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IMI2 JU AGA

Annotated Model Grant Agreement

Based upon H2020 AGA 5.2

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History of changes to the document		
Version	**Publication date**	**Changes**
1.0	**14 March 2018**	**Initial version; the annotations in this AGA are based on version 4.1 of the standard Horizon 2020 annotated grant agreement, available on the Funding and Tenders Portal under http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf ; published on 26 October 2017.**
2.0	**22 October 2018**	**Second version; the annotations in this AGA are based on version 5.0 of the standard Horizon 2020 annotated grant agreement, available on the Funding and Tenders Portal under http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf; published on 3 July 2018.**
2.1	**11 February 2019**	**Updates in the annotations of Articles 6.1, 8, 20, 22.1.3, 41.4 and 55**
2.2	**9 October 2019**	**Updates in the annotations of Articles 6.2.D.5, 6.2.F, 16.2, 20, 29, 31, 37, 55** **Clarifications on the CFS, Article 20** For easy identification, paragraphs, indents or sections with new explanations or changes are marked with the symbol ■ on the left

IMPORTANT NOTICE

The '**AGA — IMI2 JU Annotated Model Grant Agreement**' is a **user guide** that aims to explain to **applicants** and **beneficiaries** the IMI2 JU Model Grant Agreement ('IMI2 JU MGA'), which differs in some aspects from the previous IMI Model Grant Agreement and, to a limited extent, from the General Horizon 2020 Model Grant Agreement.

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.

When consulting this document the reader should be aware that it originates from the general Horizon 2020 AGA. Consequently, and in order to ensure the necessary coherence and the same understanding all across the Horizon 2020 Framework Programme, its original content has been maintained with adaptations limited to clarifying, where necessary, IMI2 specificities or explaining several provisions of the IMI2 JU MGA stemming from derogations to the Rules for Participation, applicable to IMI2 under the Horizon 2020 legal framework.

Our approach

1. The **text** of the **article** appears in a grey text box — to differentiate it from the annotations.

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

   The annotations to the article are immediately underneath.

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

   Examples, **best practices** are in bold and green.

   Lists and **procedures** are in bold and red.

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

   New explanantions (compared to the last update) will be marked with: ■

   New rules that apply do not apply to all signed grant agreements (but instead only to those signed after a certain version of the Grant Agreement, e.g. version 3.0 or version 4.0), will be marked with: 3.0 or 4.0

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

   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

The IMI2 JU AGA 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 IMI2 JU MGA. Additional information on the IMI2 Programme can be found in the reference documents page of the IMI website (http://www.imi.europa.eu/content/home).

For a more general overview of how Horizon 2020 grants work, *see the Funding and Tenders Portal Online Manual*.

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

Several terms used in the AGA are explained in the included Glossary. Horizon 2020 terms are also explained in the Glossary.

If necessary, you can also contact the Research Inquiry Service or the IMI2 Helpdesk.

Legislation

Horizon 2020 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).

Horizon 2020 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).

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).

⚠ Please note that Regulation (EC, Euratom) No 966/2012 has been replaced by Regulation (EU, Euratom) 2018/1046 (with effect from 2 August 2018).

Rules of Application (RAP) — Commission Regulation (EC, Euratom) No 1268/2012 of 29 October 2012 on the rules of application of 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).

⚠ Please note that Delegated Regulation (EC,Euratom) No 1268/2012 has been replaced by Regulation (EU, Euratom) 2018/1046 (with effect from 2 August 2018). The rules of the RAP are now included in the new Financial Regulation.

IMI2 JU Council Regulation - Council Regulation (EU) No 557/2014 of 6 May 2014 establishing the Innovative Medicines Initiative 2 Joint Undertaking (OJ L 169, 7.06.2014, p. 54).

Delegated Regulation – Commission Delegated Regulation (EU) No 622/2014 of 14 February 2014 establishing a derogation from Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)' with regard to the Innovative Medicines Initiative 2 Joint Undertaking (OJ L 174, 13.06.2014, p.7).

Foreword

Whilst integrating most of the Horizon 2020 Annotated Model Grant Agreement (Horizon 2020 AGA), the IMI2 JU Annotated Model Grant Agreement (IMI2 JU AGA) is specific as it relates to the IMI2 JU Model Grant Agreement (IMI2 JU MGA), which, based on a limited number of derogations, differs from the Horizon 2020 Model Grant Agreement on certain aspects of Intellectual Property. Moreover, this specific IMI2 JU AGA builds on the particular characteristics of the IMI2 programme being a public private partnership and its industrial co-leadership, and further explains how IMI2 JU actions are formed and developed. It also addresses the issues related to the rules on eligibility for funding which are specific to IMI2 JU actions.

Therefore all parties interested in participating in IMI2 JU funded projects are required to carefully read the IMI2 JU AGA, in particular the "Introduction" and the section 3 “Rights and obligations related to background and results” since they differ from the Horizon 2020 AGA. In addition, please note that Article 9 outlines which articles in the MGA are not applicable to Beneficiaries not receiving funding.

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INTRODUCTION

The purpose of the "Introduction" and the "Glossary" is to present in a general manner to all IMI2 JU actions' applicants and participants the specific context of the IMI2 programme. In particular, it intends to explain the IMI2 programme's industrial co-leadership and the consequences on the way actions are formed and operate within applicable rules, as established by the IMI2 JU MGA, on the basis of EU regulations also applicable to IMI2 JU. For more specific guidance the reader should refer to the annotations of the specific provisions.

The IMI2 JU MGA as well as the relevant legal framework will always prevail.

I. The IMI2 Programme

The Innovative Medicines Initiative 2 (IMI2) is a public-private partnership supported by the European Union (EU) through Horizon 2020, its framework programme for Research and Innovation[1], and the European Federation of Pharmaceutical Industries and Associations (EFPIA), as a founding member. The IMI2 JU was established by the Council Regulation No 557/2014 (hereinafter IMI2 JU Regulation)[2].

For the implementation of IMI2 a Joint Undertaking (IMI2 JU) is established. The members of the IMI2 JU are the European Union and EFPIA, and can be joined by other partners as Members or Associated Partners upon approval of the IMI2 JU Governing Board.

IMI2 builds on the previous Innovative Medicines Initiative (IMI1) implemented from 2008 until 2013 with the support of the EU and EFPIA, and aims at addressing needs that are common to the EU and the industry by focusing efforts on major public health issues and ensuring a permanent dialogue with regulatory authorities and patient organisations.

The main policy objectives of this partnership are:

- to support the development and implementation of pre-competitive and non-competitive[3] research;
- to support the development and implementation of innovation activities of strategic importance to the Union's competitiveness and industrial leadership; and
- to address specific societal challenges, and in particular the challenge to improve European citizens' health and well-being.

To that end, IMI2 will more specifically contribute to the following:

- increase the success rate in clinical trials of priority medicines identified by the WHO;
- where possible, reduce the time to reach clinical proof of concept in medicine development, such as for cancer, immunological, respiratory, neurological and neurodegenerative diseases;
- develop new therapies for diseases for which there is a high unmet need such as Alzheimer's disease and limited market incentives, such as antimicrobial resistance;
- develop diagnostic and treatment biomarkers for diseases clearly linked to clinical relevance and approved by regulators;

[1] 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) and repealing Decision No 1982/2006/EC Text with EEA relevance, *OJ* L 347, 20.12.2013, p. 104–173. .

[2] Council Regulation (EU) No 557/2014 of 6 May 2014 establishing the Innovative Medicines Initiative 2 Joint Undertaking Text with EEA relevance, *OJ* L 169, 7.6.2014, p. 54–76.

[3] According to Article 1(e) of the Statutes annexed to the IMI2 JU Regulation, "The IMI2 Joint Undertaking shall carry out the following tasks: […] effectively support pre-competitive research and innovation in life sciences mainly through grants; if clinical trials are necessary, priority shall be given to phases I and II; phases III and IV shall be funded in justified cases where it is demonstrated that unmet medical needs exist, and if they are either non-competitive or pre-competitive".

- reduce the failure rate of vaccine candidates in phase III clinical trials through new biomarkers for initial efficacy and safety checks; and
- improve the current drug development process by providing support for the development of tools, standards and approaches to assess efficacy, safety and quality of regulated health products.

II. Implementing the harmonized legal framework established by Horizon 2020

Actions funded by public-private or public-public partnerships supported by Horizon 2020 must comply with the Horizon 2020 Rules for participation[4] (Horizon 2020 Rules). The harmonisation of applicable rules is meant to streamline and ease the participation of European researchers and their organisations across activities funded or co-funded by the EU, whether operated by the European Commission or by these partnerships.

However, certain derogations from the Horizon 2020 Rules[5] are applicable to IMI2 JU actions with regard to Intellectual Property (IP) and eligibility for funding rules. As a consequence, whilst the Horizon 2020 MGA and the Horizon 2020 AGA form the basis on which the specific IMI2 JU MGA and this IMI2 JU AGA have been established, some articles – in particular some of those relating to IP - of the IMI2 JU MGA differ from the provisions of the Horizon 2020 MGA. Consequently, the relevant annotations of the IMI2 JU AGA differ from the respective ones of the Horizon 2020 AGA.

Yet, it must be stressed that harmonisation does not carry with it uniformity: within the established common legal framework, each research action naturally deploys its own characteristics, whether related to its specific objectives or perspectives, or to the composition of its consortium. Horizon 2020 Rules effectively grant beneficiaries all the necessary autonomy to properly reflect these characteristics in their consortium agreement, and in particular the balance of their common and individual interests. Applicable rules must therefore be understood in the particular context to which they apply.

Under IMI2, the way consortia are constituted and the way actions[6] are identified, evolve and are implemented, reflect the industrial co-leadership of this programme's objectives, which is based upon the partnering and co-investment of EFPIA as a founding member with the EU in IMI2 JU. Hence, in addition to some detailed explanations on IMI2 specific IP rules, the IMI2 JU AGA includes this Introduction which sets forth, in a general manner, the specific IMI2 context and its expected practical consequences on some key elements of IMI2 JU actions.

III. The specific Intellectual Property rules under IMI2

Based on the IMI1 experience and in order to maximise the impact of IMI2, and ensure that it meets its objectives, a number of specific IP rules tailored to the needs of IMI2 JU actions have been set out, derogating from those of Horizon 2020.

As a consequence, some of the IMI2 applicable IP rules included in the IMI2 JU MGA under "Section 3 – Rights and obligations related to background and results" (Articles 23(a) to 31), are different from those applicable to other Horizon 2020 actions. As a result, the corresponding specific annotations in this IMI2 JU AGA also differ from the annotations in the Horizon 2020 AGA.

Furthermore, for common Horizon 2020 IP rules applicable also to IMI2 JU, annotations provided in this IMI2 JU AGA may slightly differ, in particular regarding the examples provided, in order to better capture the specifics of IMI2.

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[4] Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006, *OJ* L 347, 20.12.2013, p. 81 – 103.

[5] Article 1.3 (c) of the H2020 Rules for Participation as further developed by the Commission Delegated Regulation (EU) No 622/2014 of 14 February 2014 establishing a derogation from Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)' with regard to the Innovative Medicines Initiative 2 Joint Undertaking Text with EEA relevance, *OJ* L 174, 13.6.2014, p. 7–11. The derogations to H2020 Rules for participation concern certain IPR rules as well as eligibility for funding of participants in IMI2 JU actions, which is limited to certain categories of participants.

[6] Under IMI2 JU an action will typically be a research and innovation action, but may in certain cases also consist of an innovation action or a coordination and support action.

Beneficiaries of IMI2 JU actions are expected to carefully read the IMI2 IP rules and their related explanations, in order to ensure compliance with them.

IV. Partnering with industry

The partnership between the European Union, represented by the European Commission, and industry is recognised in the IMI2 JU MGA through a reference to the support for the programme coming from Horizon 2020 and from EFPIA as a founding member, as well as from any new potential members and from Associated Partners, where relevant.

IMI2 JU is a public-private partnership where research related to the future of medicine should be undertaken in areas where combination of societal, public health and biomedical industry competitiveness goals requires the pooling of resources and fostering collaboration between the public and private sectors, with the involvement of small and medium-sized enterprises (SMEs). In most cases, this means that research consortia are formed by industrial beneficiaries (EFPIA companies and other industrial beneficiaries) and other relevant partners from academia, SMEs, regulators, patient organisations, etc.[7]

These industrial beneficiaries will invest resources to co-fund IMI2 JU, as contributors with the EU to the IMI2 programme. Apart from SMEs and other companies with an annual turnover of EUR 500 million or less, which comply under certain conditions with the applicable eligibility criteria for funding, EFPIA companies and, more generally, large industrial beneficiaries with an annual turnover of more than EUR 500 million, do not receive any funding under the IMI2 programme[8] but may benefit from the more specific IPR regime applicable under IMI2 JU and the possibility to agree with the other beneficiaries within the consortium, to consider specific aspects such as scientific project leadership and governance.

It is thus important to acknowledge the significant role that EFPIA beneficiaries/other large industrial beneficiaries play in the implementation of the IMI2 programme and its priorities. Consortium agreements should therefore consider addressing specific issues, such as the governance and the scientific project leadership of the action.

IV.A -Partnering with EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding: their rights and obligations

Article 9 of the IMI2 JU MGA sets out rules for the implementation of action tasks by beneficiaries not receiving JU funding.

Under a Horizon 2020 action, beneficiaries usually receive funding from the EU. Beneficiaries not receiving funding are an exception. However, under IMI2, the situation is quite the opposite as far as EFPIA beneficiaries/other large industrial beneficiaries are concerned: usually they will not receive funding and they contribute with the EU to the funding of the IMI2 programme, whilst e.g. benefitting from the more specific IPR regime applicable under IMI2 JU MGA[9].

Based on Article 9 of the IMI2 JU MGA, those beneficiaries, like any other Horizon 2020 beneficiary not receiving JU funding, will in particular:

- not have to comply with the conditions related to the eligibility of costs and the calculation of the IMI2 JU grant;
- not have to comply with the conditions pertaining to records and other supporting documentation for costs;

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[7] In most cases, IMI2 JU consortia are selected following a two-stage process, whereby IMI2 JU call topics involve pre-identified potential industrial beneficiaries constituted of EFPIA companies/other large industrial beneficiaries, which have made a specific commitment in undertaking research and dedicating relevant resources for the particular call topic and that will not receive JU funding. The call for proposals then aims at identifying other beneficiaries that will partner with them and receive JU funding. These may also include members of EFPIA, eligible to receiving JU funding in certain cases.

[8] JU-funded beneficiaries may include any EFPIA company if it is an SME or other companies with an annual turnover of EUR 500 million or less not being an affiliated entity of a company with an annual turnover of more than 500 million; the definition of 'affiliated entities' within the meaning of Article 2(1)(2) of Regulation (EU) No 1290/2013 applies *mutatis mutandis*.

[9] Commission Delegated Regulation (EU) No 622/2014, *see supra* footnote 5.

- not have to comply with the specific conditions established in Article 13 related to the selection of subcontractors;
- not have to submit financial reports and convert their costs to Euro;
- not have to comply with some of the IP rules;
- not be subject to rejection of costs, reduction of the grant or recoveries, suspension of the payment deadline, suspension of payments or financial penalties;
- not be subject to financial checks, reviews and audits;
- not be concerned by Annexes 4, 5 and 6 to IMI2 JU MGA.

Beneficiaries not receiving JU funding will nevertheless comply with the other provisions of the IMI2 JU MGA, like any other beneficiary. In particular:

- each beneficiary must have a sufficient financial capacity to be able to implement the action and in particular its allocated work;
- each beneficiary must sign and be party to a grant agreement based on IMI2 JU MGA and a consortium agreement;
- each beneficiary may be entrusted with the task of coordinator;
- each beneficiary's budgeted costs will be indicated in Annex 2, although they will not be used to calculate the IMI2 JU grant.

Where a beneficiary not receiving JU funding, whether it is an EFPIA beneficiary/other large industrial beneficiary or any other beneficiary, is the coordinator, it must comply with the applicable related obligations as explained under Article 9.

When a beneficiary eligible for JU funding (the recipient) receives financial transfer counting as financial contribution to IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU funding" with regard to the applicable obligations under the GA. Therefore, such recipient must be considered as a beneficiary receiving JU funding. Consequently, Article 9 does not apply to it. Please also refer to the applicable section of the *IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

IV.B -Partnering with EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding: accounting for their contribution to IMI2 JU through projects (on behalf of EFPIA or new Members other than the Union, or Associated Partners)

EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding[10] participate to their total contribution to IMI2 JU through the costs they incur in implementing IMI2 JU actions themselves as Members other than the Union and Associated Partners or through costs incurred by their constituent or affiliated entities in the meaning of IMI2 JU Regulation[11]. In order to account for their contribution to IMI2 JU, these costs will be directly reported on an annual basis to the IMI2 JU, not through individual IMI2 JU actions. The specific terms for this reporting are agreed separately and outside the IMI2 JU MGA by the IMI2 JU[12].

The reporting of these contributions (also referred to as in kind contributions) is based on the following principles, presented hereunder as a matter of transparency for all beneficiaries.

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[10] These may include beneficiaries potentially eligible to receive JU funding but that did not apply for it.

[11] In addition, the contribution can also include costs incurred in relation to advisory groups called Strategic Governing Groups or "SGGs"

[12] In the IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners available at: http://www.imi.europa.eu/sites/default/files/uploads/documents/apply-for-funding/call-documents/imi2/IMI2_JU_Guidelines_for_reporting_in_kind_and_financial_contributions_by_%20Members_other_%20than_the_%20Union_%20and_%20Associated_Partners_0.pdf.

(1) In accordance with the IMI2 JU Regulation, for the purpose of valuing the in kind contributions, the costs incurred by such beneficiaries will be determined according to the usual cost accounting practices of each beneficiary, to the applicable accounting standards of the country where it is established, and to the applicable International Accounting Standards and International Financial Reporting Standards[13].

(2) These costs will be certified by an independent external auditor appointed by the beneficiary concerned. The valuation method may be verified by IMI2 JU if there is any uncertainty arising from the certification. In case of remaining uncertainties, the valuation method may also be audited by IMI2 JU.

> ***Example:*** *if IMI2 JU identifies any special uncertainties after having received the certificate of the independent external auditor, IMI2 JU can ask the latter how certain costs were certified. If the EFPIA beneficiary uses average FTE rates when claiming personnel costs the IMI2 JU can ask how this calculation was done, e.g. if the EFPIA beneficiary uses fully loaded FTE or partly loaded FTE, how one FTE is defined, etc. Except if needed for the verification of or for the audit of the valuation method, costs as such will not be audited by IMI2 JU.*

(3) Due to the global nature of the participating EFPIA beneficiaries, some elements of their contributions to actions might be non-EU/H2020 Associated Countries in kind contributions[14].

(4) Costs incurred by EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding and constituting part of their contribution to IMI2 JU (on behalf of EFPIA or new Members other than the Union, or Associated Partners) may also include:

- costs they incurred in the action that were paid using financial resources provided to them by third parties, other than the EU or under any of its programmes or partnerships

  Example: *an EFPIA beneficiary's incurred cost for carrying out a clinical study is covered by financial contributions from third parties.*

Instead of in kind contributions, Members other than the Union and Associated Partners or their constituent or affiliated entities may also provide financial contributions in the meaning of IMI2 JU Regulation.

> ***Example:*** *an EFPIA beneficiary not receiving JU funding can provide a financial contribution to another beneficiary receiving JU funding for carrying out actions in accordance with Annex 1. The financial contribution will be reported as financial contribution by the beneficiary not receiving funding (BNRF) and as a receipt by the recipient.*

Costs incurred by such beneficiaries that are covered by resources provided by IMI2 JU or the EU under any of its programmes or partnerships, whatever the applicable funding rate, will not be accounted for as contributions to IMI2 JU.

The same above principles will apply to contributions provided by any Associated Partner to IMI2 JU.

For more detailed information on in kind contribution and financial contribution from IMI2 JU members other than the Union and Associated Partners please refer to the *IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

IV.C -Partnering with EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding: the consortium agreement

As under any Horizon 2020 action, beneficiaries of an IMI2 JU action enjoy an important degree of autonomy with regard to the organisation of their consortium.

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[13] For the purpose of reporting the value of in kind contributions to IMI2 JU a beneficiary not receiving JU funding may opt to apply the eligibility criteria established by the IMI2 JU MGA while ensuring compliance with Article 4.4 of IMI2 JU Regulation.

[14] In kind contributions consisting of costs incurred in third countries other than countries associated to Horizon 2020 shall be justified and relevant to the objectives set out in Article 2 of IMI2 Council Regulation, and shall not exceed 30 % of the eligible costs at the level of the IMI2 programme, incurred by the Members other than the Union and by the Associated Partners (IMI2 Council Regulation, Article 4.2). For more information on in kind and financial contributions from EFPIA Beneficiaries and more generally members of the the JU and Associated Partners, please refer to the *IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

Typically, as established by Article 41.3 of the IMI2 JU MGA, various internal issues are addressed in a consortium agreement (CA), such as and not limited to:

- the internal organisation or governance of the consortium and the action, including allocation of scientific tasks among beneficiaries;
- additional rules on rights and obligations related to background and results;
- the settlement of internal disputes;
- additional confidentiality provisions between the beneficiaries further to those foreseen in the IMI2 JU MGA.

Due to the particularities of the IMI2 JU actions, beneficiaries will need to conclude such CA. Hence, they should in particular reflect upon and address the following additional issues:

- the possibility to appoint a project leader, as further detailed in the following section;
- the consequences of withdrawal of a beneficiary, or the suspension or pre-termination of its participation or of the action. In addition to liability and financial indemnification for such situations, the CA should foresee potential mitigation actions or plans to minimise the impact of such a change on the execution of the action. The CA may even foresee further provisions regarding joint responsibility for the proper implementation of the action.

There is however a limit to the contractual autonomy of the consortium: **nothing in the CA may contradict provisions of the IMI2 JU MGA**.

IV.D -Partnering with EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding: project scientific governance and leadership

Project scientific governance and leadership are key elements under the IMI2 programme, as a means to properly reflect ts industrial co-leadership, and the legitimate interests of EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding.

In the spirit of the partnership, and to reflect how IMI2 JU call topics are built on identified scientific priorities agreed together with EFPIA beneficiaries/large industrial beneficiaries, these beneficiaries intend to significantly contribute to the programme and project leadership as well as project financial management.

The final architecture of the full proposal will be defined by the participants in compliance with the IMI2 JU rules and with a view to the achievement of the project objectives. The allocation of a leading role within the consortium will be discussed in the course of the drafting of the full proposal to be submitted at stage 2. To facilitate the formation of the final consortium, until the roles are formally appointed through the consortium agreement, the proposed project leader from among EFPIA beneficiaries/large industrial beneficiaries shall facilitate an efficient negotiation of project content and required agreements. All beneficiaries are encouraged to discuss the project architecture and governance and the weighting of responsibilities and priorities therein.

The division of roles and responsibilities within the consortium is explained under Article 41.2 and 41.3 of the IMI2 JU MGA. In particular:

- all beneficiaries enjoy the same rights and obligations subject to the CA, but the CA may not contain provisions contrary to the GA, and
- a beneficiary is appointed as coordinator by the consortium, representing the consortium vis-à-vis IMI2 JU and is therefore entrusted with additional tasks, e.g. the distribution of the JU funding among eligible beneficiaries.

But coordination does not entail scientific leadership. The consortium still has to further organise its own specific internal governance, and may opt for approaches ranging from collective management to the designation of one of the beneficiaries as its project leader. Such a leader may be the coordinator or another beneficiary.

In IMI2 JU actions, beneficiaries should consider the appointment of a project leader as a key element in order to ensure a strong scientific coordination and collaboration between the “industrial beneficiaries” and the “JU-funded beneficiaries”. As it is an important feature reflecting the industrial co-leadership of IMI2, beneficiaries receiving JU funding should expect EFPIA beneficiaries/other large industrial beneficiaries not receiving JU funding to request the appointment of a project leader, and moreover claim that the appointee is one of them.

A project leader could perform a number of tasks on behalf of the consortium, such as, but not limited to:

- during the call for proposals and selection process, coordinate meetings on and drafting of the full project proposal;
- work with the beneficiaries on the drafting and negotiation of the CA and other legal agreements among the beneficiaries;
- work with the beneficiaries to prepare and negotiate any non-disclosure agreements that may be required for the action.
- act as the key-contact and intermediary for all scientific action governance issues including external communication, other than the ones entrusted directly to the coordinator, (e.g. with bodies like EFPIA and its internal working groups, media, etc.);
- support and collaborate with the coordinator on its monitoring activities and the adoption of appropriate internal measures, to ensure that the beneficiaries are on track with their obligations regarding budget, delay, deliverables and high scientific quality ;
- review the action deliverables and reports before their submission by the coordinator to the IMI2 JU.

In accordance with the provisions of the IMI2 JU MGA, the coordinator will remain the central contact point between the consortium and IMI2 JU, and will be liable for the tasks directly entrusted to him by the IMI2 JU MGA. The CA may establish additional obligations such as internal validation processes in relation to these tasks, so as to ensure the proper representation of the consortium.

Should a project leader be appointed, the CA should address its relationship with the coordinator with respect to their respective tasks, for example the information received from or sent to IMI2 JU on all issues of interest for the proper scientific management of the action.

GLOSSARY

This Glossary aims at explaining the main terms used in the IMI2 JU MGA and the IMI2 JU AGA. It is important for participants in an IMI2 JU action to familiarise themselves with the particular characteristics of IMI2 when engaging in an IMI2 JU action.

Access Rights

The right to use results or background under the terms and conditions laid down in the IMI2 JU MGA.

Accession Form

Document attached as Annex 3 to the IMI2 JU MGA to be signed by each of the beneficiaries (apart from the coordinator who will sign the IMI2 JU MGAas such) for the undertaking of the action.

Action (also referred to as 'Project')

All the activities, including research activities, carried out by the beneficiaries as detailed in Annex 1 to the signed IMI2 JU MGA.

Affiliated Entity

Any legal entity that is under the direct or indirect control of a beneficiary, or under the same direct or indirect control as the beneficiary, or that is directly or indirectly controlling a beneficiary. Control may, in particular, take either of the following forms:

(a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;

(b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

The following relationships between legal entities are not in themselves deemed to constitute controlling 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.

Allocated Work

The research work and the related activities and services allocated to a beneficiary in accordance with Annex 1 to the IMI2 JU MGA.

IMI2 Annotated Model Grant Agreement (also referred to as 'IMI2 JU AGA')

The IMI2 JU MGA including guidance and explanations, with an introduction explaining in a general manner the specifics of IMI2 JU.

Associated Country[15]

A third country, which is party to an international agreement with the European Union, as referred to in Article 7 of the Regulation establishing Horizon 2020.

Associated Partners

A legal entity supporting the IMI2 objectives in its specific areas of research as referred to in the Regulation establishing IMI2 JU, and which has been accepted as such by the IMI2 JU Governing Board in accordance with Articles 2 and 3 of the Statutes of the IMI2 JU Regulation.

[15] *See* the complete list at: http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf

Background

Any data, know-how or information-whatever its form or nature- tangible or intangible, including any rights such as intellectual property rights - that is: (a) held by beneficiaries prior to their accession to the IMI2 JU grant agreement; and (b) needed to implement the action or to exploit the results of the action; and (c) identified by the beneficiaries in accordance with Article 24 of the IMI2 JU MGA.

Beneficiary (may also be referred to as 'participant')

A legal entity which has signed the IMI2 JU MGA, or the accession form, with the IMI2 JU. There can be two types of beneficiaries in an IMI2 JU action, i.e.:

- Beneficiaries receiving JU funding;
- Beneficiaries not receiving JU funding, such as in particular those EFPIA beneficiaries not eligible to receive JU funding or not requesting it.

Beneficiary Not Receiving JU Funding

Beneficiaries not receiving JU funding are the legal entities not eligible for funding (e.g. large companies with an annual turnover of more than EUR 500 million) or requesting zero JU funding.

'Beneficiaries not receiving JU funding' are usually:

- constituent or affiliated entities of the IMI2 JU Members other than the Union (e.g. EFPIA companies), or of the IMI2 JU Associated Partners, not eligible or not requesting JU funding;
- any other private company having an annual turnover higher than EUR 500 million (i.e. not eligible for JU funding);
- third country participants (i.e. participants that are neither from an EU Member State nor from a Horizon 2020 associated country[16]) that were not granted exceptional JU funding by the JU (during the selection procedure).

When a beneficiary eligible for IMI2 JU funding receives a financial transfer counting as contribution to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA[17].

Code of Conduct for the Recruitment of Researchers

A set of general principles and requirements that should be followed by employers and/or funders when appointing or recruiting researchers. These should ensure observance of values such as transparency of the recruitment process and equal treatment of all applicants, in particular with regard to the development of an attractive, open and sustainable European labour market for researchers.

Collaboration Agreement

A 'collaboration agreement' is an agreement between the consortium and the beneficiaries of another complementary JU/Horizon 2020 grant, to coordinate their work under the different GAs. It is purely internal; the JU/EU is not party and has NO responsibility for them (nor for any adverse consequences).

Complementary Grants

'Complementary grants' are different JU grants which are 'linked' by the work plan/calls by identifying them as 'complementary actions'.

[16] 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.

[17] As far as the financial contributions are concerned, please refer to the applicable section of the *IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

Coordination Agreement

A 'coordination agreement' is an agreement between the consortium and the participants of the third country/international organisation (IO) action (*see* Article 2 of IMI2 JU AGA). It is purely internal; the JU/EU is not party and has NO responsibility for it (or for any adverse consequences).

Confidential Information

Any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed, in accordance with Article 36 of the IMI2 JU MGA.

Consortium Agreement (also referred to as 'CA')

The 'consortium agreement' is an agreement between members of the consortium, to set out their internal arrangements for implementing the grant. It is purely internal; the JU is not party and has NO responsibility for it (nor for any adverse consequences).

Contributions of Members (other than the Union) and Associated Partners to the IMI2 Programme and Its Joint Undertaking at the Level of the IMI2 JU

The contributions provided by the members of IMI2 JU other than the Union (i.e. EFPIA) and the Associated Partners, or their constituent or their affiliated entities, consisting of:

- the costs they incur in participating in actions that are not covered by any IMI2 JU grant or the EU under any of its programmes or partnerships, i.e. in kind contributions;
- the costs they incur in relation to IMI2 JU advisory groups; and
- any financial contributions which may be made in addition to, or instead of in kind contributions.

Coordination and Support Action (also referred to as 'CSA')

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.

Coordinator

The beneficiary in charge of the grant administration, to whom are assigned the specific tasks identified in Article 41.2(b) of the IMI2 JU MGA.

Description of the Action

Annex 1 to the IMI2 JU MGA, which provides the contractual description of the action.

Direct Exploitation

To develop results for commercialisation, including through clinical trials, or commercialising results themselves.

Dissemination

The public disclosure of the results by any appropriate means (other than resulting from protecting or exploiting the results), including by scientific publications in any medium.

EFPIA

European Federation of Pharmaceutical Industries and Associations.

EFPIA Beneficiary[18]

A member of EFPIA, as defined by its statutes and internal rules, is a constituent or any affiliated entity of EFPIA, and participating in an IMI2 JU action and regarded as a beneficiary in the case of an IMI2 JU grant agreement.

EFPIA beneficiaries not receiving JU funding can participate in EFPIA's contribution to IMI2 JU through the costs they incur in IMI2 JU actions and that are not covered by the EU under any of its programmes or partnerships and/or through providing financial contributions and through the costs they incur in advisory groups called Strategic Governing Groups or "SGGs"[19].

In case the eligibility criteria for JU funding are satisfied, an EFPIA beneficiary may apply and receive JU funding under an IMI2 JU MGA as a "beneficiary receiving JU funding"[20]. In that case its costs covered by the IMI2 JU contribution or any other Union financial contribution may not be accounted for as an EFPIA contribution to IMI2 JU.

European Charter for Researchers

A set of general principles and requirements which specifies the roles, responsibilities and entitlements of researchers as well as of employers and/or funders of researchers. It aims at ensuring that the nature of the relationship between researchers and employers or funders is conducive to successful performance in generating, transferring, sharing and disseminating knowledge and technological development, and to the career development of researchers.

Fair and Reasonable Conditions

The 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 rights are requested and/or the scope, duration or other characteristics of the research use envisaged.

IMI2 JU Annual Work Plan

The annual document planning and detailing the activities of the IMI2 JU, in particular the calls it shall launch, similar to the European Commission work programme, and adopted by IMI2 JU.

IMI2 JU Model Grant Agreement (also referred to as 'IMI2 JU MGA')

The agreement (including its annexes, and any amendments thereto) signed between the beneficiaries and the IMI2 JU for the undertaking of an IMI2 JU action.

IMI2 JU

The Innovative Medicines Initiative 2 Joint Undertaking, a Union body established by Council Regulation (EU) No 557/2014 of 6 May 2014.

Innovation Action (also referred to as 'IA')

An action primarily consisting of activities directly aimed 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.

International European Interest Organisation

An international organisation, the majority of whose members are Member States or Associated Countries, and whose principal objective is to promote scientific and technological cooperation in Europe.

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[18] Where a new Member (other than EFPIA) or Associated Partner joins IMI, this definition and related rights and obligation will apply *mutatis mutandis* to their beneficiaries, except if otherwise specified.

[19] For information on in kind and financial contributions from EFPIA Beneficiaries and more generally members of the the JU and Associated Partners, please refer to the *IMI2 JU Guidelines for reporting in-kind and financial contributions by Members other than the Union and Associated Partners*.

[20] *See supra* footnotes 12 and 13.

Legal Entity[21]

Any natural person or any legal person created and recognised as such under national law, European Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations.

Mid-Sized Companies

Under the IMI2 programme, mid-sized companies are companies with an annual turnover of EUR 500 million or less not being affiliated entities of companies with an annual turnover of more than 500 million; the definition of 'affiliated entities' within the meaning of Article 2(1)(2) of Regulation (EU) No 1290/2013 applies *mutatis mutandis*. Where established in an EU Member State or an associated country, such companies, including EFPIA beneficiaries, are eligible for JU funding.

Non-Profit Legal Entity

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.

Participants' Guarantee Fund

A safeguard mechanism that mitigates the risk associated to the amounts due and not reimbursed by a defaulting beneficiary receiving JU funding.

Project Deliverables (also referred to as 'Deliverables')

A distinct output of the action, meaningful in terms of the action's overall objectives and constituted by a report, a document, a technical diagram, a software, etc. These may be further divided into meaningful interim outputs, particularly if the final deliverables are few and can only be achieved over several years.

Project Leader

A beneficiary, in charge of the project scientific governance and leadership (*see* also the introduction), as may be further detailed in Annex 1 to the IMI2 JU MGA and the CA.

