2	Estimated budget for the action
Annex 3	Model financial statements
Annex 4	Model for the certificate on the financial statements

1. Partners — Partners not carrying out action tasks under this SGA

The partners of a SGA are generally the **same as the partners of the FPA** *(see Article 62.1 FPA)*.

An entity that is not party to the FPA cannot become party to the SGA.

Conversely, all parties to the FPA become parties to the SGA.

⚠ However, not all partners of a framework partnership must actively participate in all specific actions.

Partners who do not actively participate in a specific action are 'partners not carrying out action tasks under that Specific Agreement' (and must be identified as such in the preamble to the SGA).

⚠ These partners nevertheless remain part of the consortium implementing the SGA (and are parties to this SGA, meaning that the coordinator signs also in their name).

They will also be identified in Annex 1, but it will be specified that they do not carry out any tasks covered by the SGA.

Moreover, they will also be mentioned in Annex 2, without being associated with any costs or request for an EU contribution.

As a consequence, these partners do not however need to comply with most of the other obligations concerning that SGA *(e.g. implementation, deliverables, technical and financial reporting, keeping of supporting documents, etc)*.

⚠ Some obligations *(e.g. IPR, checks reviews and audits and confidentiality)* do remain applicable also for these partners.

SGAs are **signed** by the coordinator on behalf of the other partners *(see Article 62.1 FPA)*.

⚠ The documents must be signed electronically in the electronic exchange system (i.e. the 'My Area' section of the Participant Portal).

⚠ The other partners do not need to sign accession forms.

⚠ Other entities involved in a specific action which do not sign the SGA (including entities linked to the partners) are considered as '**third parties involved in the specific action**'.

They are not bound by the terms and conditions of the FPA or SGA; conversely, the Commission/Agency has no obligation vis-à-vis third parties.

ARTICLE 14 — PAYMENTS AND PAYMENT ARRANGEMENTS

[…]

14.7 Payments to the coordinator — Distribution to the partners

Payments will be made to the coordinator.

Payments to the coordinator will discharge the *[Commission][Agency]* from its payment obligation.

The coordinator must distribute the payments between the partners without unjustified delay.

Pre-financing may however be distributed only:

a) if the **minimum number of partners** set out in the call for proposals has acceded to the Framework and Specific Agreement (see Article 62 FPA) and

b) to partners that have entered into the Specific Agreement (see Article 62 FPA).

[…]

1. Minimum number of partners

The minimum number of partners generally depends on the type of specific action.

For SGAs, the minimum number of partners will be explicitly indicated in the call for proposals (or — if there is no call for proposals — in the Work Programme and in the invitation to submit a proposal).

⚠ If a specific action requires more partners than are currently in the framework partnership, the FPA first needs to be enlarged.