Project Milestones (also referred to as 'Milestones')

A scheduled event that marks a key event or series of events within an action.

It is often reached at the end of a stage to mark the completion of a major deliverable, which marks the transition of the action from one phase to another. Milestones ensure risk management and corrective actions can be taken, if deliverables cannot be completed on time or highlight, if the work plan should be adapted to reflect the outcome of the milestone. Milestones are measurable and observable and serve as progress markers (flags).

Project milestones, if any, may be referred to by the IMI2 JU when managing an action. Should a periodic report demonstrate that one or more important milestones were not reached, thus questioning the final positive outcome of the action, the IMI2 JU may reject these reports and request the missing or additional work to be performed, and may therefore retain the periodic payment.

If provided in the consortium agreement (=negotiated and agreed by all beneficiaries) projects milestones may also be used by the consortium to define and schedule critical success criteria necessary to be achieved. Based on this the consortium may also organise the way in which the coordinator releases to beneficiaries the JU funding received.

Project Objectives (also referred to as 'Action Objectives')

The objectives which are defined in Annex I of the IMI2 JU MGA.

Research and Innovation Action (also referred to as 'RIA')

An action primarily consisting of activities aiming to establish new knowledge and/or to explore the feasibility of a new or improved technology, product, process, service or solution. For this purpose they

[21] Any legal entity can participate in an IMI2 JU Project but the rules to be eligible for receiving JU funding under IMI2 JU differ from those of Horizon 2020 (*see* Article 1 of the Delegated Act 622/2014 referred to in footnote 5).

may include basic and applied research, technology development and integration, testing and validation on a small-scale prototype in a laboratory or simulated environment.

Projects may contain closely connected but limited demonstration or pilot activities aiming to show technical feasibility in a near to operational environment.

This is the typical kind of action under IMI2 JU.

Research Infrastructures

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'.

Research Use

The use of results or background needed to use results, for all purposes other than for completing the action or for direct exploitation and which includes but is not limited to the application of results as a tool for research, including clinical research and trials and which directly or indirectly contributes to the objectives set out in the societal challenge health, demographic change and well-being referred to in the Regulation establishing Horizon 2020.

Restricted Call

A follow up IMI2 JU call to which application is restricted to those consortia selected under an earlier IMI2 JU call. The relevant Annual Work Plan/earlier IMI2 JU call must have pre-informed potential applicants about the possibility of such a later restricted call that would have as its objective the enhancement of initial project results and achievements, if exceptionally needed.

When applying to the restricted follow up call, the consortium will be entitled to open to other beneficiaries as appropriate. The detailed scope of the restricted Call shall be duly justified and described in the relevant Annual Work Plan.

Results

Any tangible or intangible output of the action, such as data, knowledge or information, that is generated in the action, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights. Results do not include any sideground.

Sideground

Tangible or intangible output generated by a beneficiary under the action, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, but which are outside of the action objectives as defined in the grant agreement and which therefore are not needed for implementing the action or for research use of results.

SME

Micro-, small- and medium-sized enterprises, as defined in the Commission Recommendation on SMEs[22]. Such companies, including EFPIA companies, if any, are eligible for JU funding[23].

Subcontractor

A third party which has entered into an agreement on business conditions with one or more beneficiaries, in order to carry out a certain limited part of the work of the action, described in the technical annex.

Third Country

A country which is not a Member State of the European Union.

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[22] Commission Recommendation 2003/361/EC of 6 May 2003, *OJ* L 124, 20.5.2003, p. 36.
[23] *See supra* footnote 12.

Third Party

Any legal entity which is not a party to the signed IMI2 JU MGA, including a legal entity only providing resources to a beneficiary.

Work Package(s)

A sub-division of the action as described in Annex I to the IMI2 JU MGA and "Work Package Leader(s)" shall be the leader(s) of the Work Package.

IMI2 JU MODEL GRANT AGREEMENT (IMI2 JU MGA) ANNOTATIONS

The IMI2 JU Model Grant Agreement (IMI2 JU MGA) is used for grants for 'research and innovation actions (RIA)', 'innovation actions (IA)' and 'coordination and support actions (CSA)'.

GRANT AGREEMENT

NUMBER [insert number] — [insert acronym]

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

on the one part,

The **Innovative Medicines Initiative 2 Joint Undertaking** ('the JU'), represented for the purposes of signature of this Agreement by the JU Executive Director or his/her representative, [forename and surname],

and

on the other part,

1. 'the **coordinator**':

[**full official name (short name)**], established in [official **address** in full], ***[OPTION for beneficiaries with VAT:** VAT number [insert number],] **[OPTION for coordinators not receiving JU funding:** as 'beneficiary not receiving JU funding' (see Article 9),]* 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)**], established in [official address in full], ***[OPTION for beneficiaries with VAT:** VAT number [insert number],]*

***[OPTION for beneficiaries not receiving JU funding:** X. [**full official name (short name)**], established in [official address in full], **[OPTION for beneficiaries with VAT:** VAT number [insert number],] as 'beneficiary not receiving JU funding' (see Article 9),]*

[same for each beneficiary]

Unless otherwise specified, references to 'beneficiary' or 'beneficiaries' include the coordinator.

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

The JU receives contributions from the European Union's Horizon 2020 research and innovation programme and support from [insert names of the JU Members other than the Union]***[OPTION for grant agreements where associated partners are involved**: and from [insert **name(s) of the associated partner(s)**]]*.

By signing the Agreement or the Accession Form, the beneficiaries accept the grant and agree to implement it 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

2a Additional information on the estimated budget

Annex 3 Accession Forms

***[OPTION to be used if Article 14 applies and if joint and several liability has been requested by the JU:** 3a Declaration on joint and several liability of linked third parties]*

Annex 4 Model for the financial statements

Annex 5 Model for the certificate on the financial statements

Annex 6 Model for the certificate on the methodology

[1] The person representing the JU must be an authorising officer .

1. Participants: Coordinator — Beneficiaries – Linked third parties – Third parties involved in the action

Beneficiaries means the legal entities who have signed the grant agreement (GA) with the JU (i.e. participate in a project supported by a JU grant).

⚠ The term **participant** is used in this document in a wider meaning than in the definition of Article 1.1(15) of the Rules for Participation Regulation No 1290/2013. It covers normally beneficiaries and linked third parties (and sometimes also other third parties involved in the action).

The **coordinator** is the beneficiary which is the central contact point for the JU and represents the consortium (towards the JU).

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 JU
- 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) become beneficiaries of the grant and are **bound by the entirety of** its **terms and conditions**.

This means that the beneficiaries must:

- carry out the action (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 **linked third parties**, international partners, subcontractors, third parties giving in-kind contributions, etc.) are considered

as **third parties involved in the action** (for the definitions and conditions, *see Articles 8 and 9-14a)*.

Their involvement in the action varies depending on the role.

Since there is no formal contractual link with them, they are formally speaking not bound by the terms and conditions of the GA. However, by participating in the action and via the obligations on their beneficiary, they are indirectly bound to most of the GA obligations.

⚠ The consortium set-up must follow the roles of the GA. Participants should be attributed their roles according to their real contribution to the project. The main actors should be the beneficiaries. All other roles (third parties) should perform secondary tasks.

This means for instance that:

- linked third parties — are allowed to *fully* participate in the action, like the beneficiary they are linked to; they will therefore be treated for many issues (including cost eligibility; *see Article 6.3*) like beneficiaries
- subcontracting — beneficiaries/linked third parties may NOT subcontract tasks to other beneficiaries/linked third parties, (*see Article 13*)
- coordinator tasks — the key coordinator tasks listed in the GA may NOT be subcontracted or delegated to any other beneficiary or linked third party (except, under certain circumstances, to an entity with 'authorisation to administer'; see *Article 41.2*)
- in-kind contributions between beneficiaries/linked third parties — if beneficiaries/linked third parties give in-kind contributions to other beneficiaries/linked third parties, their cost should normally simply be declared by the contributing beneficiary/linked third party (if the contributions are particularly important for the project, it may however be advisable to specifically mention them in the description of the action).

For an overview on the different types of third parties and their GA roles, rights and obligations, *see the table in Article 8*.

⚠ If you are a 'beneficiary without legal personality' (Article 197(2)(c) Financial Regulation No 2018/1046; *e.g. association*) and will implement the project with the help of your members, you should make sure that the members participate as linked third parties, so that they will be able to charge their costs to the project.

2. Name and address — Legal entity data

The legal entity data (legal name, address, legal representatives, etc.) of the beneficiaries comes from the Funding & Tenders Portal Participant Register (former Beneficiary Register).This data will be automatically used for all communications concerning this grant *(see Article 52)* and other Horizon 2020 grants.

⚠ The beneficiaries (via their **legal entity appointed representative (LEAR)**) must keep their **data** in the Funding and Tenders Portal up-to-date at all times including after the end of the grant *(see Articles 17 and 52)*.

CHAPTER 1 GENERAL

ARTICLE 1 — SUBJECT OF THE AGREEMENT

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]

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 plan:** 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

What? The RIA, IA and CSA grants of the IMI2 JU MGA fund[24]:

- for **research and innovation actions** (**RIA**): R&D aiming to establish new knowledge or explore the feasibility of a new technology, product, process, service or solution (including 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)**: innovation activities directly aiming at producing plans and arrangements or designs for new, altered or improved products, processes or services (including prototyping, testing, demonstrating, piloting, large-scale product validation and market replication)[25]
- for **coordination and support actions** (**CSA**): accompanying measures *(such as standardisation, dissemination, awareness-raising and communication, networking, coordination or support services, policy dialogues and mutual learning exercises and studies)*[26].

[24] More information on the types of action can be found in the Horizon2020 General Annexes to the Work Programme as referred to in the IMI2 JU Annual Work Plan.

[25] For the definition, *see Article 2.1(6) of the Rules for Participation, Regulation No 1290/2013:* '**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.

[26] For the definition, *see Article 2.1(7) of the Rules for Participation, Regulation No 1290/2013:* '**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.

⚠ The term **action** comes from the Financial Regulation No 966/2012 and **means project**. (Previous EU Research Framework Programmes used project.)

RIA, IA and CSA actions are mono- or multi-beneficiary actions.

They are funded in all Parts of the Horizon 2020 Framework Programme *(e.g. H2020-FETOPEN-2014-2015-RIA; H2020-WIDESPREAD-2014-3).*

ℹ For more information on RIA, IA and CSA actions, *see the Funding and Tenders Portal Online Manual and the H2020 grants fact sheets.*

2. Complementary grants

'Complementary grants' are different JU grants which are linked by the work plan/calls by identifying them as complementary actions.

The beneficiaries and those of the complementary grants must cooperate and provide access to their results.

They must conclude a written **collaboration agreement** 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')

'Joint actions' are the result of **joint** or **coordinated calls** for proposals, launched in parallel by the JU and a non-associated third country (i.e. a third country not associated to Horizon 2020) or international organisation (in policy areas of common interest and expected mutual benefit where there is a clear added value for the EU).[27]

For *joint* calls: the applicants prepare a joint proposal which is submitted to *both* the EU and the third country/IO; the proposals are evaluated and selected through joint evaluation and selection procedures, involving a balanced group of independent experts appointed by each party.

For *coordinated* calls: the applicants submit separate proposals (to the EU and the third country/IO), together with a summary of the work to be done under the coordinated proposal. The JU will only evaluate the proposals for the JU action; however, the evaluation may be coordinated (i.e. include experts from the third country/IO use the same expert panels; apply the same evaluation criteria, etc.).

For both types of calls, the JU participants sign a GA with the JU, while the third country participants sign one with their funding agency/IO. The description of the action (Annex 1 of the GA) contains the research carried out under the JU action (but will also include detailed explanations about the research to be carried out under the third country/IO action).

To ensure coordination, the participants of the two actions must conclude a **coordination agreement** *(see Article 41.5)* to link the actions (although legally separate) and ensure a smooth and successful project implementation.

ℹ For guidance on coordination agreements, *see How to draw up your coordination agreement.*

[27] *See Article 12 of the Rules for Participation Regulation No 1290/2013.*

ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION

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The duration of the action will be ***[insert number]*** **months** as of *[**OPTION 1 by default:** the first day of the month following the date the Agreement enters into force (see Article 58)] [**OPTION 2 if needed for the action:** [insert date]]* [2] (‘**starting date of the action**’).

[2] This date must 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 or the need to start the action on another day than the first day of the month. In any case, the starting date should not be earlier than the date of the submission of the grant application (Article 130 FR).

1. Action starting date

The action starting date is fixed by the JU 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 JU and the consortium.

Exceptionally, the JU may agree that the action starts on another day than the first day of the month, if the consortium requests it (usually in its proposal) and can show that there is a need to start the action at that moment *(e.g. an action that is dependent on environmental conditions)*.

That starting date can be either:

- **before the entry into force** of the GA, i.e. before the grant agreement is signed by both parties (retroactive)

  Example: *GA signed by the coordinator on 30.12.2014. The JU signs on 5.1.2015. The action starting date would normally be the 1.2.2015, but the consortium has requested a fixed starting date of 1.9.2014 in its proposal (submitted by the consortium on 15.5.2014), since the action funded is the continuation of a previous IMI project. Upon consideration of the reasons, this fixed starting date is approved.*

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

  ⚠ The action starting date can **NEVER** be **before** the **submission** of the proposal.

- **after the entry into force of the GA,** i.e. after the grant agreement is signed by both parties, but on another day than the first day of the following month

  A starting date fixed much 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.

2. Action duration

The action duration is fixed by the JU in the GA.

It is expressed as a number of months, running from the action starting date until the end date of the action.

⚠ The action duration relates only to the period during which the ***action tasks*** (set out in Annex 1) are implemented.

The end date of the action is therefore NOT the same as project closure or the end of the GA.

After the end date of the action, the beneficiaries still have to submit their final report and the JU has to make the payment of the balance. Moreover, certain obligations under the GA continue even afterwards.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

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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 or 14a applies:*** *It also shows the estimated costs of the [beneficiaries not receiving JU funding (see Article 9)] [and][international partners (see Article 14a)].]*

4.2 Budget transfers

The estimated budget breakdown indicated in Annex 2 may be adjusted — without an amendment (see Article 55) — by transfers of amounts between beneficiaries, budget categories and/or forms of costs set out in Annex 2, if the action is implemented as described in Annex 1.

However, the beneficiaries may not add costs relating to subcontracts not provided for in Annex 1, unless such additional subcontracts are approved by an amendment or in accordance with Article 13.

[OPTION if lump sum foreseen in Article 5.2*: Moreover, lump sums set out in Annex 2 can never be adjusted.]*

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 5.1)*.

Costs of beneficiaries not receiving JU funding and costs of international partners (including the in-kind and financial contribution from Members of the IMI2 JU other than the Union and the Associated Partners) 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 and Article 14a)*.

2. Budget categories

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

Budget categories of the IMI2 JU MGA:

- direct personnel costs
  - costs for employees (or equivalent)
  - costs for natural persons working under a direct contract
  - costs of personnel seconded by a third party against payment
  - costs for SME owners without salary

- personnel costs for providing trans-national access to research infrastructure
- direct costs of subcontracting
- direct costs of providing financial support to third parties (if option applies)
- other direct costs
  - travel costs and related subsistence allowances
  - equipment costs
  - costs of other goods and services
  - capitalised and operating costs of large research infrastructure
- indirect costs
- specific cost categories (if option applies).

  This budget category (specific cost categories) applies ONLY where specific activities are reimbursed by unit costs or lump sum costs. For the IMI2 JU MGA, this is currently the case for 'access costs for providing trans-national access to research infrastructure', 'costs for energy efficiency measures in buildings' and 'costs for clinical studies'.

⚠ 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).

⚠ Costs for personnel, equipment, goods or services that are in-kind contributions by a third party (for free or against payment) can in practice simply be added to the budget category they correspond to (i.e. personnel costs or other direct costs) — if they comply with the eligibility rules set out in Articles 6 and 11 and 12.

3. Budget transfers (budget flexibility)

The budget in Annex 2 is an estimation.

⚠ **Budget flexibility** — The budget is in principle flexible (with the exceptions set out below).

Be however aware that the budget table will be used for the calculation of grant reductions *(see Article 43)*.

Beneficiaries may transfer budget among themselves, between linked third parties or between budget categories (without requesting an amendment; *see Article 55*) and — at the time of reporting — declare costs that are different from the estimated budget.

⚠ The maximum grant amount *(see Article 5.1)* can however **NOT** be **increased**.

What?

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 set out in Article 5.1 (at the level of the action).

Unit costs — 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**. Moreover, a beneficiary can NOT transfer budget to a **form of costs** that it did not set out **in its estimated budget** — except within the personnel costs category and to costs of internally invoiced goods and services (*Article 6.2.D.5*).

Example (allowed transfer): *A beneficiary budgets 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 acceptable without an amendment of the GA.*

Example (not allowed transfer): *A beneficiary budgets all its costs as 'actual costs' in the estimated budget. However, at the end of the first reporting period, the beneficiary wants to declare part of the costs by using a specific unit cost allowed in the call (e.g. unit cost for clinical studies). This is NOT possible without an amendment of the GA.*

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 ('action tasks') of Annex 1.

Best practice: The coordinator can contact the JU to ask whether the transfer of budget reflects a significant change in Annex 1 which requires an amendment.

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 can never 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*

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 (amendment): *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. It requests an ex-ante approval via an amendment (see Article 55)*

Example (simplified approval procedure): *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 an amendment, but declares the change only with the next periodic technical report (at its own risk). Since the JU approves the report, the costs of the additional subcontract are eligible.*

⚠ Beneficiaries that rely on the simplified approval procedure bear the **full risk** of non-approval and rejection by the JU *(see Article 13)*.

CHAPTER 3 GRANT

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

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 1 for research and innovation actions (RIA) and coordination and support actions (CSA): 100%** of the action's eligible costs**] [OPTION 2 for innovation actions (IA)**[3]: **100 %** of the eligible costs for beneficiaries [and linked third parties] that are non-profit legal entities*[4] *and **70%** of the eligible costs for beneficiaries [and linked third parties] that are profit legal entities**] [OPTION 3 for exceptional cases if foreseen in the work plan: [OPTION A for RIA and CSA:** *[…..%] of the action's eligible costs] **[OPTION B for IA**: […..%] of the eligible costs for beneficiaries[and linked third parties] that are non-profit legal entities*[5] *and […..%] of the eligible costs for beneficiaries [and linked third parties] that are profit legal entities**]* (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 direct personnel costs covered by the unit cost [/lump sum] under 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** not receiving a salary (see Article 6.2, Points A.4) must be declared on the basis of the amount per unit set out in Annex 2a (**unit costs**);

(b) for **direct costs of subcontracting** *[(excluding subcontracting costs covered by the unit cost [/lump sum] under Point (f))]*[7]: as actually incurred costs (**actual costs**);

(c) for **direct costs of providing financial support to third parties** *[(excluding costs of financial support covered by the unit cost [/lump sum] under Point (f))]*[8]: *[**OPTION 1 to be used if Article 15 applies**: as actually incurred costs (**actual costs**);][**OPTION 2**: not applicable;]*

(d) for **other direct costs** *[(excluding other direct costs covered by the unit cost [/lump sum] under Point (f))]*[9]:

- for costs of internally invoiced goods and services: on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**');
- for all other costs: as actually incurred costs (**actual costs**);

(e) for **indirect costs** *[(excluding indirect costs covered by the unit cost [/lump sum] under Point (f))]*[10]: on the basis of a flat-rate applied as set out in Article 6.2, Point E ('**flat-rate costs**');

(f) *[**OPTION 1a for specific unit costs (if unit cost foreseen by Commission decision and applicable to the grant):** for [**insert name of specific cost category(ies)** [11]]: on the basis of the amount(s) per unit set out in Annex 2a[12] (**unit costs**).]*

*[**OPTION 1b for specific lump sum costs (if lump sum foreseen by Commission decision and applicable to the grant):** for [**insert name of specific cost category(ies)**]: as the lump sum set out in Annex 2 ('**lump sum costs**').]*

***[OPTION 2: specific cost category(ies):** not applicable.]*

3 For the definition, see Article 2.1(6) of Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" ('**Rules for Participation Regulation No** 1290/2013') (*OJ* L 347, 20.12.2013 p.81): '**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.

4 For the definition, see Article 2.1(14) of the Rules for Participation 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.

5 For the definition, see Article 2.1(14) of the Rules for Participation 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.

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 cost category (as in Commission decision authorising the use of the unit cost/lump sum). For example, 'access costs for providing trans-national access to research infrastructure', costs for clinical studies', 'costs for energy efficiency measures in buildings'.

12 Annex 2a must clearly show, for each beneficiary (and linked third party) concerned, all the parameters for the unit cost (i.e. the unit(s), the amount(s) per unit, the research installation/infrastructure for which it is used, the clinical study for which it is used, etc.).

1. Maximum grant amount

The maximum grant amount set out in this Article can NOT be exceeded.

⚠ The maximum grant amount will **NOT** be **increased** — 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 and CSA actions is normally **100%** of the total *eligible* costs[28]; for IA actions it is normally **70%** of the total eligible costs[29].

The eligible costs of **non-profit** beneficiaries/linked third parties participating in innovation actions may be reimbursed at **100%**.[30]

In exceptional cases fixed in the work plan/call, **lower reimbursement rates** may apply.

28 *See Article 28(4) of the Rules for Participation, Regulation No 1290/2013.*

29 *See Article 28(5) of the Rules for Participation, Regulation No 1290/2013.*

30 *See Article 28(5) of the Rules for Participation, Regulation No 1290/2013.*

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**).

However, 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 their different reimbursement rates.

The reimbursement rate of a beneficiary does NOT condition the reimbursement rate of its linked third parties.

Example: *The beneficiary is entitled to 70 % but it has a linked third party entitled to 100 %. The linked third party will have a reimbursement rate of 100 % — despite the lower reimbursement rate of the beneficiary to which it is linked.*

The reimbursement rates apply to all forms of costs (actual, unit, lump sums and flat-rates costs)[31] and all budget categories.

⚠ The grant can **NEVER** reimburse **more** than the maximum grant amount fixed in Article 5.1

3. Cost forms

The IMI2 JU MGA foresees options for all four cost forms (i.e. actual, unit, flat-rate and lump-sum costs)[32]. In practice, they are currently all used, except for lump sums.

Cost forms of the IMI2 JU MGA:

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

    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** (— unless declared as unit cost; *see below*)

    Example: *EUR 2 000 actual price for a computer*
- **unit costs** (i.e. an amount per unit) for:
  - personnel costs of **SME owners** not receiving a salary[33]
  - personnel costs calculated by the beneficiaries in accordance with their usual cost accounting practices (**average personnel costs**) [34]

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[31] *See Article 28(6) of the Rules for Participation, Regulation No 1290/2013.*

[32] *See Articles 123, 124 of the Financial Regulation No 966/2012.*

[33] 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.

[34] *See Article 33(2) of the Rules for Participation, Regulation No 1290/2013.*

- costs of **internally invoiced goods and services** calculated by the beneficiaries in accordance with their usual cost accounting practices
- specific unit costs for:
  - costs for **energy efficiency measures** in buildings'[35]
  - **access costs** for providing trans-national access to research infrastructure'[36]
  - **access costs** for providing *virtual* access to research infrastructure[37]
  - costs for **clinical studies**[38]
- **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)[39]
- **lump sum costs** (i.e. a global amount deemed to cover all costs of the action or a specific category of costs).

Example: *EUR 150 000 to carry out a study within an action*

The IMI2 JU MGA currently does NOT use any lump sum costs.

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 IMI2 JU MGA:

Forms of costs	Budget categories					
	Direct personnel costs	Direct costs of sub-contracting	Direct costs of financial support to third parties (option used if Article 15 applies)	Other direct costs	Indirect costs	Specific cost categories (option used if Article 6.2 (F) applies)
Actual costs	YES	YES	YES	YES	NO	NO
Unit costs	YES, only for: - costs established according to the usual cost accounting	NO	NO	YES, only for: costs of internally invoice	NO	YES, only if foreseen by Commission Decision

[35] 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.

[36] 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.

[37] Decision of 6 February 2019 authorising the use of unit costs for the actions involving virtual 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_virtual-access_infra.pdf

[38] 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. Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit%20costs_clinical_studies.pdf.

[39] *See Article 29(1) of the Rules for Participation, Regulation No 1290/2013.*

	practices of the beneficiary - costs of SME owners not receiving a salary			goods and services		
Flat-rate costs	NO	NO	NO	NO	YES	NO
Lump sum costs	NO	NO	NO	NO	NO	YES, only if foreseen by Commission Decision

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 JU — 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 substantial errors, irregularities or fraud or serious breach of 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 JU (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 JU.

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 to the beneficiary ***[OPTION for linked third parties:*** *or to a linked third party**]*** specifically to be used for the action, given by:

(i) a third party or

(ii) a beneficiary not receiving JU funding which is:

- a JU member or a constituent or affiliated entity of a JU member or

- a JU associated partner or a constituent or affiliated entity of a JU associated partner, 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 substantial errors, irregularities or fraud or serious breach of obligations — Reduced grant amount — Calculation

If the grant is reduced (see Article 43), the JU will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or 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 JU — at the end of the action— as part of the calculation of the payment of the balance.

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 1

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

- **financial criteria**, including:
  - the amount of eligible costs
  - the reimbursement rates
  - the maximum grant amount *(see Article 5.1)*.

The procedure for the final payment and detailed calculations is described in Article 21.

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 JU 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 JU 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 JU 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 the seriousness of the errors, irregularities or fraud or 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 JU finds — after the payment of the balance — ineligible costs, substantial errors, irregularities or fraud or serious breach of obligations (and therefore **rejects costs** and/or **reduces the grant**), it will revise the final grant amount, for the beneficiary concerned and, if needed, make a recovery.

The detailed calculations are described in Article 21.

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

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 2a or calculated by the beneficiary in accordance with its usual cost accounting practices (see Article 6.2, Point A and Article 6.2 D.5)

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**').

⚠ ONLY **eligible costs** may be entered into the estimated budget for the action *(see Article 4) and* declared in the financial statements *(see Article 20)*.

Record-keeping & burden of proof — 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.

Compliance with eligibility rules may be subject to a **check or audit** by the JU. Any ineligible costs found will be **rejected** *(see Article 42)*.

Cost eligibility is NOT the same as beneficiary/action eligibility. The latter are normally checked upstream (before Grant Agreement/Amendment signature) in order to make sure that only eligible beneficiaries/actions are selected for a grant. Loss of eligibility during an ongoing grant normally leads to termination or change of status *(see Articles 50 and 55)*; costs become automatically ineligible as from the date of loss of eligibility.

If a beneficiary **declares ineligible costs**, the ineligible costs will be rejected and, if needed, other measures specified in Chapter 6 (e.g. *suspension, termination, grant reduction*, etc.) may be taken.

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)*.

ℹ For a consolidated list of eligibility issues relating to specific situations/legal framework in individual countries, see the *List of issues applicable to particular countries*.

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

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

If costs are invoiced or paid later than the end date, they are eligible only if the debt existed already during the action duration (supported by documentary evidence) and the final cost was known at the moment of the financial report.

Costs of services or equipment supplied to a beneficiary (or to its linked third party) may be invoiced and paid after the end date of the action, if the services or equipment were used by the beneficiary (or to its linked third party) during the action duration. By contrast, costs of services or equipment supplied after the end of the action (or after GA termination) are not eligible.

Example: *A conference for which costs are claimed must take place 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 JU grant cannot be used to finance activities other than those approved by the JU.

  ⚠ **Project management** — Coordination and administration tasks are considered **action tasks.**

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

  The beneficiaries must be able to show (with records and supporting documents; *see Article 18*) the actual costs of the work, i.e. what was actually paid for the work (and for depreciation costs: what is actually recorded in the beneficiary's profit and loss accounts).

  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 H2020 actions, and should not charge it as a direct cost.*

  This may NOT be used as an excuse 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)*

  ⚠ new in Horizon 2020: Accounting documentation is necessary only for direct costs. Indirect costs do not need supporting evidence because they are declared using a flat-rate.

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

AND

- **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.

  Examples:

  1. *The beneficiary may NOT increase the remuneration of its personnel, upgrade its travel policy or its purchasing rules because of the JU support.*

  2. *Entertainment or hospitality expenses (including gifts, special meals and dinners) are generally not eligible.*

  3. *Tips which are not obligatory are not eligible. By contrast, in some countries the invoice of the restaurant includes a certain mandatory amount as payment for the 'service'. In this case, the amount may be considered eligible — if the other eligibility conditions are fulfilled.*

Specific cases (actual costs):

In-kind contributions free of charge and **costs of linked third parties** — For in-kind contributions provided by third parties free of charge and costs of linked third parties, the eligibility rules apply *mutatis mutandis* *(see Article 6.3 and 6.4)*.

Thus, the costs must be:

- actually incurred by the third party
- 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.

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 action duration and for the rate of actual use for 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).

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.

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

Costs for reporting at end of the action — Costs related to drafting and submitting the periodic report for the last reporting period and the final report are eligible even if they are incurred after the action duration.

Those costs include the cost of certificates on the financial statements (CFS) required by the GA and the cost of participating in a final review carried out by the JU before the submission of the final reports. They may also include the cost of personnel necessary to prepare the periodic report for the last reporting period and the final report. However, they do NOT include research or innovation activities undertaken after the end date of the action.

Costs to allow for the participation of disabled people *(e.g. costs for sign language interpreters required for dissemination events organised under the action)* — May be eligible if they fulfil the general and specific eligibility conditions listed under Articles 6.1 and 6.2. The beneficiaries must keep records *(see Article 18)* to prove in case of an audit, check or review the actual costs incurred and that they were necessary for the implementation of the action.

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 **amount per unit**

  Example: *A Commission decision that sets the amount per unit for laboratory analyses at EUR 300 per test. This amount per unit is also set out in Annex 2a.*

- the **number of units** must be **necessary** for the action
- the units must be **used or produced during the action duration**

AND

- the beneficiaries must be able to **show the link** between the number of units declared and the work on the action.

The beneficiaries must be able to show (with records and supporting evidence; *see Article 18*) that the number of units declared was actually used for the action. (The actual costs of the work are not relevant.)

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.*

Specific cases (unit costs):

Costs declared on the basis of the usual accounting practices— For two budget categories (A. personnel costs and D.5 costs of internally invoiced goods and services), costs may be declared not as a fixed unit cost, but on the basis of the beneficiary's usual cost accounting practices. In this case,:

- the beneficiary:
  - must calculate the costs according to its usual accounting practices
  - must budget and declare a total amount (not the units used)
- the amount per unit is not fixed in Annex 2a.

Other costs may NOT be declared according to the usual cost accounting practices. For them, the amounts per unit will be fixed by the JU and set out *(in Annex 2a of the GA; see Article 5.2)*.

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 certain **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 EUR 30 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 cost

  s: (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.

The beneficiaries must be able to show (with records and supporting evidence; *see Article 18*) that the costs to which the flat-rate is applied are eligible. (The actual indirect costs are not relevant.)

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.

The beneficiaries must be able to show (with records and supporting evidence; *see Article 18*) that the action tasks have been carried out as described in Annex 1. (The actual costs of the work are not relevant).

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 1 to be used if Article 15 applies:*** *direct costs of providing financial support to third parties;]* ***[OPTION 2:*** *not applicable*;**]**
D. other direct costs;
E. indirect costs;
F. ***[OPTION 1 for specific unit[/lump sum] costs****: [insert name(s) of specific cost category(ies)*[13]***]] [OPTION 2:*** *not applicable**]**.*

'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 cost category (as in the Commission decision authorising the use of the unit cost/ lump sum). For example: 'access costs for providing trans-national access to research infrastructure', 'costs for clinical studies', 'costs for 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. eligibility conditions
4. how the costs must be calculated.

For a consolidated list of eligibility issues relating to specific situations/legal framework in individual countries, *see the List of issues applicable to particular countries*.

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 action

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

The beneficiaries must be able to show (with records and supporting evidence) the link to the action.

3. Indirect costs

'Indirect costs' are costs that cannot be identified as specific costs directly linked to the performance of the action.

In practice, they are costs whose link to the action can NOT be (or has not been) measured directly, but only by means of cost drivers or a proxy (i.e. parameters that apportion the total indirect costs (overheads) among the different activities of the beneficiary).

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

A. Direct personnel costs *[(not covered by 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 ('**costs for employees (or equivalent)**'). 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' means any part of the remuneration which exceeds what the person would be paid for time worked in projects funded by national schemes.

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 conditions similar to those of an employee (in particular regarding the way the work is organised, the tasks that are performed and the premises where they are performed);

(b) the result of the work carried out belongs to the beneficiary (unless exceptionally agreed otherwise), 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 of personnel seconded by a third party against payment** are eligible personnel costs if the conditions in Article 11.1 are met.

[14] For the definition, see Article 2.1(14) of the Rules for Participation Regulation 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.

A.4 **Costs of owners** of beneficiaries that are micro, 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 2a multiplied by the number of actual hours worked on the action.

A.5 **Costs of** '**beneficiaries that are natural persons**' Not applicable.

[*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 JU, 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. Therefore, the maximum number of hours that can be declared for the grant are:

{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 JU, EU or Euratom grants}.

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

(a) for personnel costs declared as **actual** costs (i.e. budget categories A.1, A.2, A.3 [*and A.6*]): the hourly rate is calculated per full financial year, as follows:

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

divided by

number of annual productive hours}

using the personnel costs and the number of productive hours for each full 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) 'fixed number of hours': 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);

(ii) 'individual annual productive hours': 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 collective 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) 'standard 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. 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.

As an alternative, beneficiaries may calculate the hourly rate *per month*, as follows:

{actual monthly personnel cost (excluding additional remuneration) for the person

divided by

{number of annual productive hours / 12}}

using the personnel costs for each month and (one twelfth of) the annual productive hours calculated according to either option (i) or (iii) above, i.e.:

- fixed number of hours or
- standard annual productive hours.

Time spent on **parental leave** may not be deducted when calculating the hourly rate per month. However, beneficiaries may declare personnel costs incurred in periods of parental leave in proportion to the time the person worked on the action in that financial year.

If parts of a basic remuneration are generated over a period longer than a month, the beneficiaries may include only the share which is generated in the month (irrespective of the amount actually paid for that month).

Each beneficiary must use only one option (per full financial year or per month) for each full financial year;

(b) for personnel costs declared on the basis of **unit** costs (i.e. budget categories A.1, A.2, A.4, [*and A.6*]): the hourly rate is one of the following:

(i) for SME owners: the hourly rate set out in Annex 2a (see Point A.4 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).

1. Direct personnel costs (A.): Types of costs — Forms — Eligibility conditions — Calculation

This budget category applies to all RIA, IA and CSA grants under the IMI2 JU MGA.

An additional option for access to research infrastructure (together with the corresponding Article 16 and other provisions) will be inserted into the GA if the action also involves access to research infrastructure.

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

- costs for **employees** (or equivalent):
- 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: Employees (or equivalent) (A.1)

1.1.1 What? Personnel costs for employees or equivalent (i.e. persons working for the beneficiary on the basis of an employment contract or equivalent appointing act) that worked in the action.

⚠ '**Equivalent appointing act**' means the appointing acts of civil servants (who do not sign employment contracts but receive official nominations for their posts).

⚠ ONLY costs for **personnel assigned to the action** (i.e. working for the action according to internal written instructions, organisation chart or other documented management decision) can be eligible. Reliable time records will normally be sufficient proof of the assignment to the action — unless there is other contradicting evidence *(e.g. the employment contract indicates that the person was hired to work on another project).*

It covers (and is limited to):

- **basic remuneration** (i.e. the payments for the employee's normal work and participation in projects – up to what is the beneficiary's usual remuneration practice for national projects)

and in addition:

- for non-profit legal entities: **additional remuneration** (i.e. extra payments made for the participation in projects — above the beneficiary's usual remuneration practice for national projects).

⚠ **National projects** are to be understood in the large sense, meaning all types of projects funded under any type of national (public or private) funding scheme (including projects co-financed by EU funds that are managed by the Member States, *e.g. regional funds, agricultural and fisheries funds*).

Projects from EU programmes directly managed by the Commission/Agencies or their funding bodies *(e.g. LIFE, ERASMUS, Health, etc.)* do not, however, qualify as national projects (but as EU/international projects).

Both basic remuneration and additional remuneration do not only cover the payment itself (salary or bonus), but also the social security contributions *(mandatory employer and employee contributions)*, taxes included in the remuneration *(e.g. income tax)* and other costs and payments included in the remuneration *(e.g. a fee paid by the beneficiary for a complementary health insurance scheme for the employee).*

What not? Cost of persons who work for the beneficiary but NOT with an employment contract or equivalent appointing act (*e.g. staff provided by a temporary work agency, seconded staff, self-employed persons with a direct contract with the beneficiary*).

Staff provided by a temporary work agency — A contract with a temporary work agency qualifies typically as a purchase of services (unless the temporary work agency carries out directly some task of the action — in which case it would be considered as subcontracting). Thus, although NOT eligible as personnel costs, the costs can be charged under other budget categories (i.e. D.3 other goods and services or B. subcontracting), if they comply with the eligibility conditions (*e.g. best value for money and no conflict of interest; see Articles 10 and 13*).

Seconded staff and **self-employed persons with a direct contract** - Can also be declared under other categories within the personnel costs *(see below, points 1.2 and 1.3)*.

1.1.2 Costs for employees (or equivalent) must be **declared** as:

- **actual personnel costs** (most common case)

OR

- **unit costs** in accordance with the usual cost accounting practices (average personnel costs; *see Article 5.2(a)*).

1.1.3 The costs for employees (or equivalent) must comply with the following **eligibility conditions**:

For basic remuneration:

- 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)*)

  Payments of dividends to employees (profit distribution) are NOT eligible under *Article 6.5(a)(i)*. However, bonuses based on the overall financial performance of the organisation *(e.g. profitability or surplus)* may be accepted, if they fulfil the conditions set out below, i.e. as part of the usual remuneration practices for national projects and thus eligible as basic remuneration.

  Examples (positive):

  If the profit of the company at the end of the year is more that x € (or more than x %), each employee will receive a bonus of z % of his/her basic remuneration (or a fixed bonus of x € more as part of the gross salary).

  Examples (negative):

  If the profit of the company at the end of the year is more that X € (or more than X %), z % of that profit will be distributed to employees trough extra remuneration.

  Any part of the remuneration which is based on commercial targets or fund raising targets is NOT eligible (because neither incurred in connection with the work described in Annex 1 of the action nor necessary for its implementation).

  ***Examples**: x € for reaching a sales target; x % on sales; x € premium per externally funded project gained; x % of the external funding gained*

- be paid in accordance with national law, the collective labour agreement and the employment contract/equivalent appointing act

  Examples:

  ***1.** The collective labour agreement establishes that all researchers may receive a bonus between EUR 100 and EUR 200 per month based on their seniority.*

  ***2.** The national law authorises public universities to pay a bonus based on merit of the employees.*

  ***3.** The contract fixes a premium of EUR 1 000 for each research paper published in peer-reviewed international research journals.*

- **exclude arbitrary bonuses** (i.e. bonuses which are not part of the beneficiary's usual remuneration practices and/or which are not based on objective conditions).

For additional remuneration (in addition to the conditions above):

- be a **non-profit legal entity**

- be paid for the performance of **additional work** or **different expertise** than his/her usual tasks

  This is usually the case, since additional remuneration aims precisely to reimburse the additional work/expertise that is required for JU, EU and international projects.

- be **consistently applied** whenever the same kind of work or expertise is required and **regardless of the source of funding** used

  The additional remuneration may not differ according to *where* the funds come from. In particular, it cannot be set up for actions funded by a specific donor; additional remuneration schemes that are applicable only to JU and EU projects are not acceptable.

  ***Example (not acceptable):** All professors carrying out research will be paid 10 % more when they work on JU-funded actions.*

  Also, they may not be subject to budget availability (i.e. only to be paid if there is remaining funds in the project budget).

  However, the additional remuneration does not have to be the *same* for all persons working in the same project (provided that objective criteria are used to determine the differences).

⚠ **8000 EUR ceiling —** Additional remuneration is eligible **ONLY up to** a ceiling of **8000 EUR** annual costs; *see point 1.1.4*).

Specific cases (direct personnel costs for employees (or equivalent) (A.1)):

Teleworking — Remuneration costs of personnel not working on the premises of the beneficiary (i.e. teleworking) may be accepted as eligible, 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 hours worked for the action.

Benefits in kind — Costs of benefits in-kind provided by the beneficiary to its personnel *(e.g. costs of a company car made available to certain categories of employees for their own use)* or of quasi-financial benefits *(e.g. costs of lunch vouchers)* may be accepted as eligible, if they are justified and registered as personnel costs in conformity with the beneficiary's usual remuneration practices. Like all costs, they must fulfil the eligibility conditions set out in Article 6.

Recruitment costs — Recruitment costs are generally NOT eligible as direct costs, because the beneficiary is required to have the necessary human resources to implement the action. If a beneficiary needs to recruit additional personnel during the action, the related costs would be considered part of the entity's normal indirect costs, which are covered by the 25 % flat-rate.

Costs for students, PhDs and other researchers under scholarship, internship or similar agreements (not employees) — Costs of students that work for the beneficiary can be accepted, if the agreement is work-oriented (not training-oriented: i.e. not aimed at helping the student to acquire professional skills).

PhD agreements will be considered work-oriented. However, time for training, if any, may NOT be charged to the action.

Fellowships / scholarships / stipends — Can be charged to the action (as personnel costs), if they fulfil the conditions set out Article 6.1 and 6.2.A.2, and in particular:

- the remuneration complies with the application national law on taxes, labour and social security
- the assignment of tasks respects the laws in force in the country of the beneficiary
- the students have the necessary qualifications to carry out the tasks allocated to them under the action.

Cost for exemptions from academic fees — The fees (or part of them) are eligible as personnel cost, if the student's contract includes 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)*.

Parental leave — Salaries and social security contributions paid during parental leave (either maternity leave or parental leave) are eligible as part of the basic remuneration only if:

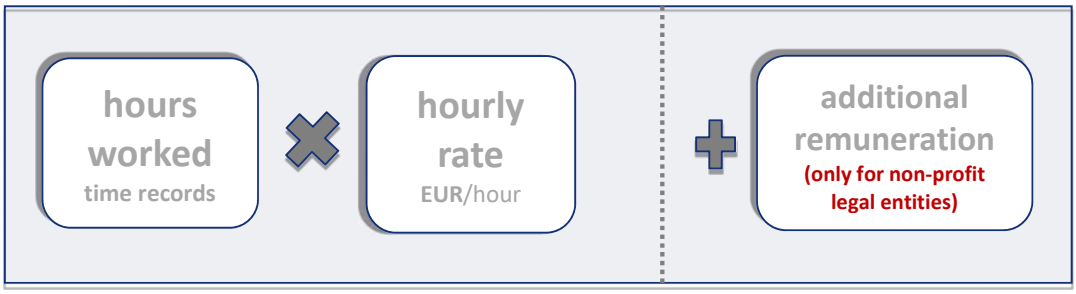
- they are mandatory under national law, under the relevant collective labour agreement (e.g. statutory maternity pay) or under the employment contract
- the beneficiary has actually incurred them
- they are not reimbursed by national (central, regional or local) authorities (i.e. only the net amounts paid by the beneficiary are eligible).

Costs related to public officials — 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 (applied to the central, regional or local government employing the public officials). In this case, the public officials will be considered as in-kind contributions (resources made available) provided by a third party (the government) free of charge (see *Article 12*).

Supplementary contracts — Supplementary contracts for participation in projects (whatever their form) are acceptable if it is the beneficiary's usual practice and compatible with national law. The remuneration will be qualified as basic or additional remuneration, depending on the scope (national OR EU/international) and amount (above, equal or below usual remuneration practices for national projects).

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

In general, personnel costs for H2020 actions are calculated (for each person assigned to the action, including persons working exclusively on the action) as follows:



In practice, the calculation will differ (per type of beneficiary/employee) depending on the remuneration practices of the beneficiary:

Case 1: beneficiaries declaring personnel costs as actual costs

Case 1A: employee whose remuneration is not project-based (i.e. same remuneration, regardless if they are involved or not in specific projects)

Case 1B: employee whose remuneration is project-based (i.e. different remuneration levels, depending on whether they work in specific projects or not)

Examples:

1. *The beneficiary and the researcher sign a separate employment contract for the work of the person in the Horizon 2020 action. The hourly rate resulting from that additional employment contract is different from the hourly rate of the other employment contract of the person with the beneficiary.*

2.*The beneficiary has a remuneration scheme which includes the payment of a bonus for work in specific projects. The bonus is paid as part of the total salary of the person in addition to the basic salary and other general bonuses.*

3. *The employment contract of the person fixes a specific hourly rate to be paid for work in specific projects. This hourly rate replaces the standard salary of the person while it works in those projects.*

Case 2: beneficiaries declaring personnel costs as unit costs in accordance with the usual cost accounting practices (average personnel costs).

Additional remuneration is in practice an issue ONLY for case 1B beneficiaries. All other beneficiaries will automatically fall under 'basic remuneration only' and therefore are not concerned by the provisions on additional remuneration.

Case 1B beneficiaries need to differentiate between payments that are basic remuneration and payments that are additional remuneration. For them, the hourly rate charged to the action must be calculated using only basic remuneration (i.e. excluding any part that qualifies as additional remuneration). Additional remuneration may be charged (separately and on top), if the beneficiary is a non-profit entity, if that remuneration is eligible and only up to a ceiling of 8000 EUR per year.

⚠ ONLY **hours actually worked on the action** can be counted. Such hours must be registered via time records or, if the person works exclusively in the action, via a declaration (*see Article 18.1.2*).

⚠ **Double ceiling —** Beneficiaries must ensure that:

- the **total number of hours** worked **declared** in JU, EU and Euratom grants for a person for a year is NOT higher than the number of **annual productive hours** used for the calculation of the hourly rate *(see below)*

  Example: *Beneficiary using 1 720 as annual productive hours. According to the time-records, during the financial year 2017 employee Z worked 900 hours in a H2020 action and 900 hours in another EU project. The total hours worked for JU/EU projects by employee Z would therefore be 1 800 (900 + 900). However, the beneficiary cannot declare more than 1 720 hours, since this is the number of annual productive hours it used for the calculation of the hourly rate. Therefore, for 2017, the beneficiary can only charge 820 hours to the H2020 action (i.e. 1 720 – 900 hours declared to other EU grant), even if the person worked 900 hours in the action.*

- the **total** amount of **personnel costs declared** (for reimbursement as actual costs) in JU, EU and Euratom grants for a person for a year is NOT higher than the total personnel costs recorded in the **beneficiary's accounts** (for that person for that year).

  Example: *The total personnel costs recorded in the 2017 accounts of the beneficiary for employee Z is EUR 18 000. The beneficiary already declared EUR 9 000 to the other EU grant. The hourly rate for employee Z according to the formula in the IMI2 JU Grant Agreement is 11 EUR/hour and employee Z worked 900 hours for the action in 2017. The eligible personnel costs for the action would therefore be: 11 EUR/hour x 900 hours = EUR 9 900. However, since the beneficiary already declared EUR 9 000 to the other EU grant, the maximum that it can declare to the H2020 action is: EUR 18 000 (total personnel costs for employee Z) – EUR 9 000 (already declared to other EU grant) = EUR 9 000. The beneficiary can therefore declare only EUR 9 000, even if the result of the formula for personnel costs would be EUR 9 900.*

How to calculate direct personnel costs for employees (or equivalent):

For case 1A beneficiaries (actual costs, not project-based remuneration): 2 steps

Step 1 — **Calculation of the hourly rate (for each employee)**

The beneficiary must calculate, for each employee, the hourly rate to be charged to the by using one of the following methods:

- **per full financial year** (main method): single hourly rate for each person for each full financial year
- **per month** (alternative method): one hourly rate for each person for each month (i.e. 12 hourly rates per person for each financial year).

Each beneficiary may choose any of the two options. However, the option chosen must be applied during the full financial year to all its personnel in all H2020 grants. If the beneficiary wants to change option, it can do so for the next financial year (— again for all its personnel in all its H2020 grants).

⚠ **Recalculations & adjustments of financial statements (exceptional) —** To benefit from this new option (i.e. hourly rate per month) beneficiaries may apply it retroactively for all grants on-going (i.e. for which the final report has not been submitted) on 20 July 2016 (i.e. date of adoption of H2020 MGA version 3.0). The beneficiary may re-calculate costs already declared on the basis the full financial year by using the monthly calculation method. However, in that case it must do the recalculation for ALL personnel costs declared for that/those financial year(s) in ALL on-going JU grants. The beneficiary must declare the differences, either positive or negative, as adjustments in the next reporting period.

⚠ The grant agreement **formulas for the hourly rates are mandatory**. Those formulas may lead to minor/temporary differences with the personnel cost recorded in the accounts. Those differences have no impact on the eligibility of the costs, provided that the formula has been correctly applied and that the *double ceiling* explained above has been respected.

Calculation of the hourly rate *per full financial year*

Annual hourly rates must be calculated as follows:

for each person:

{actual **annual personnel costs** for the person
divided by
number of **annual productive hours**}.

The rate must be calculated by ***full financial* year** (i.e. the 12-month period covered by the annual accounts of the entity).

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

When at the end of the reporting period there are months for which the financial year is not closed yet *(e.g. the financial year is still on-going; necessary information for that year is not yet available, etc.)*, the beneficiary must use the figures of the last closed financial year available to declare the costs for those months (i.e. use the hourly rate of the last closed financial year available also to calculate the personnel costs for the hours worked on those months).

Example: *Action with 1 reporting period of 18 months from 1.10.2015 to 31.3.2017. The beneficiary's financial year closes on 31 December of every year.*

Calculation of the hourly rate:

For hours worked on the action from 1.10.2015 - 31.12.2015: the hourly rate of 2015 must be used; i.e. hourly rate calculated on the basis of the annual personnel costs and annual productive hours of the closed financial year 2015.

For hours worked on the action from 1.1.2016 – 31.12.2016: the hourly rate of 2016 must be used; i.e. hourly rate calculated on the basis of the annual personnel costs and annual productive hours of the closed financial year 2016.

For hours worked on the action from 1.1.2017 – 31.3.2017: the hourly rate calculated for the last closed financial year available must be used, e.g. the one of the year 2016. Therefore, the beneficiary will not calculate another hourly rate for the period from 1.1.2017 - 31.3.2017. Instead, it will simply continue applying the hourly rate calculated for 2016 for the hours worked in 2017 until 31.03.

Last closed financial year available refers to the most recent *full* financial year for which all information necessary to calculate the hourly rates in accordance with the GA is available at the end of the reporting period. Therefore, it is NOT necessary to wait until the annual accounts have been audited.

Financial year different from fiscal year — If the financial year is different from the fiscal year (i.e. the 12-month period used to calculate the income taxes) the entity may use the **fiscal year** instead of the financial year for calculating the hourly rate. The method must however be consistently applied and can NOT be changed within the same grant.

⚠ **Recalculations & adjustments of financial statements (exceptional)** — Adjustments to the hourly rate are normally allowed ONLY for mistakes *(e.g. incorrect accounting information; error in the calculation; etc.)* and must be done using the hourly rate which would have had to be used at the end of the reporting period concerned.

Examples:

1. *An internal audit on the annual accounts of the beneficiary finds later errors in the accounting information used to calculate the hourly rates.*

2. *Reporting period 1 runs from 1 January 2016 to 30 June 2017. The beneficiary used the hourly rate 2016 for the entire period (i.e. also for the part from 01/01/2017 – 30/06/2017) because the financial year 2017 was still on-going at the end of the reporting period. In 2018, the beneficiary realises that the 2016 hourly rate was incorrectly calculated and that it has to declare an adjustment for reporting period 1. To calculate the adjustment, the beneficiary must use the correct hourly rate for 2016 for the whole reporting period 1, including the period from January to June 2017.*

Otherwise, costs that have already been declared can normally NOT be adjusted/changed (even if a recalculation of the hourly rate after the closure of the financial year would give another result).

The **annual personnel costs** may include only eligible personnel costs.

Any part of the remuneration which is paid once a year (*e.g. holiday pay*) will be taken into consideration for the hourly rate of the year in which it was accrued in the accounts.

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

- **option 1:** 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time) ('**1720 fixed hours**')
- **option 2:** the total number of hours worked by the person in the year for the beneficiary **('individual annual productive hours**')
- **option 3:** 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')**.

In principle, the same option (1,2 or 3) must be applied to *all personnel* working in H2020 actions. However, the beneficiary may use different options for different *types* of personnel, if:

- the same option is applied at least per group of personnel employed under similar conditions (*e.g. same staff category, same type of contract, , same cost-centre, etc*) and
- the options are applied consistently (*e.g. the choice of the option is not changed ad-hoc for specific employees*).

The beneficiary must keep the same option(s) for *the full financial year*. It can only change its option(s) for the next financial year.

⚠ **Absences & overtime —**

Absences: the three options treat absences (leave) in different ways:

- under option 1 (1720 fixed): ONLY actual time spent on parental leave (maternity and parental leave) may be deducted from the 1720 fixed hours. NO other leave *(e.g. sick leave, special leave, annual leave, etc.)* can be deducted.
- under option 2 (individual): the beneficiary must deduct all leaves (i.e. *actual time* on sick leave, parental leave or special leave, etc.) to calculate the annual productive hours.

  ⚠ In order to calculate the annual workable hours, the beneficiary has to deduct the annual leave entitlement (see example in the *table of options*). However, if the employment contract allows end-of-year transfers for leave entitlements (i.e. the days not taken one year can be taken the next one; days not taken are not paid out), the beneficiary may opt for deducting instead *actual time* of annual leave (if this is done consistently throughout the years).
- under option 3 (standard): the standard annual productive hours defined by the beneficiary normally take into account the standard time of absence in the organisation. However, the beneficiary may deduct on top the actual time spent on parental leave (maternity and parental leave) by the individual employee.

Overtime: all three options include potential overtime in the annual productive hours, either implicitly (options 1 and 3) or explicitly (option 2):

- under option 1 (1720 fixed): NO overtime may be added to the 1720 fixed hours
- under option 2 (individual): all overtime worked (paid or unpaid) must be added to the annual workable hours to calculate the annual productive hours
- under option 3 (standard): the standard annual productive hours defined by the beneficiary normally take into account the standard overtime hours in the organisation (if any).

⚠ **No impact on the hours worked —** The rules on the calculation of the *hourly rate* have no impact on the hours that can be declared *as hours worked on the action.* ALL hours worked on the action can be declared (normal hours and overtime) and all at the same hourly rate.

However, beneficiaries must make sure that they don't reach the double ceiling (i.e. number of annual productive hours used and costs recorded in accounts; *see above)*. If the overtime results in more hours worked/more costs declared over the ceiling, the exceeding can NOT be charged to the action (they must be capped at the ceilings).

Calculation of the hourly rate *per month*

Monthly hourly rates must be calculated as follows:

for each person:

{actual **monthly personnel costs**
divided by
{number of **annual productive hours/12**}**}**.

The rate must be calculated **for each month**.

The **monthly personnel costs** may include only eligible personnel costs.

If a part of the remuneration is generated over a period longer than a month *(e.g. the thirteenth salary)*, only the entitlement generated in the month can be included in the monthly personnel costs (— irrespectively of how much is actually paid in that month).

Example: *In accordance with the collective labour agreement, Ms T is entitled to a thirteenth salary (another full month salary in addition to her 12 monthly salaries) to be paid in July each year. The monthly salary of MS T is EUR 3 000.*

The monthly personnel costs in July will be:

EUR 3 000 + {EUR 3 000 / 12} = 3 000 + 250 = EUR 3 250

The beneficiary can therefore NOT include the total of the thirteenth salary in the personnel costs for July, but must distribute it over the months in which it was generated (in this example 1/12 per month). Otherwise, the hours of July would be incorrectly priced at the double of the hours worked in normal months.

⚠ **Recalculations & adjustments of financial statements (exceptional) —** If a later event *(e.g. the unexpected leave of the employee)* means that the payments made for the employee are actually lower (i.e. that the monthly hourly rates were overstated) the beneficiary must recalculate the hourly rates with the correct amount. If some of the related personnel costs were already declared, the beneficiary must declare the difference as adjustment in the next reporting period.

If the monthly entitlement of an extra salary is not known in advance *(for example for an annual merit pay whose amount is decided in December — if eligible as basic remuneration —)* the beneficiary cannot take into account the extra salary until the amount is known. It may therefore recalculate the hourly rates at that moment and, if needed, declare the difference as adjustment in the next reporting period.

For calculating the **annual productive hours**, the beneficiary must use one of the following two options *(see the table of options above for the details on each option)*:

- **option 1:** 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time) ('**1720 fixed hours**')
- **option 3:** 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**'**)**.

⚠ Option 2 can NOT be used for monthly hourly rates because the individual annual productive hours — and thus also the monthly hours, i.e. 1/12 of the annual — are known only at the end of the financial year. It would be therefore impossible to calculate the hourly rates at the end of each month.

In principle, the same option (1 or 3) must be applied to *all personnel* working in H2020 actions. However, the beneficiary may use different options for different *types* of personnel, if:

- the same option is applied at least per group of personnel employed under similar conditions *(e.g. same staff category, same type of contract, etc.)* and

– the options are applied consistently *(e.g. the choice of the option is not changed ad-hoc for specific employees)*.

The beneficiary must keep the same option(s) *during the entire financial year*. It can only change its option(s) for the next financial year.

Absences & overtime —

The same rules on the treatment of absences and overtime apply as for annual hourly rates, except that time spent on parental leave can NOT be deducted from the annual productive hours.

However, beneficiaries may charge to the action the *costs* incurred for parental leave (as personnel costs) in proportion to the time the person worked for the action during the financial year (time worked on the action over total productive hours for the year). This must be done separately and on top of the personnel costs declared by multiplying the hours worked for the action by the monthly hourly rates.

Example:

In 2015 Ms T has been five months in parental leave. During that time the social security reimbursed to the beneficiary 50 % of her salary. Her monthly salary was EUR 3 000 (reimbursement EUR 1 500). The beneficiary used option 1 (1720 fixed hours) for the annual productive hours and Ms T worked in 2015 320 hours on the H2020 action.

Personnel costs incurred during parental leave= {EUR 3 000 x 5} - {EUR 1 500 x 5} = 15 000 – 7 500 = EUR 7 500

(Note: amounts reimbursed to the beneficiary by the social security are not actual costs for it and, therefore, must be deducted)

Proportion of time worked for the action in 2015 = Time worked for the action / Total productive hours excluding the parental leave = 320 / {1720 - {1 720 x 5/12}} = 320 / {1 720 – 716,7} = 320 / 1 003,3 = 31,89 %

Cost of parental leave for the H2020 action = EUR 7 500 x 31,89 % = EUR 2 391,75

No impact on the hours worked — The rules on the calculation of the *hourly rate* have no impact on the hours that can be declared *as hours worked on the action.* ALL hours worked on the action can be declared (normal hours and overtime) and all at the same hourly rate.

However, beneficiaries must make sure that they don't reach the double ceiling (i.e. number of annual productive hours used and costs recorded in accounts; *see above)*. If the overtime results in more hours worked/more costs declared over the ceiling, the exceeding can NOT be charged to the action (they must be capped at the ceilings). The ceilings apply per full financial year, not per month.

However, do not forget that your personnel costs must comply with national labour law.

Example:

If the national law provides for a prohibition for employees to work more than 48 hours per week, it is not possible to charge to the H2020 action 250 hours in a month for an employee.

Step 2 — **Multiplying the hourly rates by the hours worked on the action**

The hourly rate for the employee must be multiplied by the number of hours s/he actually worked on the action and this gives the amount that can be charged to the action.

For case 1B beneficiaries (actual costs, project-based remuneration): 4 steps

Step 1 — **Checking the nature of the remuneration (basic or additional) for each employee)**

The beneficiary must first find out, for each employee, if the remuneration it is paying is all basic remuneration or contains also additional remuneration.

To do this, the beneficiary must calculate **two reference hourly rates**:

– reference rate for the work on the H2020 action ('**action reference**')

and

– reference rate for the usual remuneration practice for national projects ('**national projects reference**').

If the action reference is *equal or below* the national projects reference, the remuneration is all basic remuneration. If it is *higher*, the exceeding part is additional remuneration and must be taken out for the calculation of the hourly rate to be charged to the action.

Step 1a — **Calculation of the reference hourly rates**

For the **action reference**: the beneficiary must calculate an hourly rate (either *annual* or *monthly*) based on the remuneration paid to the employee for his/her work in the H2020 action.

For *annual* reference rates:

{annual personnel costs for the person for his/her work in the action

divided by

number of hours worked for the action in the financial year}.

If the reporting period ends before the end of the financial year, the beneficiary must use the personnel costs and the hours from the beginning of the year until the end of the reporting period.

For *monthly* reference rates:

{monthly personnel costs for the person for his/her work on the action

divided by

number of hours worked for the action in the month}.

For the **national projects reference**: the beneficiary must calculate an hourly rate based on either:

- regulatory requirements *(e.g. national law or collective labour agreements)* setting up the level of remuneration to be paid for work in projects funded under national schemes — if those amounts were actually paid at least once before the submission of the H2020 proposal for work in a national project

  Example: *The national law establishes that the maximum monthly salary of engineers acceptable for national grants is EUR 4 000. Beneficiary A has paid that salary to its engineers while working in national grants. Beneficiary B has signed a collective labour agreement whereby the monthly salary to be paid for work under national grants is fixed at EUR 3 500. Beneficiary B has paid that salary to its engineers working in national grants.*

  Maximum amount acceptable as basic remuneration for beneficiary A = EUR 4 000/month for a person working full-time. If the remuneration of the person for the work in the H2020 action is more than this ceiling, the excess will qualify as additional remuneration.

  Maximum amount acceptable as basic remuneration for beneficiary B = EUR 3 500/month for a person working full-time. If the remuneration of the person for the work in the H2020 action was more than this ceiling, the excess will qualify as additional remuneration.

- internal rules setting up the level of remuneration to be paid for work in projects funded under national schemes — if those amounts were actually paid at least once before the submission of the H2020 proposal for work in a national project

  Example: *The internal rules of University Z provide that a professor working in externally-funded projects may get an extra salary of up to 50 % for the time its works for those projects. The maximum extra salary University Z has actually paid for work in national projects was 30 %.*

  Maximum amount acceptable as basic remuneration = salary of the person + 30 % (for the time worked in the H2020 action). If the remuneration of the person for the work in the H2020 action is more than this ceiling, the excess will qualify as additional remuneration.

or

- if none of these are available or if the beneficiary never had any national projects before the submission of the H2020 proposal: the average remuneration of the employee in the previous financial year.

The hourly rate of the national project reference must be calculated using 1720 fixed annual productive hours (unless there is an hourly rate directly set in the law, collective labour agreement or internal rules).

For the average remuneration of the employee, the beneficiary must moreover exclude remuneration that came from H2020 actions; i.e.:

{total annual personnel costs* for the person for year n-1 excluding remuneration paid for work in H2020 actions

divided by

1720** minus hours worked in H2020 actions in year n-1}

* The total annual personnel costs include all remuneration paid by the beneficiary to the person for work, irrespectively of the tasks of the person and the projects for which the person was working; but excludes all remuneration paid for work in H2020 actions. If the remuneration included ineligible items *(e.g. profit distribution)* those must also be removed.

** 1720 is the fixed number of annual productive hours. The beneficiary must remove from those annual productive hours the hours worked in H2020 actions. If in year n-1 the person worked exclusively in H2020 actions, the beneficiary must use the average salary of the last year in which the person did not work exclusively in H2020 actions *(e.g. year n-2 or year n-3)*. If in year n-1 the person was on long-term sick leave, the beneficiary may use the average of year n-2 (instead of n-1).

If the national law or the internal rules set up different levels of remuneration for different categories of staff, the reference will be the one of the category to which the person belongs.

If the national law or the internal rules set up different remuneration levels for different types of national projects (or for different work within the projects), the reference will be the one applicable to the type of project/work that is closest to the H2020 action.

Example: *The internal rules of University Z provide that a professor working in basic research projects will receive 10 % extra salary; while a professor working in applied research projects will receive 15 % extra salary. Both extra salaries are systematically paid also for projects funded by national schemes. The H2020 action is an innovation action. The reference that would apply in this case is the extra salary for applied research projects (15 %) as the type of project is closer to the H2020 innovation action than basic research projects.*

The beneficiary must keep appropriate and sufficient evidence to support the action and national project references used *(see Article 18)*.

Example: *If the beneficiary uses the internal rules it must keep documental evidence of the internal rules applied, the category of the person (if applicable), and the payslip and payment documents proving that such remuneration was paid at least once prior to the submission of the proposal.*

Step 1b — **Comparing the action reference with the national project reference**

If the action reference is *higher* than the national project reference, the exceeding part is additional remuneration:

{total additional remuneration = difference between the two reference rates * number of hours worked on the action}

{total basic remuneration = national project reference rate * number of hours worked on the action}

If the action reference is *equal or lower* than the national project reference, there is no additional remuneration; the remuneration paid to the employee is all basic remuneration.

Example personnel costs with additional remuneration (Part 1 of 3):

1. *Ms R is employed full-time as professor at University X. She has a basic annual gross salary of EUR 24 000. The internal rules of the university provide that professors involved in research projects financed by external funders can get up to EUR 6 000 per month of full dedication to the project. However, due to budgetary restrictions the maximum that has been paid to any professor in a national project was EUR 4 800. Ms R worked in 2017 for the H2020 action 200 hours. For those hours she received an extra salary of EUR 6 500. She also participated in other projects generating*

other extras for her. So, her total gross annual salary was EUR 36 000. The hourly rate for the H2020 action is as follows:

The salary of Ms R varies depending on her participation in certain projects. Therefore, the beneficiary must assess if any part of that salary qualifies as additional remuneration. For that, it must compare the action reference with the national project reference:

Action reference rate = basic salary corresponding to the 200 hours worked for the action ((24 000 / 1720) x 200 = 2 790,70 €) + bonus paid for the action (6 500 €) = 9 290,70 € / 200 (hours worked in the action) = 46,45 €/hour (hourly rate)

National project reference rate (in this example based on the internal rules of the university applicable to national projects) = maximum salary paid for any professor working in a national project in accordance with the internal rules = 4 800 € / (1720 annual productive hours / 12 months) = 4 800 € / 143,33 hours = 33,49 €/hour

The Action reference (i.e. 46,45) is higher than the national project reference (i.e. 33,49). The excess (46,45 – 33,49 = 12,96 €/hour) qualifies as additional remuneration. Therefore:

The total basic remuneration = 33,49 €/hour x 200 (hours worked in the action) = 6 698 €

The total additional remuneration = 12,96 €/hour x 200 (hours worked in the action) = 2 592 €

(This example continues here for the calculation of the hourly rate)

***2.** Same situation as above, but in this case the work in the action has been done under a supplementary employment contract covering additional working hours (on top of the full-time contract of the professor).*

Action reference rate = 6 500 € (remuneration of the supplementary employment contract) / 200 hours (covered by that supplementary contract) = 32,50 €/hour

National project reference rate = 4 800 € / (1720 annual productive hours / 12 months) = 4 800 € / 143,33 hours = 33,49 €/hour

In this case, the action reference (i.e. 32,50) is lower than the national project reference (i.e. 33,49). Therefore, the beneficiary is NOT paying additional remuneration.

The total basic remuneration = 32,50 €/hour x 200 (hours worked in the action) = 6 500 €.

Step 2 — **Calculation of the hourly rate (for each employee; on the basis of basic remuneration)**

The beneficiary must then calculate the hourly rate to be charged to the action for the employee:

- **If** there is **additional remuneration**, the beneficiary must calculate the hourly rate using only the basic remuneration. In practice, this will be the action reference, capped at the national project reference (i.e. the hourly rate will normally be equal to the national project reference rate).

  Example personnel costs with additional remuneration (Part 2 of 3):

  ***1.** Ms R worked 200 hours over the financial year in the action. For that time she received a remuneration of 9 290,70 €. In the calculations made in part 1 of the example we identified that 2 592 € qualify as additional remuneration.*

  The hourly rate applicable to the action will be, therefore:

  (Actual annual personnel costs for the action - additional remuneration) / hours worked in the action over the year = (9 290,70 € - 2 592 €) / 200 = 33,49 €/hour.

  Personnel costs resulting from the hourly rate = 33,49 €/hour x 200 = 6 698 €.

  (This example continues here for the eligibility of additional remuneration)

- **If** there is **NO additional remuneration** (i.e. all is basic remuneration), the beneficiary can simply use the action reference as hourly rate to charge to the H2020 action.

  Example personnel costs without additional remuneration (Part 3 of 3):
  1. Ms R worked 200 hours over the financial year in the action. For that time she received a remuneration of EUR 6 500 thr
  ough an additional contract.
  Action reference rate = 6 500 € (remuneration of the supplementary employment contract) / 200 hours (covered by that supplementary contract) = 32,50 €/hour
  National project reference rate = 4 800 € / (1720 annual productive hours / 12 months) = 4 800 € / 143,33 hours = 33,49 €/hour

In this case, the action reference (i.e. 32,50) is lower than the national project reference (i.e. 33,49). Therefore, the beneficiary must use the action reference as hourly rate to

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

charge to the H2020 action:
Total personnel costs to be declared = 32,50 €/hour x 200 (hours worked in the action) = 6 500 €.

Step 3 — **Multiplying the hourly rate by the hours worked on the action**

After that, the hourly rate for the employee must be multiplied by the number of hours s/he actually worked on the action and this gives the amount of basic remuneration that can be charged to the action *(see examples in Step 2 above)*.

Step 4 — **For non-profit legal entities: addition of the additional remuneration (if any)**

If the beneficiary is a non-profit entity, and the payments that are additional remuneration are eligible, it may also declare them to the action

If the resulting amount (for the year) is above the **8000 EUR ceiling**, 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 JU action during the full financial year	**EUR 8 000**	pro-rata amount of EUR 8 000
NOT working exclusively for the JU action during the full financial year	{8 000 / annual productive hours FTE} * hours worked for the action over the year	

The 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**.

This ceiling covers not only the additional payment (bonus) but also the additional taxes, costs and social security contributions triggered by the additional payment.

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

Examples:

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

2. *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 is eligible up to a maximum of:

Example personnel costs with additional remuneration (Part 3 of 3):

1. *Ms R worked 200 hours over the financial year. For that work she received 6 698 € of basic remuneration and 2 592 € of additional remuneration.*

If the beneficiary is a for-profit legal entity, the 2 592 € of additional remuneration would be automatically ineligible. The personnel costs which the beneficiary can charge to the action would be therefore 6 698 €.

If the beneficiary is a non-profit legal entity, additional remuneration may be eligible up to the ceiling. To calculate the eligibly part, you need to determine the pro-rata of the cap which corresponds to the 200 hours worked for the action:

(8 000 / 1 720) x 200 = 930,23 €

Although the beneficiary paid 2 592 € of additional remuneration, only 930,23 € are eligible. The difference (2 592 – 930, 23 = 1 661,77 €) is ineligible, since it exceeds the ceiling.

Therefore, the personnel costs which the beneficiary could charge to the action would be: 6 698 € of basic remuneration + 930,23 € of additional remuneration = 7 628,23 €.

For case 2 beneficiaries (unit costs in accordance with the usual cost accounting practices): 2 steps

Step 1 — **Calculation of the hourly rate (for each employee)**

The beneficiary can use the hourly rate(s) that it uses normally (usual cost accounting practices) as average personnel costs, provided that:

- the cost accounting practices 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 already included in other budget categories and
- the hourly rate is calculated using one of the **three options** provided in the MGA for the number of **annual productive hours** *(e.g. option 3 'standard annual productive hours')*.

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 of the beneficiary. 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.*

If necessary, the hourly rate must be adjusted to remove:

- cost elements that are ineligible under the GA (even if they are part of the beneficiary's usual methodology for determining the hourly rate).

  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 (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 H2020 actions. In H2020 actions, indirect costs must be declared using a flat rate of 25%, so personnel costs cannot include any indirect costs.

Budgeted or estimated elements used to calculate the hourly rate can only be accepted if they:

- are relevant, i.e. clearly related to personnel costs
- are used in a reasonable way (i.e. 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.*

Beneficiaries may request the **approval of the methodology** used by them, by submitting (via the following address: EC-H2020-UNIT-COST-METHODOLOGY-CERTIFICATION@ec.europa.eu) an audit certificate on their usual cost accounting practices *(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 hours worked on the action**

After that, the hourly rate for the employee must be multiplied by the number of hours s/he actually worked on the action and this gives the amount that can be charged to the action.

Specific cases (direct personnel costs for employees (or equivalent) (A.1)):

Persons working exclusively on the action — There is NO different calculation method for staff working 100 % on the action. (The percentage of time dedicated to the action does NOT make a difference for the way how personnel costs must be calculated; it matters only for the types of records that must be kept *(see Article 18.1.2)*). Therefore, the calculation method for personnel costs of Article 6.2.A (as chosen by the beneficiary) applies.

Since there is no obligation to keep time-sheets for periods covered by a declaration on exclusive work, beneficiaries should report:

- for annual hourly rates: a pro-rata (of the annual productive hours corresponding to the period covered by the declaration (at the annual hourly rate)
- for monthly hourly rates: 1/12 of the annual productive hours for each month actually worked for the action in the period covered by the declaration (at the monthly hourly rate).

Example:

1a *Researcher Y worked exclusively in the action during the reporting period running from 1.10.2014 to 31.03.2016. Its actual annual personnel costs were EUR 32 000 for 2014 and EUR 34 400 for 2015. The beneficiary applies 1720 as annual productive hours and calculates annual hourly rates*

The personnel cost to be reported would be calculated as follows:

	Hourly rate	*Hours worked for the project*	
2014 ➔	*(32 000 / 1720)*	*x [(1720 / 12 months) x 3 (Oct, Nov, Dec)]*	
	18,60	*x 430*	*= 8 000*
2015 ➔	*(34 400 / 1720)*	*x 1720*	
	20	*x 1720*	*= 34 400*
2016 ➔	*The financial year is not completed so we use the 2015 hourly rate*		
	20	*x [(1720 / 12 months) x 3 (Jan, Feb, Mar)]*	*= 8 600*
		TOTAL	*= 51 000*

1b *Researcher Y worked exclusively in the action during the reporting period running from 1.10.2014 to 31.03.2016. Its monthly personnel cost were 2 666,66 EUR in 2014, 2 860 EUR from January 2015 until October 2015 and 2 900 EUR from then on. The beneficiary applies 1720 as annual productive hours and calculates monthly hourly rates.*

The personnel cost to be reported would be calculated as follows:

	Hourly rate	x	Hours worked for the project	=	Total
2014➔					
October	*{[2666 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 666*
November	*{[2666 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 666*
December	*{[2666 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 666*
				Total =	*8 000*[*]
2015 ➔					
January	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
February	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
March	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
April	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
May	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
June	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
July	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
August	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
September	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
October	*{[2860 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 860*
November	*{[2900 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 900*
December	*{[2900 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 900*
				Total =	*34 400*
2016➔					
January	*{[2900 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 900*
February	*{[2900 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 900*
March	*{[2900 EUR /(1720/12)]*	*x*	*(1720/12)}*	*=*	*2 900*
				Total =	*8 700*
				TOTAL =	*51 100*

[*] *Decimals have been rounded*

If the declaration covers months in which the person was **absent** for more than half of the working days those months can NOT be taken into account to calculate the hours worked in the action (— unless the absence is linked to annual leave AND the duration does not exceed the pro-rata of annual leave entitlements corresponding to the period covered by the declaration).

Example:

1. *Researcher Y worked exclusively in the action from1 July 2014 to 31 October 2014. In August it took three weeks of holidays and in September it was 10 days on sick leave. The beneficiary applies 1720 as annual productive hours*
Number of hours that can be charged to the action based on the declaration = 3 months (July, September and October) x (1720 / 12) = 3 x 143,33 = 430 hours
August is not taken into account because the person was absent more than half of the working days, since s/he took three weeks of holidays.

2. *The person has the right to two working days of annual leave per month worked. The period covered by the declaration is from January to September (i.e. 9 months). Therefore, the leave entitlement of the person for that period is 9 x 2 = 18 working days. The person takes 3 weeks of annual leave in August. August could also be counted because the leave taken (i.e. 15 working days) is less that the leave entitlement for that period (i.e. 18 working days).*

Employees hired during 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 annual hourly rate can only be calculated on the basis of the personnel costs incurred during the ongoing financial year.

Example: *The reporting period runs from 1.10.2014 to 31.03.2016. 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, it is particularly important to determine the pro-rata of the annual productive hours correctly *(e.g. if option 1 - 1 720 fixed hours are used, the productive hours for the period February-March would be 1 720 /12 * 2 = 286,66; if option 2 -individual annual productive hours- is used, the productive hours for the period February-March would be the actual productive hours for the period February-March; if option 3 – standard annual productive hours - is used, the productive hours for the period February-March would be the standard annual productive hours/12*2)*.

End-of-contract indemnities — Since the entitlement to end-of-contract indemnities is most often generated over a period of time longer than a financial year, the beneficiary may charge the indemnity in the reporting period in which the employee's contract ends - but outside the hourly rate (i.e. separately and on top of the personnel costs declared on the basis of the hourly rate) AND only for the part that corresponds to the time worked by the person on the action (i.e. pro-rata of the total time during which the entitlement was generated).

Moreover, the indemnity can be accepted ONLY if it:

- arises from the applicable national labour law and
- is recorded in the accounts of the beneficiary and
- is incurred during the action duration (although the actual payment may take place latter).

Employment contract remunerated per hour — For employment contracts that do not establish a fixed salary and a number of hours to be worked but only an amount to be paid for each hour worked by the employee, individual annual productive hours (i.e. option 2) can only be applied if all of the following conditions are fulfilled:

- the employment contract explicitly fixes the hourly rate to be paid
- the employment contract established that the salary is the result of multiplying the hourly rate by the number of hours worked
- the total salary paid under the employment contract is identifiable and supported by auditable documents *(e.g. payslips and declarations to the tax authorities)*
- the employment contract is the only contract between the person and the entity (i.e. there is no other parallel contract).

If those conditions are fulfilled, the individual annual productive hours can be calculated as follows:

{total salary paid to the employee in the financial year

divided by

hourly rate fixed in the employment contract}.

This summary table explains the three **different options** for **annual productive hours (for case 1A and case 2 beneficiaries)**:

Options	What does it mean?	When can it be used? How should it be used?	What happens if you make a mistake?
Option 1 **1720 fixed hours**	The number of hours is fixed for full-time employees (and it is pro-rata for employees working part-time or working only part of the year for the beneficiary).	Can be used **in all cases**; any beneficiary can use this option. A pro-rata of 1720 hours can be used if: – the employee has not worked the full year for the beneficiary or – the employee's contract explicitly states (or allows to determine) a precise percentage of a full-time-equivalent covered by such contract. ***Examples (pro-rata calculations):*** ***1.*** *Researcher X worked for Beneficiary Z from 1 October to 31 December; i.e. 3 full months. The pro-rata of the annual productive hors would be calculated as follows:* *1720 / 12 (months) * 3 (October, November, December) = 430 productive hours* ***2.*** *The contract of Researcher Y with Beneficiary Z establishes that it must work 20 hours per week, while a full-time employee at Beneficiary Z works 40 hours per week. Working days and leave entitlements are the same. The annual productive hours would be calculated as follows:* *1720 * [20 hours (Researcher Y) / 40 hours (full-time employee)] = 1720 * 50 % (part-time percentage) = 860 productive hours*	

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 GA {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* – this calculation method is consistently applied (per group of personnel under similar conditions). ***Example for 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 8 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 5 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:*	If the auditors find that a beneficiary made a mistake, the JU 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 to determine 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.

		Annual workable 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.* ⚠ This option can NOT be used if the employment contract, collective labour agreement or national law does not allow to determine the number of individual annual workable hours.	
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 group – an applicable collective labour agreement or – the national law on working time.	If the auditors find that a beneficiary made a mistake, the JU 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; – 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 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 for 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 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)*	– if the two first indents in the middle column (number calculated in accordance with usual accounting practices AND calculation method consistently applied) 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. – If the standard annual productive hours is 90% of the standard annual workable hours the auditor will not challenge that amount if the amount is in accordance with the usual cost accounting practices of the beneficiary and the calculation method is consistently applied.

		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).* ⚠ This option can NOT be used if the employment contract, collective labour agreement or national law does not allow to determine the number of annual workable hours for the group of personnel. ***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 fixed hours).*	

1.2 Direct personnel costs: Natural persons with direct contract (A.2)

1.2.1 **What?** This budget category **covers** typically the costs of **in-house consultants** and similar persons (i.e. **self-employed *natural persons)*** that worked on the action for the beneficiary under conditions similar to those of an employee, but under a contract which is NOT legally the same as for employees. It regards, in particular, contracts qualified as quasi-subordinate work contracts under national law when the conditions under which the work is carried out are similar to those of an employee.

What not? Staff provided by another entity against a price, including staff provided by a temporary work agency (because in this case there is no direct contract between the person and the beneficiary; the contract is not with the beneficiary but with the entity hiring the person).

> **Staff provided by a temporary work agency —** A contract with a temporary work agency qualifies typically as purchase of services (unless the temporary work agency carries out directly some task of the action — in which case it would be considered as subcontracting). Thus, although NOT eligible as personnel costs, the costs can be charged under other budget categories (i.e. D.3 other goods and services or B. subcontracting), if they comply with the eligibility conditions (especially best value for money and no conflict of interest; see *Articles 10 and 13*).

1.2.2 Costs for natural persons working under a direct contract may be **declared as:**

– **actual costs** (most common case)

OR

– **unit costs** in accordance with the usual cost accounting practices (average personnel costs; *see Article 5.2(a)*).

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

- 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)*, even if that third party is a one-person company
- the person must work **under conditions similar to those of an employee,** in particular:

> ⚠ **Similar does not mean equal —** The working conditions of the person do NOT have to be exactly the same that those of an employee, but overall similar.

- the beneficiary must organise and supervise the work of the person in a way similar to that of its employees

Example (acceptable):

The beneficiary's project leader and the person discuss regularly the work to be carried out for the action. The project leader decides the tasks and timing of the work and instructs the person accordingly.

Example (not acceptable):

The beneficiary's project leader and the person meet only once a month or irregularly, for updates on the state of play of the entrusted work. If changes are needed, they have to be agreed by the person and may lead to a change of the amount charged to the beneficiary.

- the beneficiary must be able to ensure reliable time recording (for the hours that the person works for the action)

> ⚠ **Record-keeping —** The beneficiary must keep records of the hours which the person worked for the action *(e.g. time-sheets etc.; see Article 18.1.2).*

- the person is subject to similar presence requirements as the employees.

Examples (acceptable):

The person works physically at the beneficiary's premises, following a time schedule similar to that of the employees (e.g. the beneficiary authorises up to two days of teleworking per week to its personnel and the person has chosen to benefit from this regime, i.e. works 2 days in teleworking and 3 days physically at the beneficiary's premises).

Example (not acceptable):

The entity authorises up to two days of teleworking per week. However, the person works four days in teleworking and only one day at the beneficiary's premises.

- the **result** of the work carried out (including patents or copyright), must in principle **belong** to the **beneficiary**.

  If (exceptionally) they belong to the person, the beneficiary must (just like for employees) obtain the necessary rights from the person (transfer, licences or other), in order to be able to respect its obligations under the GA *(see Article 26.3)*.

- **not** be **significantly different** from costs for employees performing similar tasks

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

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

However, for the **actual costs 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 work and the number of hours to be worked: the global amount for the work must be divided by the number of hours to be worked

– if the contract states a fixed amount for the work but does not specify the number of hours to be worked: the global amount for the work must be divided by the pro-rata of 1 720 annual productive hours which corresponds to the duration of the contract over the financial year.

Example: *The contract provides that the person will work at the beneficiary's premises for assisting in research tasks. The contract is for 6 months starting on 1 January 2017 and ending on 30 June 2017. According to its time records, the person worked 500 hours in the H2020 action over that period. The contract sets a monthly payment of EUR 3 000 but does not explicitly establish the number of hours to be worked.*

Personnel costs for the action = hourly rate x 500 (hours worked in the action)

Hourly rate = annual personnel costs / annual productive hours = (3 000 € x 6 months) / (1 720 hours x (6 months/12 months)) = 18 000 € / (1 720 x 0,5) = 18 000 € / 860 hours = 20,93 €/hour

Personnel costs for the action = 20,93 x 500 = 10 465 €.

Social security contributions which are mandatory under national law may be included in the calculation of the hourly rate.

For the **unit costs** hourly rate (average personnel costs), the rules in point 1.1.4 apply without any changes.

This summary table explains how to treat **different types of work contracts** for declaring costs under Horizon 2020[40]:

Characteristics of the contract	**Contract remunerating time** (*e.g. the contract establishes that the person must work for beneficiary 40 hours per week*)	**Contract not specifying the working time conditions** *(e.g. the contract establishes tasks, but the time to be worked (hours) is not defined in the contract, collective labour agreement or national law)*
The contract is an employment contract, i.e.: – recognized as such by the national labour law AND - the hiring entity pays social security contributions for the hired person	**CASE A** **This is the standard situation**. The costs may be declared in category A.1 'employees (or equivalent)' (Article 6.2.A.1). They must be calculated as described in Article 6.2.A. Calculation (point 1.1.4): ➔ The beneficiary may choose among the three options for annual productive hours to calculate the hourly rate.	**CASE B** The costs may be declared in category A.1 'employees (or equivalent)' (Article 6.2.A.1). They must be calculated as described in Article 6.2.A. Calculation (point 1.1.4); however: ➔ Only option 1 (i.e. 1720 fixed annual productive hours) can be used to calculate the hourly rate. ➔ If the employment contract does not cover the full financial year, the annual productive hours must be calculated as a pro-rata of 1720. ***Example:*** *Contract from 01.01.2015 to 31.03.2015. Annual productive hours = (1720/12) x 3 (Jan, Feb, Mar) = 430*

[40] These explanations do NOT apply to **SME owners** not receiving a salary *(see Article 6.2.A.4)*.

Other contract (i.e. not an employment contract, i.e.:	**CASE C1:** the costs fulfil the conditions of Article 6.2.A.2. The costs may be declared in category A.2 'natural persons with direct contract' (Article 6.2.A.2) The costs must be calculated as described in point 1.2.4. **CASE C2:** the costs do NOT fulfil the conditions of Article 6.2.A.2. The costs can NOT be declared in category A. 'personnel costs'. They must be treated like CASE D1.	**CASE D1:** the costs do NOT fulfil the conditions of Article 6.2.A.2. The costs can NOT be declared in category A 'personnel costs' However, they may be eligible under another budget category: – if the contract covers tasks described in Annex 1: in category B 'subcontracting' (Articles 6.2.B and 13) or – in category D.3 'other goods and services' (Articles 6.2.D.3 and 10). ⚠ The beneficiary must award the contracts ensuring best value for money and avoiding any conflict of interests *(see Articles 10 and 13)*. **CASE D2:** the costs fulfil the conditions of Article 6.2.A.2. The costs can be declared in category A 'personnel costs'. They must be calculated as described in Article 6.2.A. Calculation (point 1.2.4); however: ➔ Only option 1 (i.e. 1720 annual productive hours) can be used to calculate the hourly rate. ➔ If the contract does not cover the full financial year, the annual productive hours must be calculated as a pro-rata of 1720.

1.3 Direct personnel costs: Seconded personnel (against payment) (A.3)

1.3.1 **What?** This budget category **covers** the costs of persons that worked on the action and that were **seconded** by a third party as an in-kind contribution ***against payment*** *(see Article 11)*.

What not? Persons provided by a temporary work agency, secondment of staff between beneficiaries (or linked third parties) in the same grant or secondment by a third party free of charge.

Staff provided by a temporary work agency — A contract with a temporary work agency qualifies typically as a purchase of services (unless the temporary work agency carries out directly some task of the action — in which case it can be considered as subcontracting). Thus, although NOT eligible as personnel costs, the costs can be charged under other budget categories (i.e. D.3 other goods and services or B. subcontracting), if they comply with the eligibility conditions (especially best value for money and no conflict of interest; see *Articles 10 and 13*).

Secondment of staff between beneficiaries (or linked third parties) — Is allowed, but it is the beneficiary/third party who employs the person who has to declare its costs (NOT the beneficiary/third party to whom the person has been seconded). The costs declared must be supported by reliable time records of the number of hours the person worked for the action. Those time records must be produced under the responsibility of the beneficiary/third party to whom the person is seconded.

Persons seconded free of charge — Costs for persons seconded free of charge (i.e. the third party's costs) can be declared as personnel costs by the beneficiary, if they fulfil the conditions of Articles 6.4 and 12.

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

1.3.2 Costs for persons seconded by a third party may be **declared** ONLY as **actual costs**.

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

- 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**

  'Seconded' means 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.*

  Best practice: Secondments should be formalized via a secondment agreement. The secondment agreement has to detail the conditions of secondment (tasks, payment (or not) from one entity to the other, duration of the secondment, location, etc.).

  A secondment normally requires the seconded person to work at the beneficiary's premises, although in specific cases it may be agreed otherwise in the secondment agreement.
- the beneficiary must **reimburse the costs** to the third party (i.e. not for free)
- fulfil the **additional** cost eligibility **conditions** set out in Article 11.1.

1.3.4 There is no specific **calculation** method; the costs must correspond to the price paid by the beneficiary — up to the costs actually incurred by the third party (*see Article 11.1*).

For the calculation of the upper limit (i.e. the third party's actual costs), the same calculation rules apply as in point 1.1.4.

⚠ **Record-keeping —** The beneficiary must keep records of the hours which the seconded person worked for the action *(e.g. time-sheets etc.; see Article 18.1.2)*.

1.4 Direct personnel costs: SMEs owners not receiving a salary (A.4)

1.4.1 What? This budget category **covers** the costs of SME owners (direct owners or co-owners of the SME which is a beneficiary of the grant), but **don't receive a salary**.

This includes SME owners who are remunerated/compensated for their work for the SME by any other means than a salary *(for example, dividends, service contracts/other non-employment contracts between the company and the owner, etc.)*.

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.)

1.4.2 These costs must be **declared as the** unit cost (hourly rate) fixed by Commission Decision C(2013) 8197[41] and set out in Annex 2 and 2a of the GA.

The precise unit cost is not pre-fixed by the Decision; the 'amount per unit' (hourly rate) must be calculated for each individual — before signature of the GA — according to the following formula:

Amount per unit = {{ EUR 4 650 or 4 880* /143 hours}

multiplied by

{country-specific correction coefficient of the country where the beneficiary is established}}

The country-specific correction coefficient is the one set out in the *H2020 Work Programme (section 3 MSCA)*[42] in force at the time of the call.

*EUR 4 650 for calls under Work Programmes 2014-2015 and 2016-2017 and EUR 4 880 for calls under Work Programme 2018-2020.

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*

In practice, the declaration of costs for SME owners is very simple and almost completely automatised: The beneficiaries must only indicate the number of hours worked on the action and the costs are then automatically calculated by the IT system.

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

- 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 **SME owner**, 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.

The JU may verify that the beneficiary fulfils the conditions for using this unit cost.

1.4.4 The **cost** are **calculated** (automatically by the IT system) as follows:

amount per unit (hourly rate; *see Annex 2a GA*) **x** number of actual hours worked on the action.

[41] 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

[42] Available at http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

⚠ **Ceiling** — The **total number of hours** declared in JU, EU and Euratom grants **for an SME owner for a year** (i.e. a financial year) can NOT be higher than 1720.

1.5 Direct personnel costs: Access to research infrastructure personnel costs (A.6)

1.5.1 What? This budget category **covers** the personnel costs for access to infrastructure activities, i.e. normally:

- costs for employees (or equivalent)
  - basic remuneration and
  - for non-profit legal entities: additional remuneration
- costs for natural persons with direct contract and
- costs of seconded personnel (against payment).

1.5.2 Personnel costs for providing trans-national or virtual access to research infrastructure may be **declared as:**

- **actual costs** (most common case)

OR

- **unit costs** in accordance with the usual cost accounting practices (average personnel costs) (see Article 5.2(a)).

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

- 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** cost eligibility **conditions** set out in Article 16.1 or 16.2.

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

B. Direct costs of subcontracting *[(not covered by 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 13.1.1 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 (B.): Types of costs — Form — Eligibility conditions — Calculation

This budget category applies to all RIA, IA and CSA grants under the IMI2 JU MGA.

The additional options for access to research infrastructure (together with the corresponding Article 16 and other provisions) will be inserted into the GA if the action also involves access to research infrastructure.

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

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 **eligibility conditions**:

- 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** cost 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** cost 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.

Specific cases (subcontracting costs (B.)):

Staff provided by a temporary work agency — Costs for staff provided by a temporary work agency may exceptionally have to be declared under category B. 'subcontracting' (instead of category D.3 'other goods and services') if the temporary work agency carries out directly some task of the action (provided they comply with the eligibility conditions).

C. Direct costs of providing financial support to third parties *[(not covered by Point F)]*

[OPTION 1a to be used if Article 15.1 applies:** C.1 **Direct costs of providing financial support** are eligible if the conditions set out in Article 15.1.1 are met.**]

[OPTION 1b to be used if Article 15.2 applies:** C.2 **Direct costs of providing financial support in the form of prizes** are eligible if the conditions set out in Article 15.2.1 are met.**]

[OPTION 2**: Not applicable.**]

1. Direct costs of providing financial support to third parties (C.): Types of costs — Form — Eligibility conditions — Calculation

This optional budget category (together with the corresponding Article 15 and other provisions) will be inserted into the GA if the action also involves financial support to third parties.

1.1 What? This budget category **covers** the costs for the financial support given to third parties.

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 **eligibility conditions**:

- 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** cost 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 covered by 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 (D.1): Types of costs — Form — Eligibility conditions — Calculation

This budget category applies to all RIA, IA and CSA grants under the IMI2 JU MGA.

The additional option for access to trans-national research infrastructure (together with the corresponding Article 16 and other provisions) will be inserted into the GA if the action also involves access to research infrastructure.

1.1 What? This budget category **covers** the 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*) spent for the action.

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

Travel and subsistence costs relate to the personnel of the beneficiaries. They may also relate to experts that participate in the action on an ad hoc basis *(e.g. attending specific meetings),* if:

- the experts' participation is foreseen in Annex 1 or
- their participation is specifically justified in the periodic technical report and the JU approved it without formally amending the GA (simplified approval procedure).

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 Europe.

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 **eligibility conditions**:

- 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 that was 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 subsistence allowances as a lump sum /*per diem* payment, it is the lump sum/*per diem* amount that is considered an eligible cost, NOT the actual prices paid by the person receiving the lump sum or *per diem*. (For the purposes of the grant, these lump sum/*per diem* costs remain actual costs, NOT unit or lump sum costs under Article 5.2. They must be recorded in the beneficiary's accounts 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** cost 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.

Specific cases (travel costs (D.1)):

Combination with personal travels or travels for other purposes —The costs of a combined travel can be charged to the action — but ONLY up to the cost that would have been incurred if the travel would have been made exclusively for the action AND if:

- it is the usual practice of the beneficiary to pay for such travels *(e.g. travels combining professional and personal reasons)*
- it has been an actual cost for the beneficiary.

***Example*:**

The researcher flies from Madrid, where the beneficiary is established, to Prague for a project meeting. After the meeting, instead of flying back to Madrid, the researcher flies directly to New York to participate in an event not related to the action.

The beneficiary may charge to the action:

- *the cost of the flight from Madrid to Prague, and*
- *the part of the flight back from New York to Madrid up to the cost that it would have incurred for a flight back from Prague to Madrid after the end of the project meeting.*

⚠ **Record-keeping —** The beneficiary must keep evidence not only of the actual cost of the flight back, but also of the cost of the flight that the person would have taken if it would have returned directly after the end of the work for the action.

D.2 ***[OPTION 1 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 10.1.1 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 11.1 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 2 (alternative to option above) to be used if foreseen in the work plan** [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 10.1.1.*

*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 11.1 are met.**]***

[OPTION (in addition to one of the two first options above) for trans-national 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 access to research infrastructure (see Article 16.1).**]

[OPTION (in addition to one of the two first options above) for virtual access to research infrastructure, unless the work plan explicitly allows capital investments for 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 virtual access to research infrastructure (see Article 16.2).**]

[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 plan.

1. Equipment costs (D.2): Types of costs — Form — Eligibility conditions — Calculation

This budget category applies to all RIA, IA and CSA grants under the IMI2 JU MGA.

An option for full purchase costs will be inserted into the GA, if explicitly provided in the work plan/call.

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 **full 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 costs (D.2): Depreciation costs of equipment, infrastructure or other assets

1.1.1 What? This budget category **covers** the depreciation costs of equipment, infrastructure or other assets used for the action.

In some cases *(e.g. infrastructure)*, equipment costs may also 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 can NOT be declared as direct costs, but are covered by the 25 % flat rate for indirect costs *(see Article 6.2.E)*. Any depreciation declared as a direct cost under a Horizon 2020 action must be a direct cost under the beneficiary's cost accounting practices *(see Article 6.2).*

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 **eligibility conditions**:

- 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 16 (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 principles:

- the depreciable amount (purchase price) of the equipment must be allocated on a systematic basis over its useful life (i.e. the period during which the equipment is expected to be usable). If the equipment's useful life is more than a year, the beneficiary can NOT charge the total cost of the item in a single year (*see also 'cash-based accounting' below*)
- depreciated equipment costs can NOT exceed the equipment's purchase price
- depreciation can NOT be spread over a period longer than the equipment's useful life
- if the beneficiary does not use the equipment exclusively for the action, only the portion used on the action may be charged. The amount of use must be auditable

Example: *A microscope was bought before the action started and was not fully depreciated. For 6 months in reporting period 1 it was used for the action for 50 % of the time and for other activities for the other 50 % of the time. Linear depreciation is applied 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 declared for the project: EUR 50 000 (6 months of use) multiplied by 50 % of use for the action during those 6 months = EUR 25 000.

– the beneficiary can NOT charge depreciation for periods before the purchase of the equipment

Example: *A microscope was bought on 1 December. The reporting period ends on 31 December and the financial year also ends on 31 December. The maximum depreciation that the beneficiary may charge is 1 month (from 1 to 31 December); i.e. 1/12 of the annual depreciation. This applies even if the beneficiary recorded in its accounts at 31 December a full year of depreciation for the item.*

The depreciation costs must be calculated for each reporting period.

Specific cases (equipment costs (D.2)):

Low-value assets — The full cost of a low value asset may be eligible in the year when it is purchased if:

– the full cost is recorded in the accounts of the entity as expenditure of that year (i.e. NOT recorded as an asset subject to depreciation)

and

– the cost of the asset is below the low-value ceiling as defined under national law (e.g. *national tax legislation)* or other objective reference compatible with the materiality principle

and

– the item is used exclusively for the action in the year of purchase.

If the item is not used exclusively for the action in the year of purchase, only the portion used on the action may be charged.

Full price of an asset in one single year — As a general rule, beneficiaries cannot charge the total purchase price of equipment to the action, unless the GA explicitly foresees that option. The beneficiaries may therefore normally only charge the annual depreciation costs that correspond to the part of the equipment's use for the action. Declaring its *full* price in one single year would be considered either as not compliant with the international accounting standards or as an excessive cost — and therefore in both cases ineligible; *see 'cash-based accounting' below*).

Equipment bought before the action start — 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, a piece of 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 — As a general rule, beneficiaries cannot charge the total purchase price of equipment to the action, unless the GA explicitly foresees that option. The beneficiaries may therefore normally only charge the annual depreciation costs that corresponds to the part of the equipment's use for the action. This depreciation must be calculated in accordance with international accounting standards (i.e. notably spread over the equipment's useful life).

'Useful life' means the time during which the equipment is useful for the beneficiary. If the beneficiary does not normally calculate depreciation it may refer to its national tax regulations to define the useful life of the equipment.

Therefore, if the equipment's useful life is more than a year the beneficiary can NOT charge the full price in one single year (even if the beneficiary's usual accounting practice is to record the equipment's total purchase cost as an expense in one year).

Example:

A beneficiary that uses cash-based accounting buys a machine for EUR 100 000 in March 2015. According to the logbook of the machine, it is used for the action 50 % of the time from 1 July 2015 until the end of the action. 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 depreciation costs 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 declared 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 declared for the machine in the second reporting period

Prototype or pilot plants constructed by the beneficiary as part of the action tasks — Normally beneficiaries may only declare the depreciation costs for equipment, infrastructure or other assets that are used for the project.

However, (full) direct costs for construction of a prototype or pilot plant may exceptionally be eligible, if all of the following apply:

- building the prototype or pilot plant is (one of) the main action task(s) as described in Annex 1 of the GA.
- the costs are foreseen in the estimated budget (Annex 2 of the GA)
- the eligibility conditions of Articles 6.1 and 6.2 are met.

  If the beneficiary records the construction costs directly under a fixed assets account in the balance sheet rather than as expenses of the year, those costs will normally be considered as compliant with Article 6.1(a)(v) provided that:
  - it is in accordance with the national accounting standards and with the beneficiary's usual cost accounting practices,
  - there is no double charging of costs (in particular, no charging of depreciation costs for the prototype or pilot plant to another JU, EU or Euratom grant).

1.2 Equipment costs (D.2): Full cost of purchasing equipment, infrastructure or other assets

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

'Capitalised' means recorded as assets in the beneficiary's balance sheet.

1.3 Equipment costs (D.2): Costs of renting or leasing equipment

1.3.1 **What?** This budget category **covers** the costs of renting or leasing equipment used for the action (i.e. 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 **eligibility conditions**:

- 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:

- for leasing (finance leasing) with the option to buy the durable equipment:
  - the equipment leased by the beneficiary must be recorded as an asset of the beneficiary and the depreciation costs may be declared in accordance with the beneficiary's usual accounting practices
  - the costs declared can NOT 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 therefore NOT eligible.
  - the costs declared can NOT include any interest on loans taken to finance the purchase, or any other type of financing fee
- for 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 (since 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 not higher than the depreciation costs of similar equipment).

1.4 Equipment costs (D.2): Costs of equipment, infrastructure or other assets contributed in-kind against payment

1.4.1 **What?** This budget category **covers** the costs of equipment, infrastructure or other assets that were used for the action and '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 **eligibility conditions**:

- 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** cost eligibility **conditions** set out in Article 11.1.

1.4.4 The costs must correspond to the amount paid by the beneficiary and must not exceed the depreciation cost of the third party.

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 10.1.1 or

(b) contributed in kind against payment and in accordance with Article 11.1.

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 (D.3): Types of costs — Form — Eligibility conditions — Calculation

The budget category applies to all RIA, IA and CSA grants under the IMI2 JU MGA.

The additional options for access to research infrastructure (together with the corresponding Article 16 and other provisions) will be inserted into the GA if the action also involves access to research infrastructure.

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

- costs for consumables and supplies *(e.g. raw materials, etc.)*
- dissemination costs (including regarding open access to peer-reviewed scientific publications, *e.g. article processing or equivalent charges*, costs related to open access to research data and related costs, *such as data maintenance or storage and conference fees for presenting project-related research*)
- costs related to intellectual property rights (IPR) (including costs to protect the results or royalties paid for access rights needed to implement the action)
- costs for certificates on financial statements (CFS) and certificates on methodology (unless unnecessary, *for instance because the JU, EU or Euratom contribution is below the threshold of Article 20.4 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, the beneficiaries should contact the JU.

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).

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 **eligibility conditions**:

- 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** cost 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).

Specific cases (costs for other goods and services): (D.3)):

IPR access rights — Royalties paid for IPR access rights (and by extension any lump sum payments) are normally eligible, if all the eligibility conditions are fulfilled *(e.g. necessary for the implementation of the action, incurred during the action, reasonable, etc.)*.

The following are however NOT eligible (or eligible only within certain limits):

- royalties for an exclusive licence: are eligible only if it can be shown that the exclusivity (and thus the higher royalties) is absolutely necessary for the implementation of the action
- royalties for licensing agreements which were already in force before the start of the action: only the part of the licence fee that can be linked to the action is eligible (since the licence presumably goes beyond the action implementation)

Please note that under IMI2 IP policy, the rule is that access rights to background for the implementation of the action have to be granted on a royalty-free basis.

Protection of results — Costs related to the protection of the actions 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 related to protection of other intellectual property (*e.g. background patents*) are NOT eligible.

Plan for the exploitation and dissemination of results — Costs for drawing up the 'plan for the exploitation and dissemination of the results are normally NOT eligible since they will have been incurred before the start of the action, to prepare the proposal. Costs that occur when revising or implementing this plan may be eligible.

Open access — Costs related to open access to peer-reviewed scientific publications and research data are eligible, if the eligibility conditions are fulfilled. With explicit agreement by the JU it can also include fees levied for a membership scheme (if this is a requirement for publishing in open access or if membership is a pre-condition for significantly lower article processing charges).

Supplies in stock — 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.

Self-produced consumables with an accounting value in the inventory of the beneficiary. (i.e. not internally invoiced costs for goods and services) - Consumables that are manufactured (produced) by the beneficiary itself do not have a purchase price; the cost of production for the beneficiary is however normally recorded in the accounts of the beneficiary (as part of the inventory). Therefore, the eligible costs of self-produced consumables must be determined on the basis of its accounting value under the following conditions:

– only the direct costs within the accounting value of the consumable (cost of production) may be charged. If it is not possible to accurately determine the part of the accounting value corresponding to the direct costs then the beneficiary may charge the accounting value divided by 1,25 (in order to remove the Horizon 2020 flat-rate for indirect costs)

⚠ Beneficiaries can **NOT** charge the **commercial price** for self-produced consumables.

AND

– the amount resulting from the indent above may not be significantly higher than the market price of the consumable.

Example:

In an action in the field of agro-forestry research the beneficiary needs 100 plants to carry out tests. The beneficiary has a greenhouse where it keeps a stock of those plants. The market price of those plants (e.g. checked with offers or prices published in internet) is around EUR 10 per plant. The beneficiary has 150 plants in stock with a global accounting value of EUR 1 200 (= EUR 8 per plant). It is not possible to identify what part of that accounting value corresponds to direct costs of production of those plants.The beneficiary may use the self-produced plants for the action and charge EUR 6,4 per plant (8/1,25).

Staff provided by a temporary work agency — Costs for staff provided by a temporary work agency are eligible normally under category D.3 'other goods and services' if they comply with the eligibility conditions (and unless the temporary work agency carries out directly some task of the action, in which case it can be considered as subcontracting and should be declared under category B. 'subcontracting').

D.4 **Capitalised and operating costs of 'large research infrastructure'**[16] ***[OPTION 1 by default:*** *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 annotations to the H2020 grant agreements.****]***

[OPTION 2 for all topics within calls under Part 'Research Infrastructure' (except for e-Infrastructure topics): *Not applicable****]***

[OPTION 3 to be used if foreseen in the work plan: *Not applicable****]***

[16] '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 the H2020 Framework Programme Regulation 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 (D.4): Types of costs — Form — Eligibility conditions — Calculation

This optional budget category will be inserted into RIA, IA and CSA GAs, unless:

- it is excluded by the work plan.

1.1. What? It covers **capitalised costs** and **operating costs** of research infrastructure used for the action.

'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.[43]

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.[44] Only the depreciation costs of the research infrastructure corresponding to actual use may be declared as eligible direct costs.

[43] *See also International Financial Reporting Standard No 16.*

[44] *See Article 126 of the Financial Regulation No 966/2012.*

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.

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 JU-funded actions (or JU-funded and EU-funded actions). They should be changed/adapted only where strictly necessary to comply with the Horizon 2020 cost eligibility conditions. 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 to calculate the EUR 20 million threshold *(see below)* and therefore declares costs for this infrastructure, these costs cannot be considered nor declared by any other beneficiary under any other H2020 grant (in particular not by the owner of the research infrastructure).

'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 can NOT 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)*.

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

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

- 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 **action duration** and to 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 costs are declared) is **irrelevant** (i.e. it can be lower or higher than EUR 20 million) *(see also below point 2)*.

1.4 The **calculation** is explained in point 4.4.

2. Large research infrastructure (LRI)

Beneficiaries can declare capitalised and operating costs for **large research infrastructure**, if they comply with the definition and conditions listed in Article 6.2.D.4 (in particular if the large research infrastructure has a total value of at least EUR 20 million[45] 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 taken into account 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[46].

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 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 under this budget category.

⚠ **Recalculations & adjustments of financial statements (exceptional) —** Costs can be declared under this budget category ONLY after having obtained the positive ex-ante assessment from the Commission. Once obtained, the beneficiaries may, however, exceptionally adjust previous financial statements.

⚠ Costs declared in accordance with a positive ex-ante assessment will not be challenged during audits, except in case of irregularity or fraud. The auditors will only:

- ensure that the methodology used is the one that was submitted for ex-ante assessment and
- verify that the calculations (applying the methodology) are correct.

When? Applications for ex-ante assessment can be submitted at any time during grant preparation for any GA (by ticking the LRI box either in the Participant Register or during grant preparation).

[45] 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.

[46] *See Article 2(6) of the Horizon 2020 Framework Programme.*

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 conditions for declaring costs under Article 6.2.D.4).

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 Participant Register. 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.

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.

⚠ Although the ex-ante assessment is granted at entity level, it does not necessarily mean that it covers the entire legal entity from the beginning of H2020. It may cover only some departments, cost centres or even individual infrastructures of the beneficiary, possibly with different starting dates.

In that case, the beneficiary may use budget category D.4 only for cost items that are covered by the positive assessment (i.e. that use the methodology and comply with the conditions of the approval).

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 in category D.4 'large research infrastructure'. 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.

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) before 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 declared for 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)*[47].

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 JU/EU/Euratom grant (including grants awarded by a Member State, or by bodies other than the Commission for the purpose of implementing the JU, EU/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)*

  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.

> ⚠ **Combining H2020 & other EU grants —** The terminologies under the different EU funds/funding programmes 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 in category D.4 'Large research infrastructure' 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' 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. Direct measurement implies that a cost cannot be attributed to projects via an allocation key, a cost driver or a proxy.)

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.

[47] *See Article 129(1) of the Financial Regulation No 966/2012.*

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 time-sheets, 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

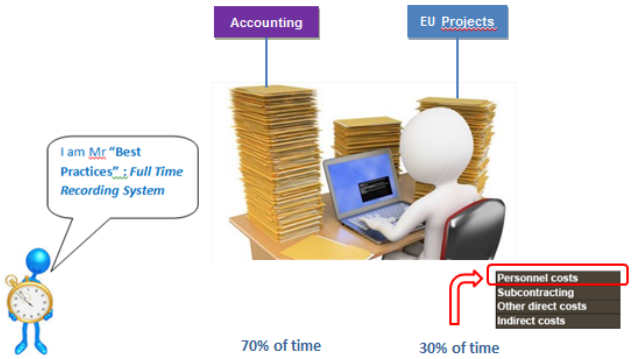
- for the other costs of the research infrastructure: to the number of hours/days/months of actual use of the research infrastructure for the action as a part of full capacity (i.e. the number of productive hours/days/months corresponding to the full potential use of the infrastructure)

  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. This 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 a JU funded action and three months for a non-JU 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 declared for the JU funded action is:

(EUR 120 000 / 12 months) x 2 months = EUR 20 000

AND NOT:

(EUR 120 000 / 5 months[48]) 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).

[48] 5 months = 2 months for an JU funded action + 3 months for non-JU research or other activities.

*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).*

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 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.

Direct measurement allows 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.

This cost remains however an actual cost, NOT a unit cost under Article 5.2.

The cost per unit of use must be **calculated** as follows:

$$\frac{\{\text{all capitalised costs of the research infrastructure + all operating costs of the research infrastructure}\}}{\text{total annual capacity}}$$

The unit of use must correspond to:

(i) the time of use expressed in hours, days or months and supported by evidence or

(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.

D.5 Costs of internally invoiced goods and services directly used for the action are eligible, if:

(a) they are declared on the basis of a unit cost calculated in accordance with the beneficiary's usual cost accounting practices;

(b) the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;

(c) the unit cost is calculated using the actual costs for the good or service recorded in the beneficiary's accounts, excluding any ineligible cost or costs included in other budget categories.

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

(d) the unit cost excludes any costs of items which are not directly linked to the production of the invoiced goods or service.

'Internally invoiced goods and services' means goods or services which are provided by the beneficiary directly for the action and which the beneficiary values on the basis of its usual cost accounting practices.

1. Costs of internally invoiced goods and services (D.5): Types of costs — Form — Eligibility conditions — Calculation

The budget category applies to all RIA, IA and CSA grants under the General MGA.

1.1 What? This budget category covers the costs for goods and services which the beneficiary itself produced or provided for the action. They include (non-exhaustive list):

- self-produced consumables *(e.g. electronic wafers, chemicals)*
- use of specific research devices or research facilities *(e.g. clean room, wind tunnel, supercomputer facilities, electronic microscope)*
- specialised premises for hosting the research specimens used for the action *(e.g. animal house, greenhouse, aquarium)*
- standardised testing or research processes *(e.g. genomic test, mass spectrometry analysis)*
- hosting services for visiting researchers participating in the action *(e.g. housing, canteen)*.

What not? Costs of goods of services purchased and costs of goods or services internally invoiced which are not directly used for the action *(e.g. supporting services like cleaning, general accountancy, administrative support, etc.)*.

1.2 Costs of internally invoiced goods and services must be **declared as** unit costs *(see Article 5.2(d))*.

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

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

⚠ It is NOT necessary to have a document called 'internal invoice' to support these costs, but the beneficiary should have a documented methodology how to determine them (such a methodology must be part of its usual costs accounting practices). The beneficiary must also keep supporting evidence of the use of the good or service for the action.

- be in line with the beneficiary's **usual cost accounting practices**

  It must be the usual practice of the beneficiary to calculate a unit cost for that good or service (i.e. an internal cost per unit invoiced to other departments of the same entity – not prices charged in the context of commercial sales or grants from other fund providers).

- the cost accounting practices must have been 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.

  Example: *if the beneficiary sets up a new unit cost which applies only to JU/EU actions, the internally invoiced costs based on that new unit cost would be ineligible.*

- the amount per unit must have been **calculated** using the actual costs recorded in the beneficiary's accounts, excluding any ineligible costs or costs already included in other budget categories

  If necessary, the unit cost must be adjusted to remove:

  – cost elements that are ineligible under the GA (even if they are part of the beneficiary's usual methodology for determining the unit cost for its internal invoices)

  Example: *The beneficiary uses internal invoices for the use of an electronic microscope based on a unit cost per hour of use. The methodology to calculate the unit cost includes costs of capital (e.g. interest charged by the bank for a loan used to buy the microscope). Those costs are ineligible under the GA (see Article 6.5) and must therefore be removed. The unit cost must be recalculated without them.*

  ⚠ A beneficiary cannot simply apply an estimated percentage of deduction on the amount of its internal invoices to remove ineligible costs. It has to ensure that the internal invoice does not include any ineligible costs under the GA.

  – costs of resources that do not belong to the beneficiary and which it uses free of charge *(e.g. personnel or equipment of a third party provided free of charge)*, because they are not in its accounts *(see Article 6.1(a)(v))*

    As an exception, if the resource for which the unit cost is calculated is co-owned by the beneficiary and a third party, the costs registered in the accounts of the third party for the co-owned resource do not need to be removed if:

    – the third party is mentioned in the grant *(e.g. as third party providing in-kind contributions in Annex 1)* and

    – the costs fulfil the other eligibility conditions of this Article *(e.g. directly linked to the resource, exclude ineligible costs, etc.)*.

  – costs that are already included in other budget categories (double funding of the same costs, *see Article 6.1(a)(i)*).

  Example: *The beneficiary uses internal invoices for water chemistry analyses, based on a unit cost per water sample analysed. The methodology to calculate the unit cost includes the cost of the staff carrying out the analysis. However, the costs for those persons are already charged to the action*

under direct personnel costs (category A.1). The cost of the staff must therefore be removed and the unit cost must be recalculated without them.

- if budgeted or estimated elements were used to calculate the amount per unit, those elements must:
  - be relevant (i.e. clearly related to invoiced item)
  - be used in a reasonable way (i.e. do not play major role in calculating the unit cost)
  - correspond to objective and verifiable information (i.e. their basis is clearly defined and the beneficiary can show how they were calculated)
- the amount per unit must have been calculated using only costs of items which were **directly linked** to the production of the internally invoiced goods or services *(e.g. staff, equipment, raw materials, etc.)*

  If a cost item is not used exclusively for the internally invoiced good or service, only the share used for the good or service may be counted (the percentage taken must be substantiated by persuasive evidence).

  Example: ***Shared staff —*** *Among the persons operating the beneficiary's wind tunnel, there is one person that is assigned only part-time to that wind tunnel; the rest of the time it works in another department. If the beneficiary includes the costs of this person at the rate of 50 %, it must be able to justify the reality of that percentage, for example, by any of the following:*
  - *reliable time recording system*
  - *a statistic survey performed in the past based on actual data*
  - *detailed calculations based on technical specifications or other scientific and technical requirements of the equipment or infrastructure allowing to reconcile the time spent by the person for the functioning of the wind tunnel*

  or
  - *a combination of these methods.*

  ⚠ **Ceiling** — The (share of the) working time of a person which is included in the calculation of the unit cost reduces the number of hours that the person can charge over the year to JU/EU/Euratom grants (*see Article 6.2.A. Calculation*). The same hours of the person cannot be charged twice to the grant, once embedded in the unit cost and again as direct personnel costs.

  If necessary, the unit cost must be adjusted to remove costs elements allocated to the unit cost indirectly; i.e. through cost drivers/allocation keys based on other cost items included in the unit cost *(e.g. for a clean room: the costs of the of the human resources department charged to the unit cost as a fixed amount per employee assigned to the clean room; or power supply costs allocated to the clean room on the basis of the square meters it occupies)*.

  Example: *Costs for an animal housing facility*

*Examples of costs **generally eligible** as part of the unit cost*	*Examples of costs **ineligible** as part of the unit cost*
– *staff working for the facility (e.g. keepers, veterinarians and other persons directly assigned to run the animal house)* – *consumables used for the animal housing (e.g. animal food, bedding)* – *depreciation of cages and other equipment directly linked to the housing of the animals* – *generic supplies like electricity or water — BUT only if the consumption of the facility has been directly measured (so that the cost can be accurately determined)*	– *cost of central services (e.g. accounting department, human resources department)* – *shared infrastructures (e.g. central heating, air-conditioning) and their maintenance* – *shared services with no differentiation of the costs incurred for the animal house facility (e.g. cleaning services)* – *depreciation of shared buildings (e.g. the animal housing is part of a main building of the beneficiary)*

– *maintenance and cleaning of the animal house facility — BUT only if the cost is directly identifiable (e.g. a separate invoice for the cleaning of the cages)*	– *bank interests, provisions for future expenses and any other ineligible costs listed in Article 6.5*

Example: *Wind tunnel*

*Examples of costs **generally eligible** as part of the unit cost*	*Examples of costs **ineligible** as part of the unit cost*
– *staff working for the facility (e.g. technicians, engineers and other persons directly assigned to the functioning of the wind tunnel)* – *depreciation of the equipment, including specific software and hardware necessary for the functioning of the wind tunnel* – *generic supplies like electricity — BUT only if the consumption of the facility has been directly measured (so the cost can be accurately determined)* – *insurance — BUT only if the cost is directly identifiable (e.g. a separate invoice for the insurance of the facility)* – *maintenance and cleaning of the wind tunnel equipment (e.g. air cooling system) — BUT only if the cost is directly identifiable (e.g. a separate invoice for the services)* – *calibration/metrology tests — BUT only if the cost is directly identifiable (e.g. a separate invoice for the services)*	– *cost of central services (e.g. accounting department, human resources department)* – *shared infrastructures (e.g. central heating, air-conditioning) and their maintenance* – *shared services with no differentiation of the costs incurred for the facility (e.g. cleaning services)* – *depreciation of shared buildings (e.g. the building where the installation is located is part of a main building of the beneficiary)* – *bank interests, provisions for future expenses and any other ineligible costs listed in Article 6.5*

1.1.4 They must be **calculated** according to the rules set out above (point 1.1.3).

E. Indirect costs *[(not covered by 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 Article 6.2 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 1 to be used if Article 15 applies:** costs of providing financial support to third parties[and][;]][**OPTION 2**: not applicable;]*

(d) ***[OPTION 1 if Article 6.2.F applies and the specific unit cost[/lump sum] cost covers indirect costs:** [unit costs under Articles 5.2(f) and 6.2.F.][lump sum costs under Articles 5.2(f) and 6.2.F.]] [**OPTION 2:** not applicable.]*

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, unless they can demonstrate that the operating grant does not cover any costs of the action.

[18] For the definition, see Article 121(1)(b) of the Regulation (EU, 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 Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ('**Financial Regulation No** 966/2012')(OJ L 218, 26.10.2012, p.1): '**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 (E.): Types of costs — Form — Eligibility conditions — Calculation

This budget category applies to all RIA, IA and CSA grants under the IMI2 JU MGA.

1.1 What? This budget category **covers** all costs for the action that are not *directly* linked to it *(see Article 6.2)*.

1.2 Indirect costs must be **declared** as a fixed flat-rate (*see Article 5.2(e);* ⚠ new in Horizon 2020).

In practice, the declaration is completely automatised: The indirect costs are automatically calculated by the IT system (on the basis of the direct costs).

⚠ The pre-filled amount may NOT be changed (except in case of a parallel operating grant, *see below*).

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

- 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 the 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 are not action tasks described in Annex 1 *(see Article 10)* is NOT considered subcontracting, and are therefore not 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)

– costs from specific cost categories (unit or lump-sum costs) that include indirect costs *(e.g. 'costs for energy efficiency measures in buildings', 'access costs for providing trans-national access to research infrastructure' and 'costs for clinical studies')*.

Example for calculating indirect costs:

A public university is a beneficiary under a GA and has incurred the following costs:

- EUR 100 000 in personnel costs (EUR 7 000 of which are an in-kind contribution in the form of a laboratory technician who carries out work for the action from his/her laboratory in a public research centre),

- EUR 20 000 subcontracting costs,

- EUR 10 000 other direct costs (consumables).

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

⚠ **Combining different JU/EU grants —** Beneficiaries that have **action grants** and **operating grants** may claim indirect costs in their action grants ONLY if they are able to demonstrate cost separation (i.e. that their operating grants do not cover any costs which are covered by their action grants).

Operating grants are annual grants to finance the operation and running costs of an entity *(e.g. call COMM-C2/01-2013 under the Europe for Citizens programme)*.

Example: *Entity A receives an operating grant under the Europe for Citizens programme for the financial year 2016 (i.e. from 01.01.2016 until 31.12.2016) The operating grant is not renewed in 2017. On 01.04.2016, entity A signs an H2020 action grant with one reporting period of 18 months (01.04.2016 – 31.12.2017). Beneficiary A may declare the indirect costs in the H2020 action grant as follows:*

- *from 01.04.2016 to 31.12.2016 ONLY IF it can demonstrate that the operating grant does not cover any costs of the action (see beow);*
- *from 01.01.2017 – 31.12.2017 under the normal H2020 rules (i.e 25% of the direct eligible costs since there is no operating grant covering the 2017 financial year).*

To **demonstrate cost separation**, the following conditions must be fulfilled:

- the operating grants may NOT cover 100% of the beneficiary's annual budget (i.e. it may not be full operating grants)
- the beneficiary must use analytical accounting which allows for a cost accounting management with cost allocation keys and cost accounting codes AND must apply these keys and codes to identify and separate the costs (i.e. to allocate them to either the action grant activities or the operating grant activities)
- the beneficiary must record:
  - all real costs incurred for the activities that are covered by their operating grants (i.e. personnel, general running costs and other operating costs linked to the WP) and
  - all real costs incurred for the activities that are covered by their action grants (including the indirect costs linked to the action)
- the allocation of the costs must be done in a way that leads to a fair, objective and realistic result.

Beneficiaries that **cannot fulfil these conditions** must EITHER:

- not sign/terminate the operating grants, in order to be able to claim indirect costs in the action grants
- keep the operating grants, but sign the action grants *without* indirect costs or request no indirect costs at reporting stage (i.e. lower the pre-filled amount in the indirect cost column of the financial statement).

4.0 The possibility to combine operating grants with action grants if costs are separated was introduced with GA version 4.0. It applies also to older grant agreements, if the beneficiaries can demonstrate that there is no double funding, in accordance with the above-listed principles (analytical accounting tools, full cost recording, fair allocation).

Best practice: In case of overlapping JU/EU action and operating grants, the beneficiary should immediately contact the JU (via the Funding and Tenders Portal). Be aware that operating grants are not always easy to identify.

F. [OPTION 1: [Insert name of specific cost category(ies[19])]][OPTION 2 if no specific cost categories applicable to the grant: Specific cost category(ies)]

[OPTION** 1a **for specific unit costs (if unit cost foreseen by Commission decision and applicable to the grant): [Insert name of specific cost category**] are eligible if they correspond to the amount per unit set out in Annex 2a multiplied by the actual number of units [and if [insert eligibility conditions, if any]].**]

[OPTION 1b for specific lump sum costs (if lump sum foreseen by Commission decision and applicable to the grant): [Insert name of specific cost category]** 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.**]

[same for each specific cost category]

[OPTION 2:** Not applicable**]

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

1. Specific cost categories (F.): Types of costs — Form — Eligibility conditions — Calculation

This optional budget category will be inserted into RIA, IA and CSA GAs, if the action involves activities for which the beneficiaries may declare specific unit or lump sum costs, i.e. currently:

- actions under Part III of Horizon 2020, Societal Challenge 3 'Secure, clean and efficient energy' involving energy efficiency measures in buildings: **costs for energy efficiency measures in buildings**

  This unit cost applies ONLY to Smart Cities and Communities calls *(e.g. SCC-01-2014 for the Work Programme 2014-2015)* and ONLY to the building-related demonstration activities.

- actions under Part I, 'Research infrastructures': **access costs for providing trans-national or virtual access to research infrastructure**

  The unit cost applies ONLY to actions with 'provision of access activities'.

  Examples: *INFRAIA-1-2014-2015, INFRADEV-3-2015 and INFRADEV-4-2014-2015*

- actions under Part III, Societal Challenge 1 'Health, demographic change and wellbeing': **costs for clinical studies**

  The unit cost applies ONLY to actions with clinical studies.

⚠ **Double funding risk —** Costs that are declared as a specific unit or lump sum cost may NOT be declared (a second time) under another budget category *(for the costs that are covered, see below)*.

Example:

The unit cost for efficiency energy measures in buildings covers subcontracting costs related to the energy efficiency measures. These cannot be declared as subcontracting costs. By contrast, costs for subcontracts not included in the unit cost (e.g. subcontracts required by the implementation of the action but not related to the efficiency energy measures) can be declared.

1.1 Specific cost category – costs for energy efficiency measures in buildings (F.2)

1.1.1 What? This budget category **covers** three categories of direct and indirect costs:

- costs of purchasing equipment, infrastructures and other assets directly necessary for additional energy efficiency measures in buildings
- costs of subcontracting the works necessary for those measures
- indirect costs for those measures.

Examples: *the costs of building elements (such as new insulation, new ventilation system, window, door, heating elements, control system) and the man-days for installing the building elements will be covered.*

What not? Fluids.

1.1.2 Costs of additional energy efficiency measures must be **declared as** the unit cost set out in Commission *Decision C(2013) 8196*[49] and set out in Annexes 2 and 2a of the GA.

The precise unit cost ('amount per unit', i.e. EUR/m2 of eligible conditioned gross floor area) is not pre-fixed by the Decision; it must be calculated for each beneficiary/linked third party — before signature of the GA — using the following table:

Short name beneficiary/linked third party	BEST No	Amount per unit	Estimated No of units	Total unit cost (cost per unit x estimated no of units)

The formula for calculating the 'amount per unit' (EUR/m2 of eligible conditioned gross floor area) is:

Amount per unit = {EUR 0.1 **x** estimated total kWh saved per m² per year **x** 10}

Beneficiaries may however 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.

The energy efficiency measures and the amount per unit must already be part of the proposal *(see the proposal templates and the BEST table provided on the call pages)* and be included in Annexes 1 and 2a.

The use of the unit cost is mandatory. The beneficiaries/linked third parties cannot choose between unit and actual costs.

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

- 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 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)*

[49] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_energy_en.pdf.

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

amount per unit *(see Annex 2a GA)* **x** number of actual m² of surface area built or refurbished ('conditioned')

The 'm2 of eligible conditioned gross floor area' may NOT include parts of the buildings which are not affected by the measures, *e.g. garages*.

Example for calculating unit costs for energy efficiency measures:

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)= 0,1EUR/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} =*

*0,1 EUR/kWh * 100kWh/m²/year * 10 years= 100 EUR/m²*

After application of the 70% funding rate for innovation actions (or for non-profit beneficiaries/linked third parties: 100%), it will give an indicative JU contribution of 70 EUR/m² (or 100 EUR/m² if the funding rate is 100%).

1.2 Specific cost category – access costs for providing trans-national access to research infrastructure (F.2)

1.2.1 What? This budget category **covers** direct and indirect 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).

⚠ This specific budget category must be distinguished from the general budget category D.4 **'capitalised and operating costs of large research infrastructure'** *(see Article 6.2.D.4)*.

Beneficiaries that use budget category F.2 'access costs for providing trans-national access to research infrastructure' can NOT — under the same grant — declare costs under budget category D.4 'capitalised and operating costs of large research infrastructure'.

What not? Travel and subsistence costs for users to get access are not included in the access costs. (These costs can be reimbursed separately, in category D.1 'travel'; *see Article 6.2.D.1 and Article 16*.)

1.2.2 If they are declared under this budget category (i.e. F.2 'access costs for providing trans-national access to research infrastructure'), the costs must be **declared as** the unit cost calculated in accordance with Commission Decision C(2013) 8199[50] and set out in Annex 2 and 2a of the GA.

The precise unit cost (amount per unit, i.e. EUR/unit of access) is not pre-fixed by the Decision; it must be calculated for each access provider and installation, using the calculation table provided on the call page and then summarised in the following table:

Short name access provider	Short name infrastructure	Installation		Unit of access	Amount per unit	Estimated No of units	Total unit cost (cost per unit x estimated no of units)
		No	Short name				

[50] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_tna-infra_en.pdf.

The 'unit of access' to the installation must be identified (i.e. the unit used to measure the total quantity of access that the installation provides to its users)

The formula for calculating the 'amount per unit of access' (EUR/unit of access) is:

$$\text{Amount per unit} = \frac{\text{average annual total access cost (over past two years}^{51})}{\text{average annual total quantity of access (over past two years}^{52})}$$

The averages must be 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 long-term maintenance).

Access providers may however submit a proposal with a unit cost calculated on the basis of average costs lower than their historical costs (in Part B of their proposal).

The 'total quantity of access' means all the units of access annually provided by the installation, included access financed under previous JU/EU grants, if any.

The 'annual total access costs to the installation' is calculated on the basis of the following categories of eligible costs:

- 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 costs of administrative, technical and scientific staff directly assigned to the functioning of the installation and to the support of the users
  - 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 user's research work
  - 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, transport 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

  Costs calculated in accordance with the beneficiary's usual cost accounting practices are acceptable for personnel (average personnel costs) and internally invoiced goods and services — if this is the normal practice of the beneficiary.
- the indirect costs for providing access to the installation, equal to 25% of the eligible direct costs, minus any costs of subcontracting (i.e. costs of contracts for maintenance and repair, installation management, scientific services and 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; costs are not eligible; *se also Article 6.2.D.2*
- travel and subsistence costs for users.
- ineligible costs as referred to in Article 6.5.

[51] In exceptional and duly justified cases, the JU may agree to a different reference period.
[52] In exceptional and duly justified cases, the JU may agree to a different reference period.

–

Example (amount per unit):

Assuming that a telescope provided 6 100 hours of access in year N-1 and 5 900 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 (6 100, 5 900) = 6 000

Unit cost = average (3 200 000, 2 800 000) / average (6 100, 5 900) = 3 000 000 /6 000 = 500 €

The detailed calculation tables (one for each installation) must already be part of the proposal *(see proposal templates and the calculation table provided on the call pages)* and be included in Annex 1; the summary table must be included in Annex 2a.

The proposal and Annex 1 should describe both the access services provided and the logistical, technological and scientific support users need in order to make use of the installation (including ad-hoc training and preparatory and closing activities necessary to use the installation).

⚠ The JU may verify that the proposed unit costs comply with the prescribed calculation method (and correct them, if needed).

As mentioned above, *before* GA signature, the beneficiaries can still opt for declaring the costs not as unit cost, but as actual costs under other budget categories *(see Article 6.2.A-E)*. One cost form per installation.

The use of unit costs for trans-national access activities is optional, i.e. each beneficiary/linked third party can decide independently whether to be reimbursed on the basis of unit costs, actual costs or a combination of the two.

Afterwards (once the GA is signed), the choice can be changed only via an amendment (because it is necessary to determine the unit cost; *see Articles 4.2 and 55*).

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

- 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** cost eligibility **conditions** set out in Article 16.1

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

amount per unit *(see Annex 2a GA)* **x** number of actual units of access provided

1.3 Specific cost category – costs for clinical studies (F.2)

1.3.1 What? This budget category **covers** the following direct and indirect costs for 'clinical studies' (i.e. any clinical research involving a substantial amount of work related to the observation of, data collection from, or diagnostic or therapeutic intervention on multiple or individual patients):

- direct personnel costs of the doctors and other medical personnel and technical personnel (including data managers) that conducted the study
- direct costs of consumables used for the study

- direct costs of the medical equipment used for the study, including:
  - depreciation costs
  - costs of service contracts necessary for their functioning (including specific cleaning, maintenance and repair)
- costs of other specific service contracts necessary for the study (including data analysis, if subcontracted)
- indirect costs for the study.

What not? Travel and subsistence costs of study participants and horizontal tasks *(e.g. study monitoring, study coordination)* are not covered by the clinical studies unit cost. (These costs can be reimbursed separately, *e.g. in categories A. 'personnel', D.1 'travel' and D.3 'other goods and services'; see Articles 6.2.A, 6.2.D.1, 6.2.D.3*.)

1.3.2 If they are declared under this budget category (i.e. F.2 'costs for clinical studies'), the costs must be **declared as** the unit cost set out in Commission *Decision C(2016) 7553*[53] and set out in Annex 2 and 2a of the GA.

The precise unit cost (amount per unit, i.e. EUR/study participant) is not pre-fixed by the Decision; it must be calculated for each study/study sequence *(see below)* and beneficiary/linked third party/third party providing in-kind contributions — before signature of the GA — using the following table:

Task, Direct cost categories	**Resource per patient**	**Costs year N-1** **Beneficiary 1** **[short name]**	**Costs year N-1** **Linked third party 1a** **[short name]**	**Costs year N-1** **Beneficiary 2** **[short name]**	**Costs year N-1** **Linked third party 2a** **[short name]**	**Costs year N-1** **Third party giving in-kind contributions 1** **[short name]**
Sequence No. 1						
Task No. 1 Blood sample						
(a) **Personnel costs:** - Doctors	n/a					
- Other Medical Personnel	Phlebotomy (nurse), 10 minutes	8,33 EUR	11,59 EUR	10,30 EUR	11,00 EUR	9,49 EUR
- Technical Personnel	Sample Processing (lab technician), 15 minutes	9,51 EUR	15,68 EUR	14,60 EUR	15,23 EUR	10,78 EUR
(b) **Costs of consumables**:	Syringe	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
	Cannula	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR

[53] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit%20costs_clinical_studies.pdf

	Blood container	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(c) **Costs of medical equipment**:	Use of -80° deep freezer, 60 days	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
	Use of centrifuge, 15 minutes	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(d) **Costs of services**	Cleaning of XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(e) **Indirect costs** (25% flat-rate)		XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
Task No. 2						
…						
Amount per unit (unit cost sequence 1):		**XX EUR**	**XX EUR**	**XX EUR**	**XX EUR**	**XX EUR**
<u>Sequence No. 2</u>						
Task No. 1 XXX						
(a) **Personnel costs:** - Doctors	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
- Other Medical Personnel	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
- Technical Personnel	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(b) **Costs of consumables**:	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(c) **Costs of medical equipment**:	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(d) **Costs of services**	XXX	XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
(e) **Indirect costs** (25% flat-rate)		XX EUR	XX EUR	XX EUR	XX EUR	XX EUR
Task No. 2						
…						
Amount per unit (unit cost sequence 2):		**XX EUR**	**XX EUR**	**XX EUR**	**XX EUR**	**XX EUR**
…						
Amount per unit (unit cost entire study):		**XX EUR**	**XX EUR**	**XX EUR**	**XX EUR**	**XX EUR**

⚠ Where the nature of the clinical study allows it, it can be split into sequences, *e.g. treatment cycles*. The number of sequences should be limited to the necessary minimum *(e.g. 3 sequences)*.

Separating the unit cost table into sequences will allow you to declare unit costs for study participants that dropped out during the study, but finalised the tasks of a sequence. Thus, the sequence unit cost can be charged for the participant, for the completed sequence(s).

Each beneficiary/linked third party/third party must calculate its unit cost on the basis of its historical data (estimated costs of the components per task and study participant). Historical cost reference data should be taken from the last closed financial year at the time of submission of the grant proposal (certified or auditable profit and loss account for 'year N-1').

Beneficiaries can choose whether to include *all* the cost components in their unit cost or only *some*, but they may NOT add any other cost categories.

They may choose whether to include personnel costs or not, but if they do, *all* the study-related personnel costs must be included (they cannot choose for individual persons/types of personnel). Moreover, this choice must be applied to all the tasks and sequences of the study. If personnel costs are included, they must moreover use one of the three available categories: doctors, other medical personnel or technical personnel (no other categories, *e.g. nurses must be included in 'other medical personnel').*

For consumables, medical equipment and services, there is more flexibility. They can choose for each individual cost items, if they would like to include it in their unit cost (or declare them as actual costs).

The choice (whether to include a cost component in the unit cost or not) is made by adding the costs into the table (or leaving it blank). All blank cost components are outside the unit cost (and can normally be declared as actual costs, if all the eligibility conditions are met).

The beneficiaries/linked third parties/third parties may therefore (for the same study/sequence) not only obtain completely different amounts per unit, but also include different components into their calculation.

Example:

Beneficiary No 1 decided to claim:

- *personnel costs as unit costs*
- *all consumables for sequence 1 as actual costs, all consumables in sequence 2 as unit cost and consumables in sequence 3 partially as actual, partially as unit costs*
- *medical equipment partially as actual, partially as unit cost (e.g. cost of a standard MRI scan — part of the study protocol sequence 2 task 3 — as unit costs and the costs for the use of an novel imaging tool — also sequence 2 task 3 — as actual costs, for instance because the historical data is not fully available)*
- *all services as unit costs.*

Beneficiary No 2 decided to claim all study costs as unit costs.

Linked third party 2a decided not to use the unit cost for any of the study costs (all costs as actual costs).

The formulas for calculating the individual cost components are:

For **personnel costs**:

For personnel costs of doctors: 'average hourly cost for doctors', i.e.:

$$\{\frac{\text{certified or auditable total personnel costs for doctors for year N-1}}{\{1720 * \text{number of full-time-equivalent for doctors for year N-1}\}} \text{ multiplied by estimated number of hours to be worked by doctors for the task (per participant)}\}$$

For personnel costs of other medical personnel: **'**average hourly cost for other medical personnel', i.e.:

{certified or auditable total personnel costs for other medical personnel for year N-1
{1720 * number of full-time-equivalent for other medical personnel for year N-1}
multiplied by
estimated number of hours to be worked by other medical personnel for the task (per participant)**}**

For personnel costs of technical personnel: **'**average hourly cost for technical personnel', i.e.:

{certified or auditable total personnel costs for technical personnel for year N-1
{1720 * number of full-time-equivalent for technical personnel for year N-1}
multiplied by
estimated number of hours to be worked by technical personnel for the task (per participant)**}**

'total personnel costs' means actual salaries + actual social security contributions + actual taxes and other costs included in the remuneration, provided they arise from national law or the employment contract/equivalent appointing act

For **consumables**:

For each cost item: 'average price of the consumable', i.e.:

{{certified or auditable total costs of purchase of the consumable in year N-1
total number of items purchased in year N-1}
multiplied by
estimated number of items to be used for the task (per participant)**}**

'total costs of purchase of the consumable' means total value of the supply contracts (including related duties, taxes and charges such as non-deductible VAT) concluded by the beneficiary for the consumable delivered in year N-1, provided the contracts were awarded according to the principle of best value- for-money and without any conflict of interests

For **medical equipment**:

For each cost item: 'average cost of depreciation and directly related services per unit of use', i.e.:

{{ certified or auditable total depreciation costs in year N-1 + certified or auditable total costs of purchase of services in year N-1 for the category of equipment concerned}
total capacity in year N-1
multiplied by
estimated number of units of use of the equipment for the task (per participant)**}**

'total depreciation costs' means total depreciation allowances as recorded in the beneficiary's accounts of year N-1 for the category of equipment concerned, provided the equipment was purchased according to the principle of best value for money and without any conflict of interests + total costs of renting or leasing contracts (including related duties, taxes and charges such as non-deductible VAT) in year N-1 for the category of equipment concerned, provided they do not exceed the depreciation costs of similar equipment and do not include finance fees

For **services**:

For each cost item: 'average cost of the service per study participant', i.e.:

{certified or auditable total costs of purchase of the service in year N-1
total number of patients or subjects included in the clinical studies for which the service was delivered in year N-1**}**

'total costs of purchase of the service' means total value of the contracts concluded by the beneficiary (including related duties, taxes and charges such as non-deductible VAT) for the specific service delivered in year N-1 for the conduct of clinical studies, provided the contracts were awarded according to the principle of best value for money and without any conflict of interests

For **indirect costs**:

{{{cost component 'personnel costs' + cost component 'consumables' + cost component 'medical equipment'}

minus

{costs of in-kind contributions provided by third parties which are not used on the beneficiary's premises + costs of providing financial support to third parties (if any)}**}**

multiplied by

25%}

The estimation of the resources to be used must be done on the basis of the study protocol and must be the same for all beneficiaries/linked third parties/third parties involved.

The year N-1 to be used is the last closed financial year at the time of submission of the grant application.

This table must already be part of the proposal *(see the proposal templates and the template for essential information to be provided for proposals including clinical studies provided on the call pages)* and be included in Annex 1 and 2a of the GA.

⚠ The JU may verify that the proposed unit costs comply with the prescribed calculation method (and correct them, if needed).

As mentioned above, *before* GA signature, the beneficiaries can still opt for declaring the costs components not as unit cost, but as actual costs under other budget categories *(see Article 6.2.A-E)*.

The use of unit costs for clinical studies is optional, i.e. each beneficiary/linked third party can decide independently (and for the different cost components/cost items) whether to be reimbursed on the basis of unit costs or of costs actually incurred.

Afterwards (once the GA is signed), the choice can be changed only via an amendment (because it is necessary to determine the unit cost; *see Articles 4.2 and 55*).

⚠ Amendment requests to change the unit cost calculation will be accepted ONLY if there was a change in the study protocol *(e.g. due to requests from competent authorities, regulatory agencies or ethics committees)* or if there was an error in the calculation.

⚠ The maximum grant amount *(see Article 5.1)* will NOT be increased.

⚠ In case of an amendment, it is still the historical costs of the last closed financial year at the time of submission of the grant proposal that must be used to re-calculate the unit cost.

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

- 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 carrying out clinical studies**.**

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

amount per unit *(see Annex 2a GA)* **x** the number of study participants

1.4 Specific cost category — access costs for providing *virtual* access to research infrastructure (F.2)

1.2.1 What? This budget category **covers** direct and indirect costs for providing virtual access to research infrastructure (i.e. the installation's operating costs and costs related to logistical, technological and scientific support for users, including costs for preparatory and closing activities that may be necessary to provide the requested access services).

⚠ This specific budget category must be distinguished from the general budget category D.4 **'capitalised and operating costs of large research infrastructure'** *(see Article 6.2.D.4)*.

Beneficiaries that use budget category F.2 'access costs for providing virtual access to research infrastructure' can NOT — under the same grant — declare costs under budget category D.4 'capitalised and operating costs of large research infrastructure'.

What not? Contributions to the capital investment of the infrastructure (including rental, lease or depreciation costs of buildings, as well as depreciation and lease of instrumentation), unless otherwise specificed in the work programme/call. In the latter case, only the portion used to provide virtual access under the action can be eligible.

1.2.2 If they are declared under this budget category (i.e. F.2 'access costs for providing virtual access to research infrastructure'), the costs must be **declared as** the unit cost calculated in accordance with Decision of 6 February 2019[54] and set out in Annex 2 and 2a of the GA.

The precise unit cost (amount per unit, i.e. EUR/unit of access) is not pre-fixed by the Decision; it must be calculated for each access provider and installation, using the calculation table provided on the call page and then summarised in the following table:

Short name access provider	Short name infrastructure	Installation		Unit of access	Amount per unit	Estimated No of units	Total unit cost (cost per unit x estimated no of units)
		No	Short name				

The 'unit of access' to the installation must be identified (i.e. the unit used to measure the total quantity of access that the installation provides to its users)

The formula for calculating the 'amount per unit of access' (EUR/unit of access) is:

$$\text{Amount per unit} = \frac{\text{total virtual access costs to the installation over last year}}{\text{total quantity of virtual access to the installation provided over the last year}}$$

The total virtual access costs must be based on:

- the beneficiary's certified or auditable historical data
- costs allocated to the installation according to the beneficiary's usual cost accounting practices, and
- excluding periods when the installation was not usable (out of order, under repair or undergoing long-term maintenance).

Access providers may however submit a proposal with a unit cost lower than the one calculated on the basis of their historical costs (in Part B of their proposal).

The 'total quantity of access' means all the units of access annually provided by the installation, included access financed under previous EU grants, if any.

The 'total virtual access costs to the installation' is calculated on the basis of the following categories of eligible costs:

[54] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/unit_costs/unit-costs_virtual-access_infra.pdf

- the direct costs incurred by the access provider for the ' total quantity of virtual access to the installation provided over the last year', as recorded in the certified or auditable profit-and-loss accounts of the reference period (year N-1) for:
  - personnel costs of administrative, technical and scientific staff directly assigned to the functioning of the installation and to the support of the users
  - 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
  - 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 specifically supplied for the installation
  - costs of software licence, internet connection or other electronic services for data management and computing supplied specifically for the installation when they are needed to provide virtual access services
  - costs of specific scientific services included in the access provided or needed for the provision of virtual access by the installation.

  Costs calculated in accordance with the beneficiary's usual cost accounting practices are acceptable for personnel (average personnel costs) and internally invoiced goods and services — if this is the normal practice of the beneficiary.
- the indirect costs for providing access to the installation, equal to 25% of the eligible direct costs, minus any costs of subcontracting (i.e. costs of contracts for maintenance and repair, installation management, scientific services and 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) unless otherwise specificed in the Work Programme.
- ineligible costs as referred to in Article 6.5.

The detailed calculation tables (one for each installation) must already be part of the proposal *(see proposal templates and the calculation table provided on the call pages)* and be included in Annex 1; the summary table must be included in Annex 2a.

The proposal and Annex 1 should describe both the access services provided and the logistical, technological and scientific support needed to enable the virtual use of the installation by users, as well as any conditions that users must meet to have virtual access to the installation.

⚠ The JU may verify that the proposed unit costs comply with the prescribed calculation method (and correct them, if needed).

As mentioned above, *before* GA signature, the beneficiaries can still opt for declaring the costs not as unit cost, but as actual costs under other budget categories *(see Article 6.2.A-E)*. One cost form per installation.

The use of unit costs for virtual access activities is optional, i.e. each virtual acess provider (beneficiary/third party) can decide independently whether to be reimbursed on the basis of unit costs, actual costs or a combination of the two.

Afterwards (once the GA is signed), the choice can be changed only via an amendment (because it is necessary to determine the unit cost; *see Articles 4.2 and 55*).

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

- 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 virtual access to research infrastructure to scientific communities
- fulfil the **additional** cost eligibility **conditions** set out in Article 16.1

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

amount per unit *(see Annex 2a GA)* **x** number of actual units of access provided

6.3 Conditions for costs of linked third parties to be eligible

***[OPTION 1 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 14.1.1.]*

***[OPTION 2:** Not applicable]*

1. Costs of linked third parties (A.-F.)

This option (together with the corresponding Article 14 and other provisions) will be inserted into the GA if the action is implemented with linked third parties.

⚠ **Linked third parties —** Linked third parties are allowed to *fully* participate in the action, like the beneficiary they are linked to. They will therefore be treated for many issues (including cost eligibility) like beneficiaries.

The same rules apply, but with the changes needed to render them applicable to linked third parties.

Examples:

1. *'Incurred by the beneficiary' should be read as 'incurred by the linked third party'.*
2. *'On the beneficiary's payroll' should be read as 'on the linked third party's payroll'.*

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** cost eligibility **conditions** set out in Article 14.1.1.

Depending on the type of cost, they must be **declared** by the linked third party under the corresponding budget category (as the beneficiary would use for its own costs).

Examples:

1. *Remuneration of employees must be declared in category A.1 'personnel costs' (Article 6.2.A.1).*
2. *Depreciation costs of equipment must be declared in category D.2 'equipment' (Article 6.2.D.2).*

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.

1. In-kind contributions by third parties free of charge (A.-F.)

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** cost eligibility **conditions** set out in Article 12.1.

Depending on the type of cost, they must be **declared** (by the beneficiary/linked third party) under the budget category they would use for their own costs.

Example: *Depreciation costs of equipment contributed free of charge must be declared in category D.2 'equipment' (Article 6.2.D.2).*

⚠ In-kind contributions *free of charge* must be **distinguished** from **in-kind contributions *against payment*** *(see Article 11)*.

In-kind contributions *against payment* are costs *of* the beneficiary (because they have to pay) and are therefore already explicitly mentioned in the different budget categories *(see Article 6.2.A.3, 6.2.D.2, 6.2.D.3)*. Their costs (i.e. the payment) must be declared under those specific budget categories.

Examples:

1. *The cost of personnel seconded against payment must be declared in category A.3 'seconded personnel (against payment)' (Article 6.2.A.3).*

2. *Costs of equipment contributed against payment must be declared in category D.2 'equipment' (Article 6.2.D.2).*

The costs of in-kind contributions free of charge (i.e. the costs of the third party offering them) can be assimilated to beneficiary costs and must be declared in the budget category that the beneficiary would have used.

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 JU;

(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 JU, EU or Euratom grant (including other grants awarded by the JU, grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the JU 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, unless it can demonstrate that the operating grant does not cover any costs of the action *[;][.]*

*[(c) **OPTION for cost categories explicitly excluded in the work plan:** [insert name of excluded cost category]].*

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. Ineligible costs

Costs are **ineligible**, if one of the following applies:

- they **do not meet the general and specific eligibility conditions** 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 JU.

Conversely, bank charges for the distribution of the JU funding may constitute an eligible cost for the coordinator (if the eligibility conditions of Article 6.1 and Article 6.2.D.3 are met).

– **deductible VAT**

'Deductible VAT' means VAT that is recoverable under the national 'VAT system' (i.e. the system of collection and deduction under the national VAT legislation). 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.

- **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 JU, EU or Euratom grant** (i.e. double funding)

  This includes:

  - costs funded directly by the JU, 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[55] from the EU/Euratom, then the indirect costs of that beneficiary are not eligible and the 25% flat-rate should not be applied - unless it can demonstrate that the operating grant does not cover any costs of the action *(see Article 6.2.E)*.

    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).*

- **cost categories explicitly excluded in the work plan/call** (if option applies).

If a beneficiary **declares ineligible costs**, they will be rejected and, if needed, other measures specified in Chapter 6 *(e.g. suspension, termination, grant reduction, etc.)* may be taken.

Specific cases (ineligible costs):

Non-identifiable VAT (in foreign invoices) — 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, if it is not possible to deduct the VAT. That VAT would therefore be eligible.

Partially deductible VAT — Some entities have a mixed VAT regime, meaning that they carry out VAT exempt or out-of-the-scope activities AND VAT taxed activities. When VAT paid on goods or services by these entities cannot be directly allocated to one or the other category of activities it will be *partially* deductible. Therefore it will also be *partially* eligible. The eligible part corresponds to the pro-rata of the VAT which is not deductible for that entity.

In these cases, the beneficiary uses a provisional (estimated) deduction ratio during the year. The final ratio is only determined at the end of the fiscal year. The beneficiary must regularise VAT when closing its accounts. Therefore, the beneficiary must also regularise the VAT costs declared for the grant (by declaring, in the next reporting period, an adjustment for the difference between the provisional deduction ratio and the final ratio).

[55] For the definition, *see Article 121(1)(b) of the Financial Regulation No 966/2012:* '**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.

Duties — The eligibility of duties depends on the eligibility of the cost item to which they are linked (i.e. in whose price they are included). If the item is eligible, the duty is also eligible

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

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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 action (and especially the research work) as detailed in Annex 1 ('technical implementation')

  The beneficiaries must prevent delays in implementing the action, or reduce them as much as possible. In addition, they must immediately inform the JU *(see Article 17)*.

AND

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

  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 applicable national law.*

⚠ Normally, the beneficiaries must comply **BOTH** with the national law of the **country** in which they are **established** AND that of the country where the **action** is **implemented**.

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION — THIRD PARTIES INVOLVED IN THE ACTION

ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION – THIRD PARTIES INVOLVED IN 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).
- call upon international partners to implement action tasks described in Annex 1 (see Article 14a).

In these cases, the beneficiaries retain sole responsibility towards the JU and the other beneficiaries for implementing the action.

1. Participants: 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.

> ***Examples (acceptable):***
>
> ***1.*** *Start-up company with no resources at the time of proposal submission, but with a credible business plan described in the application.*
>
> ***2.*** *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)* and declare these costs for the action. They may also call on international partners to carry out work under the action without receiving JU funding (see *Article 14a*) (**third parties involved in the action**).

Suppliers of goods, works or services and third parties providing in-kind contributions (against payment or free of charge) do not implement action tasks themselves but only make resources available to the beneficiary, whereas subcontractors, linked third parties and international partners implement action tasks.

⚠ Beneficiaries using third parties remain **fully responsible** for them under the GA.

⚠ **Linked third parties —** Linked third parties are allowed to *fully* participate in the action, like the beneficiary they are linked to. They will therefore be treated for many issues like beneficiaries.

Third parties involved in the action do NOT sign the GA *(see Article 1)*.

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 necessary to implement action tasks by beneficiaries.	Subcontracts concern the implementation of action tasks; they imply the implementation of 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 (if creating the website is not an action task); contract for organisation of the rooms and catering for a meeting (if the organisation of the meeting is not an action task 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. They must fulfil the same conditions for participation under the H2020 legal framework and funding under the JU legal framework as beneficiaries (for instance,

	be established in an EU Member State, or H2020 associated country) For more information on conditions for participation and funding, *see the Funding and Tenders Portal Online Manual*.
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).*

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).*

Specific cases (third parties involved in the action):

Authorisation to administer — Coordinators that are secondary or higher education establishments and coordinators that are public bodies may exceptionally delegate the administration of the payments to another legal entity (third party), in most cases a foundation.

The third party must fulfil the following conditions:

- it must have been granted an '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 JU funds.

⚠ **Project management —** Coordination and administration tasks are considered **action tasks**.

⚠ Coordinators using a third party with authorisation to administer remain **fully responsible** for it under the GA.

In this case, the option in Article 41.2(b) for authorisations to administer must be added to the grant agreement. The bank account number to be provided under Article 21.8 must be that of the entity and the payments will be transferred directly to it. The entity must therefore be registered in the Participant Register and validated by the JU. It will get its own PIC — although it is not a beneficiary.

The costs of the entity may be declared by the coordinator as in-kind contributions (free of charge or against payment; *see Articles 6, 11 and 12*).

This table gives an **overview** of the different kinds of **third parties**:

TYPE	CHARACTERISTICS						
	Works on action tasks?	**Provides resources or services for action?**	**What is eligible?**	**Must be indicated in Annex 1?**	**Indirect costs?**	**Selecting the third party**	**GA articles**
Linked third party	**YES**	**NO**	**Costs**	**YES**	**YES**	Must be affiliated or have a legal link and be eligible for funding	Article 14
International Partners	**YES**	**NO**	**N/A**	**YES**	**N/A**	Must not be eligible for funding	Article 14a
Subcontractor	**YES**	**NO**	**Price**	**YES**	**NO**	Must be best value for money, avoid conflict of interest	Article 13
Third party providing in-kind contribution	**NO**	**YES**	**Costs**	**YES**	**YES**	May not be used to circumvent the rules	Articles 11 and 12
Contractor (selling, equipment, good or service)	**NO**	**YES**	**Price**	**NO**	**YES**	Must be best value for money, avoid conflict of interest	Article 10
Third parties receiving financial support[56]	The third parties participate in the action as recipients.		**Amount of support given**	**YES**	**NO**	According to the conditions in Annex 1	Article 15

[56] Only if allowed in the work plan/call.

ARTICLE 9 — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING JU FUNDING

ARTICLE 9 — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING JU FUNDING

***[OPTION 1 for beneficiaries not receiving JU funding*: 9.1 Rules for the implementation of action tasks by beneficiaries not receiving JU funding**

*Beneficiaries that [are not eligible for JU funding][or][request zero JU funding] ('**beneficiaries not receiving JU funding**') must implement the action tasks attributed to them in Annex 1 in accordance with 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).*

***[OPTION A, to be used if the beneficiary not receiving JU funding IS NOT the coordinator and does not have linked third parties receiving JU funding:** Chapter 3, Articles 10 to 15, 18.1.2, 20.3(b), 20.4(b), 20.6, 21, 23a, 26.4, 27.2, 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 [**OPTION 1 by default**: these beneficiaries][**OPTION 2 if more than one of the three options apply to the grant**: [insert short name of the beneficiary]].*

*[They][The beneficiary] will not be subject to financial checks, reviews and audits under Article 22.**]***

***[OPTION B, to be used if the beneficiary/coordinator not receiving JU funding has linked third parties receiving JU funding:** Chapter 3, Articles 10 to 15, 20.6, 23a and 40 do not apply to [**OPTION 1 by default**: these beneficiaries][**OPTION 2 if more than one of the three options apply to the grant**: [insert short name of the beneficiary]].*

*Articles 26.4, 27.2, 28.1 [**OPTION:** (with the exception of additional exploitation obligations)], 28.2, 30.3, 31.5 do not apply to results generated without JU funds.*

*[These beneficiaries][The beneficiary] will not be subject to financial checks, reviews and audits under Article 22 for [their][its] own costs.**]***

***[OPTION C, to be used if the beneficiary not receiving JU funding IS the coordinator and does not have linked third parties receiving JU funding:** Chapter 3, Articles 10 to 15, 18.1.2, 20.6, 23a, 26.4, 27.2, 28.1 [**OPTION:** (with the exception of additional exploitation obligations)], 28.2, 30.3, 31.5 and 40 do not apply to [**OPTION 1 by default**: these beneficiaries][**OPTION 2 if more than one of the three options apply to the grant**: [insert short name of the beneficiary]].*

*[They][The beneficiary] will not be subject to financial checks, reviews and audits under Article 22 for [their][its] own costs.**]***

Beneficiaries not receiving JU 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.

*[**additional OPTION for beneficiaries requesting zero JU funding**: If a beneficiary requesting zero JU funding receives funding later on (through an amendment; see Article 55), all obligations will apply retroactively.]*

9.2 Consequences of non-compliance

If a beneficiary not receiving JU funding breaches any of its obligations under this Article, its participation in 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 2:** Not applicable]*

1. Beneficiaries not receiving JU funding

This optional Article will be inserted into the GA if the action is implemented with beneficiaries that do not receive JU funding.

⚠ **Beneficiaries not receiving JU funding —** They participate in the action as beneficiaries, but NOT with JU funding. They must carry out the work under the action and comply with the GA (although not with *all* its obligations; the financial obligations and some IPR obligations do not apply for them).

Beneficiaries not receiving JU funding' are either:

– 'beneficiaries **not eligible** for JU funding', i.e. beneficiaries which:

- do not fulfil the conditions under article 1 of the Commission Delegated Regulation (EU) 622/2014, or
- are NOT from an EU Member State, H2020 associated country which were NOT granted exceptional JU funding by IMI2 JU.

⚠ Beneficiaries that (exceptionally) become eligible for funding during the action, may in principle request funding (as from their eligibility), if the grant agreement is amended to change Articles 9, 57 and Annex 2 (*see Article 55*).

Since the maximum grant amount cannot be increased *(see Article 5.1)*, this would only be possible if the consortium reshuffles the estimated budget in order to free funding for the beneficiary concerned.

Moreover, costs incurred *before* the amendment would be eligible ONLY as from the date of eligibility for funding and if they comply with all the obligations under the GA *(e.g. for actual personnel costs must be supported by time records in accordance with Article 18).*

– 'beneficiaries **requesting zero funding**', i.e. beneficiaries that are eligible for funding, but decided not to request any funding.

⚠ Beneficiaries requesting zero funding may in principle request funding later on, if the GA is amended (to change Article 9 and Annex 2; *see Article 55*).

Since the maximum grant amount will NOT be increased *(see Article 5.1), this would only be possible if the* consortium reshuffles the estimated budget in order to free funding for the beneficiary concerned.

Moreover, costs incurred *before* the amendment would be eligible ONLY if they comply with all the obligations under the GA retroactively *(e.g. for actual personnel costs must be supported by time records in accordance with Article 18).*

In the case of IMI2**, 'Beneficiaries not receiving JU funding'** are usually:

– constituent or affiliated entities of the IMI2 Members other than the Union (e.g. EFPIA companies), or of the IMI2 Associated Partners, not eligible or requesting zero JU funding;

– any other private company having an annual turnover higher than EUR 500 million (i.e. not eligible for JU funding);

– third country beneficiaries (i.e. participants that are neither from an EU Member State nor from a Horizon 2020 associated country[57]) that were not granted exceptional JU funding by the JU (during the selection procedure).

Their tasks will appear in Annex 1 and their estimated costs (although not eligible for JU funding) in Annex 2.

Although they participate in the action, NOT all of the obligations under the GA apply to them. (Which obligations apply or do not apply depends on their role in the grant and if it has linked third parties that receive JU funding or not).

When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contribution to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU funding" in the context of the applicable obligations under the GA.

For more details on financial contributions to IMI2 JU please refer to the applicable section of the *IMI2 JU Guidelines for reporting in-kind and financial contributions by Members other than the Union and Associated Partners*.

For more information on third country participants, *see the Funding and Tenders Portal Online Manual (international cooperation).*

This table shows the **GA obligations** that do **NOT apply** to beneficiaries not receiving JU funding (marked by X under each option).

Beneficiary	Articles 5, 6 — Grant amount, form of grant, reimbursement rates and forms of costs	Articles 10 to 15 — Purchases, subcontracting, in-kind contributions, etc	Article 18.1.2 — Keeping records for costs	Article 20.3.(b) and Article 20.4.(b) — Financial reports	Article 20.6 — Currency for financial statements	Article 21 — Payments	Article 22 — Financial checks, reviews and audits	Article 23a — Management of IP	Article 26.4 and Article 27.2 — JU's ownership to protect results	Article 28.1 — Obligation to exploit results *	Article 28.2 — Results contributing to standards	Article 30.3 — JU's right to object to transfers or licensing	Article 31.5 — Access rights for JU and MS	Article 40 — Assignment of claims	Article 42 to 44 — Rejection of costs, reduction, recovery	Articles 47 and 48 — Suspension of payments
Option 1 — IS NOT coordinator and does not have third parties receiving JU funding	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Option 2 — HAS linked third parties receiving JU funding	X	X			X		Do not apply for the own costs of the beneficiary	X	Do not apply only for results generated without JU funds					X		
Option 3 — IS coordinator and does NOT have linked third parties receiving JU funding	X	X	X		X		Do not apply for the own costs of the beneficiary	X	X	X	X	X	X	X		

* with the possible exception of additional exploitation obligations, which is a suboption to be activated where applicable

[57] 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.

Apart from this, they are treated like the other beneficiaries.

The other obligations apply, just like for other 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 JU funding).*

In case of breach of any of their obligations, their participation may be terminated and any of the other of Chapter 6 measures (except for rejection of costs or recovery) may be taken.

Examples:

1. A beneficiary not receiving JU 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 JU may, at the payment of the balance, if the action tasks were not properly implemented, reduce the grant awarded in accordance with Article 43.

2. In addition, the beneficiary has breached fundamental ethical principles ➔ it may be excluded from all contracts or grants financed by the JU for a maximum period of five years (see Article 45).

Best practice: The IMI2 JU will assess the consequences of breach of obligations or improper implementation by beneficiaries not receiving JU funding at action level (not at beneficiary level). Therefore, beneficiaries are advised to foresee this situation — before signature of the GA — in the **consortium agreement**.

ARTICLE 10 — PURCHASE OF GOODS, WORKS OR SERVICES

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: […][20]**]

The beneficiaries must ensure that the JU, the Commission, 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[21] (or 2014/24/EU[22]) or 'contracting entities' within the meaning of Directive 2004/17/EC[23] (or 2014/25/EU[24]) 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.

[20] 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 JU 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.

[21] 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).

[22] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. (OJ L 94, 28.03.2014, p. 65).

[23] 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).

[24] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.03.2014, p. 243).

1. Purchase of goods, works or services

If necessary to implement the action, the beneficiaries may purchase goods, works or services.

Purchases - For the purposes of the GA, '**purchase contract**' means ordinary contract 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 (if creating the website is not an action task); contract for logistic support (e.g. organisation 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.*

The differences between purchase contracts, subcontracts, in-kind contributions against payment and implementation by linked third parties are explained in Article 8.

Characteristics of purchase contracts:

- They are usually limited in cost and scope.

⚠ Article 10 contains both additional cost eligibility conditions (in Article 10.1.1) and 'other obligations' (in Article 10.1.2).

2. Additional cost eligibility condition: Best value for money or lowest price

The beneficiaries must base their purchases either on the best value for money (considering the quality of the service, good or work proposed, i.e. the **best price-quality ratio**) or on the lowest price.

This requirement reflects the **general cost eligibility condition** set out in Article 6.1(a)(vii) (i.e. that costs must be reasonable and comply with the principle of sound financial management) and applies it specifically to the purchasing context.

The best value for money principle does NOT in all cases require **competitive selection procedures**. However, if a beneficiary did not request several offers, it must demonstrate how best value for money was ensured.

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 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 purposes of the purchase.

Occasionally (and only for contracts with a value higher than EUR 60 000) the JU may set out **additional conditions** (in view of the possible financial risks, taking into account the size of the contract and the grant amount). These conditions must be described in the work plan/call — as special eligibility conditions for the purchase costs — and be based on the rules which the JU applies 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 cost eligibility condition: Controls on the contractor (by the JU, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission and the JU, 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 and the JU have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the contractor *(for example, if they refuse access and the JU 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 2014/24/EU and 2014/25/EU[58] 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 2.1(1) of Directive 2014/24/EU)*.
>
> > '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 2.1(4) 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 4 of Directive 2014/25/EU)*.

Specific cases (purchases):

Purchases between beneficiaries — Are in principle not accepted. If a beneficiary needs supplies from another beneficiary, it is the latter beneficiary that should charge them to the action. (Otherwise there is the risk that the grant is used to charge commercial profit margins.) Purchases between beneficiaries will only be accepted in exceptional and properly justified cases *(e.g. beneficiary A is the usual supplier of beneficiary B for a generic consumable that beneficiary B needs for the action)*.

Framework contracts or **subcontracts** — Framework contracts can be used for selecting a provider if this is the usual practice of the beneficiary (e.g. for a type of goods). In order to be eligible, the framework contract must (have) be(en) awarded on the basis of best-value-for-money and absence of conflict of interest. The framework contract does not necessarily have to be concluded before the start of the action.

[58] New directives in force since 2016:
Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65) and repealing Directive 2004/18/EC (OJ L 94, 28.03.2014, p.65).
Directive 2014/25/EU 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 and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).
Old directives:
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).
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).

ARTICLE 11 — USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES AGAINST PAYMENT

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 JU 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 JU, the Commission, 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 by third parties against payment

If necessary to implement the action, the beneficiaries may use in-kind contributions provided by third parties against payment.

A 'third party' can be 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 (in-kind contributions against payment): *medical equipment provided by a hospital (against a fee) to a university in order to carry out research.*

Both this Article and Article 12 only refer to in-kind contributions; they do NOT concern the case of linked third parties carrying out part of the *action tasks* described in Annex 1 *(see Article 14)*.

⚠ Article 11 contains additional cost eligibility conditions.

2. Additional cost 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 *(e.g. the invoice from the third party)*, but only up to the costs incurred by the third party — if the other eligibility conditions are fulfilled (*see in particular* Article 6.1 *and* 6.2*; e.g. necessary for the action, recorded in the accounts of the beneficiary, etc*.).

If the amount paid by the beneficiary is lower than the cost incurred by the third party, the beneficiary may in addition declare the difference as in-kind contributions free of charge (*see Article 12)*. If it decides to do so, it may have to declare that difference also as receipt (*see Article 5.3.3)*.

For the upper limit (third party's costs), normally only the *direct* costs *actually* incurred by the third party will be taken into account.

The following costs may however be quantified using unit costs (to ensure similar costing as for charging costs under the GA):

- for personnel costs: hourly rate on the basis of usual costs accounting practices (alternative to actual costs; *see Article 6.2.A.1*)
- for SME owner costs: hourly rate fixed by Commission *Decision C(2013) 8197* [59] *(see Article 6.2.A.4)*
- for internally invoiced goods and services: unit cost on the basis of usual accounting practices *(see Article 6.2.D.5)*
- for unit costs for clinical studies: unit cost fixed in the GA (alternative to actual costs; *see Article 6.2.F*).

The actual costs must be identifiable and verifiable in the third party's accounts.

The *indirect* costs of the third party are either:

- NOT taken into account: if the resources (in-kind contribution) are used on the beneficiary's premises

or

- taken into account: if the in-kind contributions are NOT used on the beneficiary's premises *(but, for instance, on the third party's premises)*.

  In this case, the direct costs actually incurred by the third party may be increased by a flat-rate of 25% on those costs.

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

Example (direct costs of third party plus a 25% flat-rate for indirect costs):

[59] 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

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 declare it for 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 difference will be rejected as ineligible (even if they correspond to the amount actually paid by the beneficiary).

3. Additional cost eligibility condition: Third parties and their contributions be set out in Annex 1 — Simplified approval procedure

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 set out in **Annex 1** of the GA.

If the in-kind contributions are NOT used on the beneficiary's premises, their estimated costs must be also set out in **Annex 2** (additional information column).

New in-kind contributions — 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 (*see Article 55*). Exceptionally, the JU may approve costs related to in-kind contributions not included in Annex 1 without formally amending the GA (**simplified approval procedure**).

Example (approval) : *A new researcher brought into a team working 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.*

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 JU and amending the GA.*

⚠ The approval is at the discretion of the JU and there is no automatic entitlement to it. Beneficiaries that rely on the simplified approval procedure bear the **full risk** of non-approval and rejection of costs by the JU.

4. Additional cost eligibility condition: Controls on the third parties (by the Commission/JU, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission, the JU, 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 and the JU have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the third parties *(for example, if they refuse access and the JU cannot verify the eligibility of the costs, it will reject them).*

Specific cases (in-kind contributions):

Foundations, spin-off companies, etc., created in order to manage the administrative tasks of the beneficiary and which are paid directly by the coordinator — These are typically legal entities (third parties) created or controlled by the beneficiary (usually a public body like a university/ministry) which handle the financial and administrative aspects of the beneficiaries' involvement in research projects.

Their tasks may include, among others, the employment of personnel, purchase of equipment or consumables that the third party puts at disposal of the beneficiary to carry out the work of the project.

Sometimes they also include the handling of the JU contribution (which means that the beneficiary will use the bank account of the third party and that all payments made to that account count for the beneficiary).

The contributions made by these entities are usually qualified as in-kind contributions against payment. If the costs for the services are not recorded in the accounts of the beneficiary *(e.g. there is no invoice from the entity)*:

- the beneficiary has to prove that such practice is in line with national law and applicable accounting standards
- the costs must be recorded in the accounts of the third party.

ARTICLE 12 — USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES FREE OF CHARGE

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 JU 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 JU, the Commission, 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 by third parties 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 itself makes no payment and there is therefore NO cost incurred by the beneficiary. However, the GA provides that it may charge the costs incurred by the third party for its in-kind contribution *(see also Article 6.4)*.

Examples (in-kind contributions 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).

⚠ Article 12 contains additional cost eligibility conditions.

2. Additional cost 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 action duration, etc.).*

The costs must be recorded in the accounts of the third party.

Normally, only the *direct* costs actually incurred by the third party may be declared.

The following costs may however (alternatively) be quantified using unit costs, (to ensure similar costing as for charging costs under the GA):

- for personnel costs: hourly rate on the basis of usual costs accounting practices (alternative to actual costs; *see Article 6.2.A.1*)
- for SME owner costs: hourly rate fixed by Commission Decision C(2013) 8197[60] *(see Article 6.2.A.4)*
- for internally invoiced goods and services: unit cost on the basis of usual accounting practices *(see Article 6.2.D.5)*
- for unit costs for clinical studies: unit cost fixed in the GA (alternative to actual costs; *see Article 6.2.F*).

The *indirect* costs of the third party are either:

- NOT taken into account: if the resources (in-kind contribution) are used in the beneficiary's premises

or

- taken into account : if the in-kind contributions are used in the third party's premises.

  In this case, the direct costs actually incurred by the third party may be increased by a flat-rate of 25% on those costs; but the beneficiary may NOT include them a second time to calculate its own indirect costs.

Free of charge in-kind contributions may also have to be declared as receipts *(see Article 5.3.3(c))* — capped by the amount declared as third party costs for the contribution.

If an audit shows that the direct costs declared by the beneficiary are higher than those incurred by the third party, the difference will be rejected as ineligible.

3. Additional cost eligibility condition: Third parties and their contributions set out in Annex 1 — Simplified approval procedure

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 of the GA.

If the in-kind contributions are NOT used on the beneficiary's premises, their estimated costs must be also set out in **Annex 2** (additional information column).

New in-kind contributions — 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 (*see Article 55*). Exceptionally, the JU may approve costs related

[60] 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

to in-kind contributions not included in Annex 1 without formally amending the GA (**simplified approval procedure**; for details, *see Article 11*).

4. Additional cost eligibility condition: Controls on the third parties (by the Commission, the JU, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission, the JU, 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 and the JU have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the third parties *(for example, if they refuse access and the JU cannot verify the eligibility of the costs, it will reject them).*

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

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: […].[25]**]

***[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:*

*(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) to the tender(s) offering **best value for money**;*

*(e) 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 from Innovative Medicines Initiative 2 Joint Undertaking (JU) under the European Union's Horizon 2020 research and innovation programme under the grant agreement No [number]). Neither the JU nor the EU is however participating as a contracting authority in this procurement."**]***

***[OPTION 1 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 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 tenders** 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 (or 2014/24/EU) and 2004/17/EC (or 2014/25/EU) [26].**]***

***[OPTION 2 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-license);*
- *the obligation of the subcontractors to transfer 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 JU 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 information:** Action tasks involving classified information may be subcontracted only after explicit approval (in writing) from the JU (see Article 37).**]

The beneficiaries must ensure that the JU, the Commission, 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 2014/24/EU) or 'contracting entities' within the meaning of Directive 2004/17/EC (or 2014/25/EU) **must comply** with the applicable national law on public procurement.

[25] 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 JU 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.

[26] See Articles 28 and 31(2)(a) of Directive 2004/18/EC replaced by Articles 26 and 32(3)(a) of Directive 2014/24/EU and Article 40(3)(b) of Directive 2004/17/EC replaced by Article 50(b) of Directive 2014/25/EU.

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.

1. Subcontracting

If necessary to implement the action, the beneficiaries may award subcontracts covering the **implementation** of certain **action tasks** described in Annex 1.

Subcontractors — Subcontractors participate in the action by carrying out action tasks *for* the beneficiary. They are NOT beneficiaries and therefore have no direct obligations under the grant agreement (but their beneficiaries must ensure that they comply with certain key obligations).

Subcontract — For the purposes of the GA, a '**subcontract**' means the purchase of goods, works or services *that are identified in Annex 1 as action tasks*.

Example (subcontracts): *Contracts for (parts of) the research or innovation tasks mentioned in Annex 1.*

The differences between purchase contracts, subcontracts, in-kind contributions against payment and implementation by linked third parties are explained in Article 8.

Characteristics of subcontracting:

- Based on business conditions

  This means that the subcontractor charges a price, which usually includes a profit (— this distinguishes it from linked third parties; *see Article 14*).

- Subcontractor works without the direct supervision of the beneficiary and is not hierarchically subordinate to the beneficiary (— this distinguishes it 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 towards the JU for the subcontracted work 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.

- Subcontractor has no rights or obligations towards the JU or the other beneficiaries (it has no contractual relation with them).

Examples (subcontracts):

Testing and analysis of the resistance of a new component under high temperatures, if described in Annex 1 as action task.

Only **limited parts of the action** may be subcontracted — except for actions involving PCP/PPI (because the PCP/PPI action tasks are by definition fully subcontracted).

The beneficiaries must make special arrangements regarding **results** produced by the subcontractors (in order to be able to fully comply with their obligations under the GA; *see Article 26.3*).

⚠ **Security obligations —** Stricter rules apply for action tasks that involve information that is **EU-classified** or results that are subject to **limited disclosure / dissemination** in Annex 1 of the GA *(see Article 37)*.

ℹ For more information on security obligations, *see the Guidelines for the handling of classified information in EU research projects, and, more generally, the Funding and Tenders Portal Online Manual.*

⚠ Article 13 contains both additional cost eligibility conditions (in Article 13.1.1) and 'other obligations' (in Article 13.1.2).

2. Additional cost eligibility condition: Best value for money or lowest price

The beneficiaries must base their subcontracts either on the best value for money (considering the quality of the service proposed, i.e. the **best price-quality ratio**) or on the lowest price.

This requirement reflects the **general cost eligibility condition** set out in Article 6.1(a)(vii) (i.e. that costs must be reasonable and comply with the principle of sound financial management) and applies it specifically to the subcontracting context.

The best value for money principle does NOT in all cases require **competitive selection procedures**. However, if a beneficiary did not request several offers, it must demonstrate how best value for money was ensured.

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.

3. Additional cost eligibility conditions for actions involving PCP or PPI

This additional option will be inserted into the GA if the action involves pre-commercial procurement (PCP) or procurement of innovative solutions (PPI).

⚠ This concerns research and innovation actions or innovation actions *with* a PCP or PPI.

This should NOT be confused with PCP/PPI action (separate type of action, which use a different model grant agreement and whose *main* action task is the implementation of the PCP or PPI).

The additional rules mirror the key obligations for PCP/PPI actions from the H2020 MGA PCP/PPI.

4. Additional cost eligibility condition: Tasks set out in Annex 1 — Total estimated costs of subcontracting set out in Annex 2 — Simplified approval procedure

The **tasks to be implemented** and the **estimated cost** for each subcontract must be set out in Annex 1.

It is the work (i.e. the action tasks) to be performed by a subcontractor that must be identified in Annex 1. The name of the subcontractors is in principle not necessary.

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.

⚠ If the **name** of the subcontractor is known at the time of the grant signature the beneficiary may indicate it in Annex 1. However, the fact that the name of the subcontractor is indicated in Annex 1 does not imply the approval of the JU of the subcontract (or the subcontracting costs). For example, if the subcontractor was not selected based on best value-for-money the JU may reject the costs even if its name was indicated in Annex 1.

Additionally, the **total estimated costs for subcontracting** per beneficiary must appear in the table of estimated costs of Annex 2.

New subcontracts — 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 (*see Article 55*). Exceptionally, the JU may approve costs related to subcontracts not included in Annex 1 and 2 without formally amending the GA (**simplified approval procedure**).

The new subcontract must be included and explained in the technical periodic report (in the section 'unforeseen subcontractor').

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 (approval): *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 declared in the periodic report and it is approved by the JU.*

Example (no approval): *A key beneficiary leaves the consortium and the coordinator subcontracts all the tasks of this beneficiary.*

⚠ The approval is at the full discretion of the JU and there is no automatic entitlement to it. Beneficiaries that rely on the simplified approval procedure bear the **full risk** of non-approval and rejection of costs by the JU.

5. Additional cost eligibility condition: Controls on the subcontractor (by the JU, the Commission, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the JU, the Commission, 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 JU and the Commission have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the subcontractors *(for example, if they refuse access and the JU cannot verify the eligibility of the costs, it will reject them).*

6. '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 JU funding and the support from the EU, EFPIA and Associated Partners, if any (*see Article 38*)
- Liability for damages (*see Article 46*).

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the subcontractors.

Best practice: In order to be able to fulfil this obligation, the beneficiaries should impose contractual arrangements on the third parties.

7. 'Other obligation': Compliance with national procurement rules

Beneficiaries that are 'contracting authorities' or 'contracting entities' (within the meaning of the EU public procurement Directives 2014/24/EU and 2014/25/EU[61]) 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 2.1(1) of Directive 2014/24/EU)*.

'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 2.1(4) 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 4 of Directive 2014/25/EU)*.

Specific cases (subcontracting):

Subcontracting between beneficiaries — Is NOT allowed 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 affiliates — Is NOT allowed, 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

[61] New directives in force since 2016:
Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65) and repealing Directive 2004/18/EC (OJ L 94, 28.03.2014, p.65).
Directive 2014/25/EU 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 and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).
Old directives:
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).
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).

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)*)* — Can NOT be subcontracted. Other activities of the coordinator may in principle be subcontracted.

Framework contracts or **subcontracts** — Framework contracts can be used for selecting a provider if this is the usual practice of the beneficiary (e.g. for a type of service). In order to be eligible, the framework contract must (have) be(en) awarded on the basis of best value for money and absence of conflict of interest. The framework contract does not necessarily have to be concluded before the start of the action.

ARTICLE 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

ARTICLE 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

[OPTION 1: 14.1 Rules for calling upon linked third parties to implement part of the action

14.1.1 The following ***affiliated entities***[27] *and* ***third parties with a legal link to a beneficiary***[28] *(‘**linked third parties**’) may implement the action tasks attributed to them in **Annex 1**:*

*- [name of the entity (short name)], affiliated or linked to [short name 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 (short name)], affiliated or linked to [short name 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 third parties]

*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 JU, the Commission, 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.

14.2 Consequences of non-compliance

If any obligation under Article 14.1.1 is breached, the costs of the linked 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 2**: Not applicable**]

[27] For the definition see Article 2.1(2) Rules for Participation Regulation No 1290/2013: ‘**affiliated entity**’ means any legal entity that is:
- under the direct or indirect control of a participant, or
- under the same direct or indirect control as the participant, or
- directly or indirectly controlling a participant.

‘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;
(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 shall not in themselves constitute controlling 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.

[28] ‘**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

This optional Article (together with the corresponding options in Article 6 and other provisions) will be inserted into the GA if the action is implemented with linked third parties.

⚠ **Linked third parties —** Linked third parties are allowed to participate in the action, like the beneficiary they are linked to. They are NOT beneficiaries, but they are allowed to participate fully in the action and receive JU funding; they will therefore be treated for many issues (including cost eligibility; see *Article 6.3*) like beneficiaries and their beneficiaries must ensure that they comply with certain key obligations.

⚠ **Combining H2020 & other EU grants —** The terminologies under different EU funds/funding programmes may differ *(e.g. 'linked third parties' under H2020 are the SAME as 'affiliated entities' under the Financial Regulation, while 'affiliated entities' under H2020 is NARROWER than 'affiliated entities' under the Financial Regulation (see Articles 2.1(2) and 23(5) of the Rules for Participation Regulation No 1290/2013 and Article 122 of the Financial Regulation No 966/2012).*

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 towards the beneficiary. Linked third parties do NOT sign the GA (and are therefore not beneficiaries).
- The beneficiary remains responsible towards the JU for the work carried out by the linked third party.

  Moreover, the beneficiaries are financially responsible for any undue amount paid by the JU as reimbursement of costs for 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** or **entities with a legal link to a beneficiary** can be linked third parties.

'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 action duration and it usually pre-dates and outlasts the GA; ad hoc collaboration agreements or contracts to carry out work in the action are NOT covered. In this latter case, both legal entities should be beneficiaries.

AND

– a legal relationship.

This may be either a legal structure (*e.g. the relationship between an association and its members)* or through an agreement or contract not limited to the action (*e.g. a collaboration agreement for research in a particular field*).

If the only relation between two entities is a *capital link* (i.e. ownership of part of the issued share capital), the entity may only participate as a linked third party if it is an 'affiliated entity' *(see below)*.

'Affiliated entity' means:

– under the direct or indirect control of the beneficiary or

– under the same direct or indirect control as the beneficiary or

– directly or indirectly controlling the beneficiary.

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 (entities with a legal link):

1. 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 separate legal personality, 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 applicable national law. The beneficiary must provide to the JU 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 other document that proves that research facilities are put in a common structure and correspond to the concept of scientific and economic unit.

2. Associations, foundations or other legal entities composed of members *That entity is generally the beneficiary and the members are the linked third parties.*

Examples (affiliated entities):

1. *Company A established in France holding 20% of the shares in Company B established in Italy. However, with 20% of the shares it 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.*

2. *Company X and company Y do not control each other, but they are both owned by company Z. They are both considered affiliated entities.*

Linked third parties must fulfil the same conditions for participation and funding under IMI2 JU as beneficiaries (for instance, be established in an EU Member State, H2020 associated country).[62]

Example: *Company A established in the UK is a beneficiary in a grant. A owns B, a French company and also owns C, an US company. B & C may be considered affiliates to A, however only B may declare costs as a third party linked to A, because company C is established in a third country that is not eligible for funding under Article 10 of the Rules for Participation Regulation No 1290/2013.*

For more information on conditions for participation and funding, *see the Funding and Tenders Portal Online Manual.*

They must be **named** in Article 14 and their action tasks and estimated costs must be set out in Annexes 1 and 2 already at the moment of the GA signature (or if the linked third party is added later, through an amendment; *see Article 55*).

The beneficiaries must make special arrangements regarding **results** produced by the linked third parties (in order to be able to fully comply with their obligations under the GA; *see Article 26.3*).

The JU may (during the selection procedure) **require joint and several liability of a linked third party**, if:

- the financial capacity of a beneficiary is 'weak' and
- the beneficiary mainly coordinates the work of its linked third party.

Examples:

1. *The financially weak beneficiary is an association and most of the work is carried out by several of its members as linked third parties.*

2. *The financially weak beneficiary is a small company with a substantial part of its work implemented by a bigger affiliated company.*

3. *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*

[62] *See Articles 8 and 9 of the Rules for Participation Regulation No 1290/2013.*

established entity will be the beneficiary, i.e. a new legal entity. The successful applicants will carry out the work as linked third parties of the new legal entity.

If requested, 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), who must upload it (as a scanned PDF copy) in the system.

⚠ **Record-keeping —** The beneficiary must keep the original of the linked third party in its files.

The liability is for any amount owned by the beneficiary under the GA, and up to the linked third party's maximum JU contribution in Annex 2.

ℹ For more information on the financial capacity check, *see the Funding and Tenders Portal Online Manual.*

Entities performing a **substantial part of the work** (i.e. action tasks) should in principle be **beneficiaries**, NOT linked third parties. Linked third parties should only exceptionally perform a major part of the R&I work.

Examples:

1. *Entities specifically established for the purpose of implementing the action (e.g. EEIGs).*

2. *National research associations established according to the national law in order to carry out research not limited to the action.*

3. *A group of legal entities (companies/research organisations) that have a common research agenda and that have a structure consisting of an association coordinating the research. This structure/consortium is not limited to the JU 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.*

⚠ Article 14 contains both additional cost eligibility conditions (in Article 14.1.1) and 'other obligations' (in Article 14.1.2).

2. Additional cost eligibility condition: Linked third parties identified in Article 14 — Tasks set out in Annex 1 — Estimated costs set out in Annex 2 — No simplified approval procedure

The linked 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 GA signature (or added later, through an amendment; *see Article 55*).

There is NO simplified approval procedure.

3. Additional cost 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 action duration, etc.)*.

The 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.

Each linked third party has its own **financial statements**, but these statements must be *submitted by its beneficiary* (since linked third parties cannot sign them in the IT system; *see Article 20*).

For this purpose, linked third parties must send their signed financial statements on paper to their beneficiary.

⚠ **Record-keeping —** The beneficiary must keep the original of the linked third party in its files *(see Article 18.1.2)*.

Each linked third party has to provide its own ***certificate* on the financial statements** *(***CFS:** *see Article 20.4)*.

The threshold of EUR 325 000 applies to each linked third party (independently of its beneficiary).

⚠ **Record-keeping —** The beneficiary must keep the original of the linked third party in its files *(see Article 18.1.2)*.

4. Additional cost eligibility condition: Controls on the linked third parties (by the JU, the Commission, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the JU, the Commission, 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 and the JU have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the linked third parties *(for example, if they refuse access and the JU cannot verify the eligibility of the costs, it will reject them).*

5. 'Other obligation': Extension of obligations under the GA to linked third parties

The beneficiaries must ensure that the linked third parties comply with certain obligations under the GA.

Obligations that must be extended to linked third parties:

- Record-keeping obligations *(see Article 18)*
- Reporting *(see Article 20)*
- Avoiding conflicts of interest *(see Article 35)*
- Maintaining confidentiality *(see Article 36)*
- Promoting the action and give visibility to the JU funding *(see Article 38)*

Best practice: In order to be able to fulfil this obligation, the beneficiaries should impose contractual arrangements on the third parties.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the linked third parties.

ARTICLE 14a — IMPLEMENTATION OF ACTION TASKS BY INTERNATIONAL PARTNERS

ARTICLE 14a — IMPLEMENTATION OF ACTION TASKS BY INTERNATIONAL PARTNERS

[OPTION 1: 14a.1 Rules for calling upon international partners to implement part of the action

The following ***international partners***[29] *may implement the action tasks attributed to them in Annex 1:*

- *[name of the entity (short name)], international partner of [short name of the beneficiary]*
- *[name of the entity (short name)], international partner of [short name of the beneficiary]*

[same for more international partners]

The costs of the international partners are estimated in Annex 2 but:

– *will not be reimbursed and*

– *will not be taken into account for the calculation of the grant.*

The beneficiaries must ensure that the JU, the Commission, 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 international partners.

The beneficiaries must ensure that their obligations under Articles 18.1.1, 20.3(a), 20.4(a), 35, 36 and 38 also apply to their international partners.

14a.2 Consequences of non-compliance

If a beneficiary braches 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 2:** Not applicable**]

[29] 'International partner' is any legal entity established in a non-associated third country which is not eligible for funding under Article 10 of the Rules for Participation Regulation No 1290/2013.

1. International partners

4.0 This optional Article (together with the corresponding options in Article 4) will be inserted into the GA if the action is implemented with international partners. It was introduced with GA version 4.0 and does NOT automatically apply to older grant agreements (however beneficiaries with older GAs may ask for an amendment to introduce international partners *see Article 55*).

⚠ **International partners —** International partners are allowed to participate in the action without JU funding. They are NOT beneficiaries and do NOT receive JU funding; they therefore have no direct obligations under the grant agreement (but their beneficiaries must to ensure that they comply with certain key obligations).

Characteristics of implementation by international partners:

- International partners perform their action tasks directly. They do NOT sign the GA (and are therefore not beneficiaries).
- The beneficiary remains responsible towards the JU for the action tasks performed by its international partner.
- International partners perform their action tasks without receiving JU funding, i.e. their costs are NOT eligible for reimbursement under the grant. Therefore, they will not be subject to financial checks, reviews or audits.

  The costs of the international partners are estimated in Annex 2 (to get an overview of the overall project budget). But this is for information purposes only, the international partners are not required to report on their costs.

International partners do NOT need to have a (capital or legal) link to the beneficiary (but they may have one).

They must NOT be eligible for funding, i.e. be:

- a legal entity established in a country which is not EU Member State or H2020 associated country, or

Example: *A consortium of legal entities from EU Member States, H2020 associated countries wants to work with a legal entity established in New Zealand. Since the New Zealand entity would like to be involved in the action without requesting JU funding and without becoming a beneficiary, one of the beneficiaries may decide to list the New Zealand entity as its international partner and attribute certain action tasks to it (provided that the international partner agrees to the action tasks and the related obligations under the GA).*

- an international organisation other than international European interest organisations[63].

They may be used to implement any of the action tasks.

They must be **named** in Article 14a and their action tasks and estimated costs must be set out in Annexes 1 and 2 already at the moment of the GA signature (or if the international partner is added later, through an amendment; *see Article 55*).

The beneficiaries must make special arrangements regarding **results** produced by the international partners (in order to be able to fully comply with their obligations under the GA; *see Article 26.3*).

Although they are not beneficiaries and do not receive JU funding, their beneficiaries must ensure that they comply with certain key (non-financial) obligations:

Thus, they must ensure that the JU, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Article 22 to verify the proper implementation of the action tasks and that the JU has the right to make an evaluation of the impact of the action under Article 23.

Moreover, they must extend the following obligations under the GA to the international partners:

Obligations that must be extended to international partners:

- Record-keeping obligations (on the scientific and technical implementation; *see Article 18.1.1*)
- Technical reporting (in the required language; *see Article 20.3(a), 20.4(a) and 20.7)*
- Avoiding conflicts of interest *(see Article 35)*

[63] For the definition, *see Article 2.1(12) of the Rules for Participation Regulation No 1290/2013*: **'international European interest organisation'** means an international organisation, the majority of whose members are Member States or associated countries, and whose principle objective is to promote scientific and technological cooperation in Europe.

- Maintaining confidentiality *(see Article 36)*
- Promoting the action and give visibility to the JU funding *(see Article 38)*

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the international partners.

ARTICLE 15 — FINANCIAL SUPPORT TO THIRD PARTIES

ARTICLE 15 — FINANCIAL SUPPORT TO THIRD PARTIES

15.1 Rules for providing financial support to third parties

[OPTION 1 to be used if foreseen in the work plan: *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 JU, the Commission, 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 2: *Not applicable**]***

1. Financial support to third parties

This optional Article (together with the corresponding options in Article 6 and other provisions) will be inserted into the GA if the action involves financial support to third parties (i.e. funding by the beneficiary of (one or more) recipients that are not party to the GA, also called '**cascade funding**').

⚠ Actions may involve financial support to third parties ONLY where this is explicitly allowed in the work plan/call.

'Financial support' may be given 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. (For prizes, *see Article 15.2.*)

Examples:

1. *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.*

2. *One of the work packages in Annex 1 includes funding for awarding three research scholarships in the field of the action.*

Support in kind *(e.g. transfer of material for free)* by the beneficiary to a third party is NOT considered financial support.

Linked third parties may provide financial support to third parties under the same conditions as the beneficiaries.

The recipients are not party to the GA and therefore do NOT need to be identified in the GA or have a PIC.

⚠ Article 15.1 contains both additional cost eligibility conditions (in Article 15.1.1) and 'other obligations' (in Article 15.1.2).

2. Additional cost 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

  The maximum amount may normally NOT be more than EUR 60 000 per recipient. A higher amount can exceptionally be set out in Annex 1, if the work plan/call explicitly allows it and the proposal (and Annex 1) explain why this is necessary for the objectives of the action.

  This is a limit *per* recipient; several recipients could receive up to EUR 60 000 each *(e.g.* 3 *grants of EUR 50 000 each)*.

- 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)*

  The financial support provided by the beneficiaries may take any form *(e.g. a lump sum or the reimbursement of the costs incurred by the recipients when implementing the supported activities)*.

- 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)*

  These activities should benefit, primarily, the recipients (NOT the beneficiaries).

  The financial support is NOT the same as subcontracting (see *Article 13*) or purchase of goods, works or services (*see Article 10*).

- the persons or category(ies) of persons that may receive it *(e.g. farmers; PhD students)*

  Beneficiaries should describe in Annex 1 the procedures for selecting the recipients.

- the criteria for giving financial support *(e.g. physical characteristics of the agricultural plots which make them suitable for the purpose of the action)*.

  These criteria should respond to the objectives set out in the work plan/call.

The conditions must also already be part of the proposal *(see the proposal templates)*.

3. Additional cost eligibility condition: Controls on the recipients (by the Commission, the JU, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission, the JU, 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 and the JU have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the recipients *(for example, if they refuse access and the JU 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:

- Avoiding conflicts of interest *(see Article 35)*
- Maintaining confidentiality *(see Article 36)*
- Promoting the action and give visibility to the JU funding *(see Article 38)*
- Liability for damages *(see Article 46).*

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the recipients.

Best practice: In order to be able to fulfil this obligation, the beneficiaries should to impose contractual arrangements on the recipients (including control measures and/or reducing the financial support).

15.2 Financial support in the form of prizes

[OPTION 1 to be used if foreseen in the work plan: *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 JU, the Commission, 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 2: *Not applicable**]***

15.3 Consequences of non-compliance

[OPTION 1 to be used if 15.1 and/or 15.2 are applicable: *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 2: *Not applicable**]***

1. Financial support to third parties (via prizes)

This optional Article (together with the corresponding options in Article 6 and other provisions) will be inserted into the GA if the action involves financial support to third parties in the form of 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.*

Such prizes are NOT JU prizes (although the beneficiaries must promote the action and give visibility to the JU funding received; *see Article 38).*

⚠ Article 15.2 contains both additional cost eligibility conditions (in Article 15.2.1) and 'other obligations' (in Article 15.2.2).

2. Additional cost 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 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).

3. Additional cost eligibility condition: Controls on the recipients (by the Commission, the JU, ECA and OLAF) — Evaluation of the impact of the action

The beneficiaries must ensure that the Commission, the JU, 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 and the JU have the right to make evaluations of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the recipients *(for example, if they refuse access and the JU 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 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 JU funding *(see Article 38)*
- Liability for damages *(see Article 46).*

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the recipients.

ARTICLE 16 — PROVISION OF TRANS-NATIONAL OR VIRTUAL ACCESS TO RESEARCH INFRASTRUCTURE

ARTICLE 16 — PROVISION OF TRANS-NATIONAL OR VIRTUAL ACCESS TO RESEARCH INFRASTRUCTURE

16.1 Rules for providing trans-national access to research infrastructure

[OPTION 1 for trans-national access to research infrastructure: *16.1.1 '**Access providers**'[30] must provide access to research infrastructure or installations[31] 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 are allowed to 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[32] 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: […][33].*

(d) other conditions:

The access provider must request written approval from the JU (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 2:** Not applicable**]

[30] '**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.

[31] '**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.

[32] For the definition, see 2.1(3) Rules for Participation Regulation No 1290/2013: '**associated country'** means a third country which is party to an international agreement with the Union, as identified in Article 7 of the H2020 Framework Programme Regulation No 1291/2013. Article 7 sets out the conditions for association of non-EU countries to Horizon 2020.

[33] If the authorising officer considers necessary to give priority to certain categories of users.

1. Trans-national access to research infrastructure

This optional Article (together with the corresponding options in Article 6 and other provisions) will be inserted into the GA if the action involves trans-national access to research infrastructure for scientific communities ('provision of access activities'), i.e.:

- actions under Part I of the Horizon 2020 Framework Programme, 'Research infrastructures' 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)*.

Grants for this type of action usually **reimburse** — for the provision of access activity — the following **types of costs**:

'access costs' (i.e. the operating costs of the research infrastructure[64] or installation[65] 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)*.

The access costs 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 in this list 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 F.2 'access costs for providing trans-national access to research infrastructure' *(see Article 5.2(f) and 6.2.F)*.

If they are declared as *actual costs*, they must be declared under the other budget categories *(see Articles 5.2(a-e) and 6.2.A-E)*.

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 activities; *see Article 6.2.D.2*).

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 of the GA.

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[64] For the definition of research infrastructure, *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 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-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'.

[65] **'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.

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 (independently of whether the costs are declared as unit cost or actual costs).

⚠ **Record-keeping —** The beneficiaries must keep appropriate records and supporting documentation to justify the number of units of trans-national 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 virtual access) detailed information on the provision of access activity in the **periodic technical reports** *(see Article 20.3)*.

⚠ Article 16.1 contains both additional cost eligibility conditions (in Article 16.1.1) and 'other obligations' (in Article 16.1.2).

2. Additional cost eligibility condition: 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 (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 cost eligibility condition: Categories of users that may have access — Limited access for special user groups

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 cost eligibility condition: 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. 'Other obligation': Controls on the users (by the Commission, the JU, ECA and OLAF) — Evaluation of the impact of the action -

The beneficiaries must ensure that the Commission, the JU, 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 and the JU have the right to make an evaluation of the impact of the action under Article 23.

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the users *(for example, if they refuse access and the JU cannot verify the eligibility of the costs, it will reject them).*

6. 'Other obligation': Extension of obligations under the GA to users

The beneficiaries must also ensure that the users comply with certain obligations under the GA.

Obligations that must be extended to users:

- Avoiding conflicts of interest *(see Article 35)*
- Maintaining confidentiality *(see Article 36)*
- Promoting the action and give visibility to the JU funding *(see Article 38)*
- Liability for damages *(see Article 46).*

It is the beneficiaries' responsibility to ensure that these obligations are accepted by the users.

16.2 Rules for providing virtual access to research infrastructure

[OPTION 1 for virtual access to research infrastructure: *'**Access providers**'[34] must provide access to research infrastructure or installations[35] 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 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 2: *Not applicable**]***

16.3 Consequences of non-compliance

[OPTION 1 to be used if 16.1 and/or 16.2 are applicable: *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 2: *Not applicable**]***

[34] '**Access provider**' means a beneficiary or linked third party that is in charge of providing access to one or more research infrastructures or installations, or part of them, as described in Annex 1.

[35] '**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.

1. Virtual access to research infrastructure

This optional Article (together with the corresponding options in Article 6 and other provisions) will be inserted into the GA if the action involves virtual access to research infrastructure for scientific communities ('provision of access activities'), i.e.: actions under Part I of Horizon 2020, 'Research infrastructures'.

- Horizon 2020 grants will only support virtual services that are *widely* used by the community of European researchers.

Grants for this type of actions usually **reimburse**— for the provision of access activity — the following **types of costs**:

- access costs' (i.e. the operating costs of the installation during the course of the action)

- and 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 3)*.

  As from the H2020 Work Programme, the access costs 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 in this list 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 F.2 'access costs for providing trans-national access to research infrastructure' *(see Article 5.2(f) and 6.2.F)*.

  If they are declared as *actual costs*, they must be declared under the other budget categories *(see Articles 5.2(a-e) and 6.2.A-E)*.

Capital investments (i.e. costs of renting, leasing, purchasing depreciable equipment, infrastructure or other assets) will NOT be reimbursed - unless provided for in the work plan/call. In this case only the portion used to provide virtual access under the project is eligible.

Virtual access may or may not be **measured**; If measured, the GA will specify a unit of access.

When the research infrastructure access policy requires the identification of users, the EU financial support to virtual access will cover the access costs incurred by the infrastructure or installation for the provision of access under the grant to the identified users. The proposal can also define eligibility criteria (e.g. affiliation to a research or academic institution) for the users to whom access will be provided under the grant

When access is provided without identifying users, the research infrastructures virtual services to be supported by the EU must be *widely* used by the European research community[66].

The beneficiaries must provide detailed information on the provision of access activity in the **periodic technical reports**, including, when access is provided without identifying users, statistics on all users in the reporting period compiled through web analytical tools *(see Article 20.3)*.

⚠ Article 16.2 contains additional cost eligibility conditions.

2. Additional cost eligibility condition: 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.

[66] Under the H2020-INFRAEOSC-2018-2020 call, other communities could be considered in order to widen the user base.

3. Additional cost eligibility condition: 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 already be part of the proposal (as deliverables; see the proposal templates) and be included in Annex 1 of the GA.

SECTION 2 RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION

ARTICLE 17 — GENERAL OBLIGATION TO INFORM

SECTION 2 RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION

ARTICLE 17 — GENERAL OBLIGATION TO INFORM

17.1 General obligation to provide information upon request

The beneficiaries must provide — during implementation of the action or afterwards and in accordance with Article 41.2 — any **information requested** in order to verify eligibility of the costs, proper implementation of the action and compliance with any other obligation under the Agreement.

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 Participant Portal Beneficiary Register (via 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 JU 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 or the JU'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 JU may 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 JU may request the information for **any purpose** *(e.g. checks for monitoring the action or assessing reports and requests for payment; reviews; audits; investigations; evaluation of the action's impact)*. The Commission may request the information for the specific purposes established by the Grant Agreement.

It may request **any type** of information it needs (including personal data, to order to verify that costs declared for specific people are eligible; *see* Article 39). The level of detail will depend on the purpose of the request.

The JU, and the Commission, may request the information at **any time**, either during the action or afterwards.

Examples:

1. In an ex-post financial audit that starts 18 months after the balance is paid, the JU may request any information it needs during the procedure. The audit may continue beyond the two years after the balance is paid (see Article 22).

2. The JU and the Commission may request information from the beneficiaries in order to evaluate the action's impact up to five years after the balance is paid (see Article 23).

3. 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 JU 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 no longer exists after the action ends *(e.g. if it went bankrupt)*, beneficiaries may provide the information requested directly to the JU.

Until the balance is paid, all information is sent via the Funding & Tenders Portal. Afterwards, information requests may have to be sent in writing by registered post with proof of delivery *(see Article 52)*.

2. Information in the Participant Register

Each beneficiary must keep its information in the Participant Register up-to-date, including after the end of the grant.

⚠ Updated information remains necessary both to contact the beneficiaries after the end of the action and if they want to participate in other JU/EU grants.

The information includes:

– 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 IT system automatically informs the coordinator whenever a beneficiary updates its information.

ℹ For more information on beneficiary registration, *see the Funding and Tenders Portal Online Manual*.

3. Information likely to delay or affect the action or EU or JU 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 or JU financial interests.

> ***Examples (situation likely to significantly affect or delay the action's implementation or affect the EU's or JU'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 Participant Register *(see above)*, the beneficiary must **update** the Participant 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.).*

Best practice: It is recommended that the beneficiary informs the coordinator in writing (not only orally).

After receiving the information from the beneficiary, the coordinator must immediately inform:

- the JU, via the Funding & Tenders Portal
- the other beneficiaries, through the usual communication channels (in writing and offline).

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

ARTICLE 18 — KEEPING RECORDS — SUPPORTING DOCUMENTATION

18.1 Obligation to keep records and other supporting documentation

The beneficiaries must — for a period of ***[OPTION 1 by default:*** *five]**[OPTION 2 for low value grants***[36]***:*** *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 JU or the Commission 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 **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.

The beneficiaries *[and linked third parties]* may submit to the JU, for approval by the Commission, 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 JU 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.

[36] For the definition, see Article 185 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, 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 362, 31.12.2012, p. 1) (**'Rules of Application Regulation No 1268/2012'**): '**low value grants**' are lower or equal to EUR 60 000.

1. Records and other supporting documentation

The beneficiaries (for linked third parties, *see point 10*) must keep appropriate and sufficient evidence to **prove** the eligibility of all the costs declared, proper implementation of the action and compliance with all the other obligations under the GA.

⚠ Costs that are not supported by appropriate and sufficient evidence may be **rejected** (and other measures described in Chapter 6 may be applied as well).

'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.[67]

The evidence must be verifiable, auditable and available.

It must be correctly archived - for at least 5 years after the balance is paid (3 years for grants up to EUR 60 000) or longer if there are ongoing procedures *(such as audits, investigations or litigation)*. In this case, the evidence must be kept until they end.

⚠ Beneficiaries that throw away supporting documents will bear the **full risk** of cost rejection by the JU.

The rules in the GA do not affect national laws on keeping documents (which may require additional measures).

2. Original documents

The beneficiaries must **keep original documents**.

The JU or the Commission will accept any document considered an original under national law.

Examples:

1. The JU or the Commission will accept authenticated copies or digitally-signed documents, if national law accepts these as originals.

2. The JU or the Commission will accept digitalised copies of documents (instead of hard copies), 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:

1. For costs declared in category A.1 (employees or equivalent): the costs must be detailed for each person carrying out work for the action (individual hourly rate multiplied by the actual hours worked for

[67] International Standard on Auditing ISA 500 'Audit Evidence'.

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.).

2. *For costs declared in category D.1, D.2, D.3 and D.4 (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 be able to provide details of individual transactions for each type of cost. For depreciation, it must be able to 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, 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 JU may access the accounting records, but will reject costs only if the number of units declared is incorrect. (The actual costs of the work are not relevant).

If the JU 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 costs declared in accordance with their usual cost accounting practices (**average personnel** costs and costs of **internally invoiced goods and services**), the beneficiaries must keep detailed records and other supporting documents to:

- show that the costs used to calculate the unit cost match the actual costs as recorded in the statutory accounts

  Examples:

  1. *For personnel costs: accounting records; financial statement extracts; labour contracts; collective labour agreements; applicable tax, labour and social security laws; pay slips; bank statements showing salary payments; classification of employees (based on experience, qualifications, salary, department, etc.).*

  2. *For internally invoiced goods and services: accounting records; financial statement extracts; time records (or other records) for the share of personnel costs included in the unit costs; invoices or contracts for maintenance costs, cleaning costs, other services, showing that the costs are directly identifiable.*

  Manual interventions into the accounting data must be traceable and documented.

- verify that the unit cost is free of ineligible cost components

  Examples:

  1. *For personnel costs: records that show that the hourly rate does not include an indirect cost component (already covered by the 25 % flat rate); records that show that the hourly rate does not include travel costs (they should be claimed under ' category D.1 travel').*

  2. *For internally invoiced goods and services: evidence that shows that there is no profit/margin/mark-up included in the internally invoiced goods and services (e.g. different rates: one for billing the activity, with mark-up, and another one for internal costing, free of any mark-up); lists of accounts/cost centres that were excluded from the calculation of internally invoiced goods and services — because already included in the costs claimed under another budget categories (e.g. LRI costs, indirect costs, in-kind contributions, etc.).*

- assess the acceptability of budgeted and estimated elements

Examples:

1. *For personnel costs: records that show the method for calculating the annual salary increase (e.g. consumer price index which, according to the beneficiary's usual remuneration policy, serves as the basis for annual salary increases).*

2. *For internally invoiced goods and services: traceable data used to determine the budgeted/ estimated elements; records on the nature and frequency of the updates of the budgeted and estimated elements; etc.*

- for personnel costs: verify the number of productive hours used to calculate the unit cost (hourly rate).

- for internally invoiced goods and services: verify that the cost items used for the calculation of the unit cost were directly linked to the production of the invoiced good or service.

Examples (not acceptable):

1. *Maintenance which goes beyond than the maintenance of the infrastructure/facilities used to produce the good/service (e.g. maintenance costs for all the beneficiary's cleanrooms; maintenance costs for an entire building, while the cleanroom used for the good/service occupies only a part of the building).*

2. *Generic supplies for which there is no evidence that they were directly linked to the infrastructure/facilities used to produce the good/service (e.g. electricity costs when there is no electricity counter or technical specifications to measure the consumption).*

By contrast, it is NOT necessary to keep records on the actual costs incurred (per person/good or service) – unless they are needed to document the usual cost accounting practices (as just described).

6. Certificate on the methodology (CoMUC)

What? To get additional assurance, a beneficiary/linked third party may request that the JU confirms that its cost accounting practices for personnel costs comply with the conditions set out in Article 6.2.A, by approving a certificate on its methodology (CoMUC).

Approval concerns the cost accounting practices described and certified in the certificate on the methodology.

If the Commission approves the CoMUC, the JU will not challenge the personnel unit costs (hourly rates) declared — unless information was concealed or fraud or corruption was used to obtain approval (or another methodology was applied).

Approval is valid for all personnel costs declared according to these cost accounting practices, including costs declared before the Commission'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 valid for all H2020 grants (i.e. for the beneficiary's usual cost accounting practices) and is not linked or limited to a specific grant. (It is NOT valid for FP7 grants and, conversely an FP7 certificate is NOT valid for H2020.)

When? Beneficiaries may in principle submit their requests for approval at **any time** — before or during the grant.

Best practice: In order to ensure that the auditor has enough information to get assurance on the methodology, it is recommended to request it only after the first reporting period has passed.

If the beneficiary **changes its cost accounting practices**, it must obtain a new certificate and submit a new request for approval to the JU.

⚠ If the beneficiary declares personnel costs according to the changed cost accounting practices *before* the new certificate is approved, it bears the **full risk** of non-approval and cost rejection by the JU.

How?

The beneficiary must **submit** its certificate on the methodology to the JU (via the following functional mailbox: finance@imi.europa.eu). The certificate should be drawn up by an independent auditor using the template in Annex 6 of the GA (or an independent public officer, if the beneficiary is a public body).

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 is applied 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.

It is NOT necessary to keep records on the actual costs incurred.

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.

It is NOT necessary to keep records on the actual costs incurred.

9. Records for personnel costs — Hours worked for the action

The records for personnel costs depend on whether the person worked exclusively for the action or not.

⚠ For H2020, exclusive work or not matters only for the record-keeping. It has NO impact on the calculation of the costs to be declared (— in both cases they must be calculated through an hourly rate, monthly or per full financial year, etc.; *see* Article 6.2.A).

For **persons who work exclusively for the action** (regardless if they are full-time or part-time employees), the beneficiary may either:

- sign a declaration on exclusive work for the action [ODT format] (one per reporting period), to confirm that the person worked exclusively for the action, either:
  - during the whole reporting period

or

– during an uninterrupted time-period, covering at least a full calendar month within the reporting period.

Best practice: Beneficiaries should take a prudent approach and use this possibility only if it is planned that the person works exclusively on the action during a long and continuous period of time. If there are any doubts, a record of actual hours worked should be kept *(e.g. time-sheets).*

'Exclusive work' means that the person carried out NO OTHER activities for the beneficiary than those of the action.

Intermittent (i.e. sporadic or random) periods of 'exclusive' dedication can NOT be subject of a declaration. If a person worked randomly for the action after an uninterrupted time-period covered by a declaration, time-sheets are needed for the period of random work.

Example: *The person worked for the action exclusively from 15/02 to 31/05 and then worked again in the action some days in July and October and the full month of November. The declaration will cover the period from 15/02 to 31/05 and time records must be kept for the time the person worked for the action in July, October and November.*

If a person worked under different regimes during the reporting period (exclusive and non-exclusive), the declaration may be used ONLY for a period of exclusive work. The other months must be recorded with time-sheets.

If there were several periods of exclusive work during one reporting period, the beneficiary may choose to use the declaration for the longest one (and use the monthly time-sheets for the others).

The declaration must be **dated** and **signed** by the person concerned AND her/his supervisor.

– keep **time records**.

Best practice: If the person works exclusively for the action during a *full financial year*, it is strongly recommended that the beneficiary signs the 'declaration on exclusive work for the action' (— even if the person keeps time records). In this way, the declaration can serve as evidence that the person worked for the action all her/his annual productive hours.

For **persons who do NOT work exclusively for the action**, the beneficiaries must:

– show the actual hours worked, with reliable **time records** (*i.e. time-sheets*) 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.

If the time recording system is computer-based, the signatures may be electronic (i.e. linking the electronic identity data *(e.g. a password and user name)* to the electronic validation data, with a documented and secure process for managing user rights and an auditable log of all electronic transactions).

Time records should include, as a minimum:

– 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 worked for the action in the period covered by the time record

– the supervisor's full name and signature

– a reference to the action tasks or work packages of Annex 1, to which the person has contributed by the reported working hours.

Information included in timesheets must match records of annual leave, sick leave, other leaves and work-related travel.

A template [ODT format] for time-sheets with these minimum requirements is available. (This template is not mandatory; beneficiaries may use their own model, provided that it fulfils the minimum conditions and it contains at least the information detailed above.)

If time records are not reliable, the JU may exceptionally accept **alternative evidence** if it 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).

⚠ The JU has full discretion to accept or refuse the alternative evidence and there is no entitlement to it. Beneficiaries that rely on alternative evidence bear the **full risk** of refusal and rejection of costs by the JU.

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

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.

Example: *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.*

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:

1. *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.*

2. *The beneficiaries must keep evidence showing that subcontractors fulfilled their obligations in terms of the visibility of JU funding. Alternatively, they may ensure that the subcontractors keep this evidence.*

For **international partners,** beneficiaries must keep appropriate and sufficient evidence ONLY on scientific and technical implementation of the action. Beneficiaries are not required to prove the costs of the international partners, since the latter do not receive JU funding (*see* Article 14a)

Specific case (records of linked third parties):

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.

ARTICLE 19 — SUBMISSION OF DELIVERABLES

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 the coordinator breaches any of its obligations under this Article, the JU 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 action)* 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 action 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 Annex 1 of the GA.

> ***Example:*** *For actions under Part III, 'Secure, clean and efficient energy' involving energy efficiency measures in buildings, 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.*

For deliverables that are not in writing *(e.g. cell line or prototype)*, the beneficiaries must submit a short written description.

How? The coordinator must upload them directly in the Funding & Tenders Portal.

⚠ **Security obligations —** If the deliverables contain **EU classified information**, the coordinator must first contact the JU to discuss how to submit them (approval needed; *see Article 37*).

ℹ For more guidance on security obligations, *see the Guidelines for the handling of classified information in EU research projects and, more generally, the Funding and Tenders Portal Online Manual.*

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 Obligation to submit reports

The coordinator must submit to the JU (see Article 52) the technical and financial reports set out in this Article. These reports include the requests for payment and must be drawn up using the forms and templates provided 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) 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 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**'.

The report must indicate the communication activities *[,][;]*

[OPTION for 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 virtual access to research infrastructure:*** *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 JU;

(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 JU and the Horizon 2020 key performance indicators and JU and the Horizon 2020 monitoring requirements;

(b) a '**periodic financial report**' containing:

(i) 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 JU.

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);

(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], for the reporting period concerned;

(iii) not applicable;

(iv) a '**periodic summary financial statement**', 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**', 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)

20.5 Information on cumulative expenditure incurred

[OPTION 1 for grants above EUR 5 million with reporting periods beyond 18 months[37]***:*** *In addition to the reporting requirements set out above (Article 20.1 to 20.3), the coordinator must inform the JU by [31 December][30 November] each year of the cumulative expenditure incurred by the beneficiaries from the starting date of the action.*

*This information is required for the JU's accounting purposes and will not be used to calculate the final grant amount.**]***

[OPTION 2: *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 the costs recorded in their accounts 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, they 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

If the reports submitted do not comply with this Article, the JU 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, the JU may terminate the Agreement (see Article 50) or apply any of the other measures described in Chapter 6.

[37] 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

What & When?

In order to receive payments, the beneficiaries (and their linked third parties) must report on the (technical and financial) implementation of the action (reporting).

⚠ These reports must be **distinguished** from **deliverables** (that are part of Annex 1; see Article 19) and milestones (part of Annex 1, but not covered by Article 19 or 20).

The coordinator must submit a **periodic report** after the end of each reporting period (including the final one).

Each report should be seen as a single package, composed of several parts, i.e.:

- a **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 **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 consists of the final summary financial statement that is automatically generated by the IT system. In some cases (and for some beneficiaries/linked third parties) it must be accompanied by a certificate on the financial statements (CFS; 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).

Costs related to reporting may be eligible (*see Article 6.2.D.3*).

If the coordinator **breaches** its **obligation** to submit the reports, the JU may suspend the payment deadline and — if not remedied after a written reminder — terminate the GA or take any of the other Chapter 6 measures *(e.g. cost rejection, grant reduction, recovery of payments already made, etc.; see Articles 42-44, 47-50).*

The GA will not be terminated if the breach concerns the last reporting period(because the action duration is already over).

How?

The report(s) must be **prepared** by the **coordinator** and the other **beneficiaries together** (directly in the Funding & Tenders Continuous and Periodic Reporting Modules).

List of documents for the periodic reports:

- explanation of the work carried out (periodic reporting - part B technical report)
- overview of the progress (periodic reporting - part B technical report)

- updated plan for the exploitation and dissemination of results (if necessary) (periodic reporting - part B technical report)
- summary for publication (continuous reporting)
- answers to the questionnaire (continuous reporting)
- individual financial statements for each beneficiary and linked party (periodic reporting - financial report)
- explanation of the use of resources (periodic reporting - financial report)
- summary financial statement (generated automatically by the IT system).

List of documents for the final report:

- final summary for publication (generated automatically by the IT system)
- final summary financial statement (generated automatically by the IT system)
- certificates on the financial statements (CFS) (if necessary).

Generally, they can be **prepared together** (i.e. by several users from different beneficiaries), via the Funding & Tenders Portal Continuous and Periodic Reporting Modules. The parts in the **continuous reporting** can be filled out at any moment in time (continuously open) and are then automatically added into the periodic report by the IT system *(part A of the technical report with the questionnaire and the summary for publication; consolidated financial statement*). Other parts are opened only at **periodic reporting** *(part B of the technical report, individual financial statements, explanation of the use of resources)*. Data is cross-linked to avoid duplication of data input *(e.g. the financial statement and the explanation on the use of resources are linked: 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; the final report is completely automatized: assembled on the basis of elements from the periodic report).*

Individual financial statements must be filled out by each beneficiary (individually), and then signed and formally submitted to the coordinator (directly in the Funding & Tenders Portal).

This includes the **coordinator**, who must also submit the individual financial statement for itself.

For **linked third parties**, the financial statements must be filled out and submitted by their beneficiary (since the linked third parties cannot sign them in the IT system).

Before submission, the beneficiary must complete the data for the linked third party (based on the information it received from the linked third party). The beneficiary then prints the financial statement and sends it to the linked third party, for signature (*on paper*) and return (by registered post with proof of delivery). The beneficiary must ensure that the data encoded is correct (i.e. identical to the signed paper version).

⚠ **Record-keeping —** The beneficiary must keep the original of the linked third party in its files *(see Article 18.1.2)*.

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 to confirm the non-submission, when submitting the report.

If a beneficiary fails to submit its financial statement for the *last* reporting period, the JU may suspend the payment deadline *(see Article 47)*.

The **certificates on the financial statements (CFS)** must be submitted (by the coordinator) as scanned copy (PDF) together with the financial statement for the last reporting period of the beneficiary concerned.

⚠ **Record-keeping —** The beneficiary must keep the originals for itself and its linked third parties in its files *(see Article 18.1.2)*.

When all parts are ready, the report(s) are assembled automatically by the IT system and must be **submitted** by the coordinator (as a single package; **single submission**).

When a report is submitted, the other beneficiaries are automatically informed by the system.

If the JU 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 JU will send back the report to the coordinator, as a single package, together with a notification letter that explains the reasons and requests modifications and/or clarification(s) (**suspension of the payment deadline**). 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).

⚠ **Adjustments of financial statements (exceptional) —** If the beneficiaries notice a mistake *(e.g. incorrect accounting information; error in the calculation; etc)*, they can make an adjustment (positive or negative) in the following reporting period to the financial statements for any previous reporting period.

Example: *An internal audit on the annual accounts of the beneficiary finds later errors in the accounting information used to calculate the hourly rates.*

Otherwise, costs that have already been declared can normally NOT be adjusted/changed *(e.g. to take into account of a different hourly rate after the closure of the financial year)*.

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. 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, the beneficiaries 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).

3.0 For grants signed after GA version 3.0, the overview of the progress must also indicate the communication activities carried out by the consortium *(see also Article 38.1).*

> **Security obligations —** Technical reports may NOT contain any information that has been **EU-classified** in Annex 1 of the GA *(see Article 37).*
>
> For more guidance on security obligations, *see the Guidelines for the handling of classified information in EU research projects and, more generally, the Funding and Tenders Portal 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 JU can publish it on its website right away.

If needed, the JU may make changes to the summary and publish it (after having given the coordinator the opportunity to comment).

The coordinator must ensure that none of the material submitted for publication includes confidential (or EU classified) information.

For the last reporting period: The summary should present an overview of the results, their exploitation and dissemination, the action's conclusions and its socio-economic impact (because it will be directly re-used for the final report).

The **questionnaire** must be filled out to provide the JU with regular up-to-date information for monitoring the action (and ultimately the Horizon 2020 Programme).

The questionnaire consists in structured information on:

- performance indicators (defined in Annex II to the H2020 Specific Programme)
- information to monitor the implementation of H2020 on cross–cutting issues (*see Annex III to the Specific Programme*) and to assess the progress of Horizon 2020 against the objectives defined for the 'societal challenges' (*see Article 3 and 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.)*.

4. Financial report: Individual financial statements — Explanation of the use of resources — Summary financial statement— Certificates on the financial statements (CFS)

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.

⚠ Beneficiaries/linked third parties should declare ALL their eligible costs — even if they are above the estimated budget in Annex 2 (**cost overruns**). The grant will be capped at the maximum grant amount, but cost overruns may turn out useful, if the JU should reject some of the costs (at payment or later on).

Beneficiaries may declare costs incurred during a previous reporting period, if they were not declared before.

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 also have to declare the receipts for the action *(see Article 5.3.3)*.

⚠ **Combining different JU/EU grants —** Beneficiaries that have **action grants** and **operating grants** may claim indirect costs in their action grants ONLY if they are able to demonstrate cost separation (i.e. that their operating grants do not cover any costs which are covered by their action grants).

To **demonstrate cost separation**, the following conditions must be fulfilled:

- the operating grants may NOT cover 100% of the beneficiary's annual budget (i.e. it may not be full operating grants)
- the beneficiary must use analytical accounting which allows for a cost accounting management with cost allocation keys and cost accounting codes AND must apply these keys and codes to identify and separate the costs (i.e. to allocate them to either the action grant activities or the operating grant activities)
- the beneficiary must record:
  - all real costs incurred for the activities that are covered by their operating grants (i.e. personnel, general running costs and other operating costs linked to the WP) and
  - all real costs incurred for the activities that are covered by their action grants (including the indirect costs linked to the action)
- the allocation of the costs must be done in a way that leads to a fair, objective and realistic result.

Beneficiaries that **cannot fulfil these conditions** must EITHER:

- not sign/terminate the operating grants, in order to be able to claim indirect costs in the action grants
- keep the operating grants, but sign the action grants *without* indirect costs or request no indirect costs at reporting stage (i.e. lower the pre-filled amount in the indirect cost column of the financial statement).

4.0

The possibility to combine operating grants with action grants if costs are separated was introduced with GA version 4.0. It applies also to older grant agreements, if the beneficiaries can demonstrate that there is no double funding, in accordance with the above-listed principles (analytical accounting tools, full cost recording, fair allocation).

Best practice: In case of overlapping JU/EU action and operating grants, the beneficiary should immediately contact the JU (via the Funding and Tenders Portal). Be aware that operating grants are not always easy to identify. They exist under various labels (operating grants; financial contributions/support to the functioning/operationof entities; etc.).Check your call text.

The **explanation of the use of resources** must be consistent with the costs declared in the financial statement per beneficiary.

For the final reporting period, some beneficiaries/linked third parties will also have to submit a **certificate on the financial statement (CFS)**.

Such a certificate is needed if the beneficiary/linked third party requests a total financial contribution of EUR 325 000 (or more) as reimbursement for actual costs and unit costs calculated according to its usual accounting practices (average personnel costs and costs for internally invoiced goods and services).

This means that costs based on lump sums, flat-rates (*e.g. indirect costs*) or unit costs (other than those for personnel costs and costs for internally invoiced goods and services 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).

Please note that financial contributions received by a beneficiary from another beneficiary not receiving funding which is constituent or affiliated entity of the IMI2 JU Members other than the Union (i.e. EFPIA), or IMI2 JU Associated Partners cover eligible costs. Therefore, they are considered as "JU funding" (see introduction, section IV.A) and the relevant amount must be taken into consideration for the calculation of the EUR 325 000 threshold.

Example:

A is a beneficiary in an action which declared the following total eligible costs for the action:

- *personnel costs according to usual accounting practices = 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 personnel costs according to usual accounting practices incurred by A (and hence the requested financial 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*

If a certificate is required, all costs declared as actual costs or unit costs calculated according to usual accounting practices must be covered by the certificate. Incomplete certificates will be returned for correction.

However, costs previously audited by the JU are NOT counted for the EUR 325 000 threshold and they do not need to be covered (again) by the certificate.

Linked third parties must submit a certificate if it reaches (on its own, without its beneficiary) the EUR 325 000 threshold.

Certificates submitted before the EUR 325 000 threshold is reached will be rejected by the JU.

Beneficiaries/linked third parties may submit either **one certificate per reporting period** or a **single CFS for** the **whole action**.

The certificate(s) may be submitted ONLY **with** the ***final*** **financial report**. Certificates submitted at any other moment will NOT be accepted (and costs incurred for them will be considered ineligible, because not necessary).

Costs for partial certificates (i.e. one certificate per reporting period) will be accepted ONLY in the last reporting period and ONLY if:

- a CFS is mandatory (i.e. the threshold is reached at the end of the action) and
- the total costs of the partial certificates is similar to the cost that would have been incurred for a single certificate.

The certificate must be issued by an **external auditor**, using the template in Annex 5 of the GA.

Only qualified auditors may issue a certificate.

'Qualified' means qualified in accordance with national legislation implementing Directive 2006/43/EC[68] (or any EU legislation that replaces this Directive).

The auditor must certify that the costs declared in the financial statement are accurately recorded in the beneficiary's accounting system and eligible.

If the auditor cannot confirm (for any reason), s/he must explain this in detail in the certificate. The JU will consider the explanation in light of the facts provided by the auditor, and decide on steps to take.

The **summary financial statement** is generated automatically by the IT system (with consolidated data from all individual financial statements for all beneficiaries and linked third parties, for the reporting period).

For the final reporting period, the IT system will also generate a **final summary financial statement** (consolidating the data from all individual financial statements for all beneficiaries and linked third parties, for all reporting periods).

Specific cases (certificates on the financial statements):

Public bodies — For public bodies, the certificate may be issued by an independent public officer with formal competence to audit the beneficiary/linked third party (instead of by an external auditor).

International organisations — 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.

Beneficiaries/linked third parties from a third country — Beneficiaries/linked third parties established in a non-EU country must provide a certificate that complies with national regulations in the field. Auditors qualified in the EU may provide certificates for beneficiaries established in non-EU countries, if they are familiar with the relevant national regulations (national accounting rules) and comply with them when preparing the certification.

5. Information on cumulative expenditure incurred

This option will be inserted in the GA for grants above 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.

A template is available and must be submitted via the Funding & Tenders Portal Continuous Reporting Module.

[68] 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).

6. 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**: conversion of costs recorded in their accounts by one of the following:
  - daily euro exchange rate is published 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.

    For cost adjustments to previous periods ('adjustment financial statements'), the exchange rate to be used is the one for the reporting period in which the costs adjusted were incurred.

    For eligibile cost related to drafting and submitting the final reports incurred after the action duration, the exchange rate to be used is the one for the last reporting period.

    To calculate this rate, the beneficiaries may use the editable charts on the ECB website[69].

    How to calculate the rate on the ECB website:

    Step 1 — Go to the ECB website.

    Step 2 — Click on the chart icon [ ] for the currency.

    Step 3 — Choose the 'HTML5 version' which appears under the name of the currency in the top-left corner.

    Step 4 — Insert the starting date of the reporting period in the field 'from' and the end date of the reporting period in the field 'to'. The average for the period will appear above the chart.

    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[70].

    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).*

7. Language of reports

[69] Available at http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html
[70] Available at http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

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).

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

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 JU until the payment of the balance.

The amount of the pre-financing payment will be EUR [**insert amount** (insert amount in words)].

The JU will — except if Article 48 applies — make the pre-financing payment to the coordinator within 30 days either from the entry into force of the Agreement (see Article 58) or from 10 days before the starting date of the action (see Article 3), 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 JU from the pre-financing payment and transferred into the '**Guarantee Fund**'

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 JU 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 JU 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 JU (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 JU 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 JU 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 beneficiaries' consent — against any other amount owed by a beneficiary to the JU up to the maximum JU contribution indicated, for that beneficiary, in the estimated budget (see Annex 2).

21.5 Notification of amounts due

When making payments, the JU 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 JU 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 JU 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: […]
Full name of the account holder: […]
Full account number (including bank codes): […]
[IBAN code: […]] [38]

21.9 Costs of payment transfers

The cost of the payment transfers is borne as follows:

- the JU 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 JU 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 JU 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.

[38] BIC or SWIFT code applies to for countries if the IBAN code does not apply.

1. Payments to be made

The JU 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 before)
  - 10 days before the action starting date.

  Example:

  A GA is signed by the coordinator on 30 December 2014 and by the JU on 5 January 2015. The action starting date would normally be 1 February 2015, but the consortium has requested a fixed starting date of 1 September 2014 in its proposal, as the action is a continuation of a previous IMI project.

  After due consideration, the fixed starting 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.

⚠ Any payment (i.e. pre-financing, interim payments and payment of the balance) may be **offset** against debts of the beneficiaries towards the JU— without the consent of the beneficiary concerned and up to the beneficiary's maximum JU contribution in Annex 2 *(see also Article 44)*.

All payments are subject to a **payment deadline** (i.e. number of days within which the JU has to pay the consortium — after having received the payment request). The deadline depends on the type of payment:

- for pre-financing: 30 days
- for interim payments and payment of the balance: 90 days *(see Article 21)*.

If there are issues with the payment request or with the costs declared which make it impossible to comply with the payment deadline, the JU will **suspend the deadline** *(see Article 47)*.

The pre-financing payment is automatic, while for interim and final payments the JU must first:

- analyse the technical reports and financial statements
- check the eligibility of the claimed costs
- calculate the amount to be paid
- approve the payment request and authorise the payment.

This is not an in-depth verification and therefore no guarantee for eligibility or correctness. The costs may still have to be rejected later on, if the JU finds — in a more in-depth verification — that they are ineligible.

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*).

How and when the payments are distributed is in principle an internal matter for the consortium.

The consortium agreement may set out, 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).

Similarly, the consortium agreement may provide for a distribution of the funding which is different from the costs claimed.

Also, if the coordinator does NOT comply with its obligations, this is in principle an issue to be resolved within the consortium. It is only if the coordinator is terminated that the JU (and especially the Guarantee Fund will intervene; *see Article 50)*.

The JU 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 JU will **notify** the coordinator of the amount due, explaining which costs have been accepted and which have been rejected (if applicable; see *Articles 42*, *43 and 44*).

2. Payment calculations — Amounts due — Recoveries?

Pre-financing payment

How much? The pre-financing amount does not depend on any financial statement. It is a float that is fixed in each GA and automatically paid at the beginning of the action.

How to calculate the pre-financing payment:

Step 1 — **Pre-financing amount**

The amount of pre-financing is fixed in the GA.

There is no standard amount (or percentage) for the pre-financing payment. For H2020 grants, it will normally be (depending on the availability of JU budget credits) 100 % of the average JU funding per reporting period (i.e. maximum grant amount set out in Article 5.1 / number of periods). For actions with only one reporting period, it will however be less, since 100 % would mean the totality of the grant amount.

Step 2 — **Deduction of the Guarantee Fund contribution**

At the moment of the pre-financing, an amount that corresponds to 5 % of the maximum grant amount *(see Article 5.1)* is deducted from the pre-financing payment and transferred to the Guarantee Fund. (The Guarantee Fund is a Fund that covers defaulting beneficiaries).

Step 3 — **Pre-financing payment letter**

The JU will inform the coordinator about the amount due (pre-financing payment letter).

Pre-financing funds remain **JU property** until the payment of the balance — when they are cleared against the eligible costs accepted by the JU.

Example for calculating the pre-financing payment:

Action with 3 reporting periods of 18 months.
Maximum grant amount: EUR 1 000 000.
Reimbursement rate: 100 %.
Guarantee Fund contribution: 5% of EUR 1 000 000 = EUR 50 000.
Pre-financing amount & deduction of Guarantee Fund contribution:
Pre-financing amount: EUR 333 334.
Amount to be paid out to the consortium as pre-financing: EUR 333 334 - EUR 50 000 = EUR 283 334.

Payment at beneficiary termination

How much? The amount due at beneficiary termination will be calculated by the JU on the basis of the termination report, the payments already made and the report on the distribution of payments *(see also Articles 44.1.1, 50.2.2 and 50.3.3)*.

⚠ The **amount due** is used to determine whether the terminated beneficiary received too much from the consortium (and should pay it back to them) and will then flow into the calculation of the next interim and final payments in order to cap that beneficiary's accepted JU contribution.

⚠ The terminated beneficiary's share of the final grant amount (beneficiary's final grant share) will be calculated only at the end of the project (payment of the balance), together with the rest of the consortium.

⚠ If the terminated beneficiary is audited during the ongoing project, its amount due will be re-calculated. If the terminated beneficiary is audited after the end of the project, the recovery will follow the standard rules (revised final grant amount calculated on the basis of the final grant share).

How to calculate the amount due at beneficiary termination:

Amount due

Step 1 — **Calculation of the accepted JU contribution (application of the reimbursement rate to the eligible costs)**

In order to calculate the amount of accepted JU contribution for the beneficiary concerned, the JU will calculate the accepted costs for the beneficiary and each of its linked third parties (i.e. eligible/not rejected costs declared in the interim and termination reports; *see Articles 6 and 42*), apply the reimbursement rate(s) and sum them up to a total amount for the beneficiary.

Only costs incurred *(see Article 6.1(a))* by the beneficiary concerned until termination takes effect are eligible (except for costs for the termination report). Costs relating to contracts due for execution (i.e. delivery) only after termination are NOT eligible.

If the coordinator fails to submit the termination report (within the 30 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 JU will NOT send a written reminder and will not extend the deadline.

If the beneficiary requested less than the maximum JU contribution, the accepted JU contribution will be this lower requested amount.

➔ Amount resulting from Step 1.

Step 2 — **Grant reductions (substantial errors, irregularities or fraud or serious breach of obligations)**, if any

In order to calculate the amount of grant reductions, the JU will calculate the grant reductions for the beneficiary concerned and its linked third parties (if any; see *Article 43*) and then sum them up to a total amount for the beneficiary.

This total amount of grant reductions is then deducted from the pro rata temporis part of the beneficiary's and linked third parties' maximum grant amounts (Annex 2) — pro rata temporis corresponding to their period of participation (i.e. until termination).

For more guidance on grant reductions, *see the Guidance on grant reductions*.

➔ Amount resulting from Step 2.

The **amount due** is the lower of the two (amount resulting from Step 1 and amount resulting from Step 2).

Beneficiary balance

Step 3 — **Calculation of the beneficiary balance**

In order to establish if the beneficiary received excess funding, the JU will deduct the total amount of pre-financing and interim payments made (according to the report on the distribution of payments) from the amount due.

If the amount due is *higher* than the payments already made, the difference will be paid by the JU to the coordinator at the next interim/final payment.

If the amount due is *lower* than the payments made, the beneficiary must repay the difference (to the consortium; NOT to the JU). If the beneficiary doesn't, the JU will intervene, by activating the Guarantee Fund to pay the money to the consortium and then recovering it from the beneficiary in the name of the Guarantee Fund *(see below)*.

If the coordinator does not submit the report on the distribution of payments, the terminated beneficiary will NOT have to repay any amounts to the consortium. If there are issues, the consortium will have to deal with them internally.

Step 4 — **Beneficiary calculation letter**

The JU will inform the beneficiary about the balance, i.e. the amounts that are owed to the consortium or to the beneficiary concerned (beneficiary termination calculation letter).

If the closure involves grant reduction or recovery (refund to the consortium), there will be two letters: a pre-information letter (opening a contradictory procedure) and confirmation letter *(see* Articles 43 *and 44)*.

Recovery (if any)

Step 5 — **Beneficiary recovery letter & debit note**

If the beneficiary does not repay the consortium by the date specified in the confirmation letter, the JU will activate the Guarantee Fund (to pay the consortium) and claim back the money paid by the Guarantee Fund from the beneficiary, (beneficiary recovery letter; *see* Articles 44 *and 50*).

Step 6 — **Enforced recovery**

If the beneficiary does not honour the debit note within the deadline, the JU will enforce its claim, by one of the following *(see Article 44)*:

- by **offsetting** it

  'Offsetting' means to deduct the amount the debtor owes to the JU from another amount that the JU owes to debtor. With the offsetting both amounts are considered paid.

- if the JU has requested joint and several liability from a linked third party: by **holding** the **linked third party liable**
- taking **legal action** in a national court or the European Court of Justice *(see Article 57.2)*

Example for calculating the amount due at beneficiary termination:

Grant with three beneficiaries (A, B and C) and two reporting periods.

Maximum grant amount: EUR 500 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 200 000; B= EUR 200 000; C= EUR 100 000).

Reimbursement rate: 100 %.

Pre-financing: EUR 200 000.

Amount due:

Beneficiary A goes bankrupt in the middle of the action and is terminated at month 18 (of 36), just before the end of RP1.

Costs declared by beneficiary A in termination report: EUR 50 000 (direct costs) + EUR 12 500 (25 % flat rate for indirect costs) = EUR 62 500.

Costs rejected for beneficiary A following audit: EUR 10 000 + EUR 2 500 (25 % flat rate for indirect costs) = EUR 12 500.

Accepted costs beneficiary A: EUR 62 500 – EUR 12 500 = EUR 50 000.

Application of reimbursement rate: EUR 50 000 (total accepted EU contribution).

Amount resulting from Step 1: EUR 50 000.

10% grant reduction beneficiary A due to breach of obligations: 10% of {{18/36} x EUR 200 000} = 10% of EUR 100 000 = EUR 10 000.

Amount resulting from Step 2: 100 000 – 10 000 = EUR 90 000.

Lower amount of the two: EUR 50 000.

Beneficiary A amount due: EUR 50 000.

Beneficiary balance:

Payments received by beneficiary A (according to the report on the distribution of payments): EUR 60 000.

Beneficiary A balance: EUR 50 000 (amount due) - EUR 60 000 (payments received) = EUR -10 000 (excess payments of EUR 10 000).

Recovery:

Amount to be recovered from beneficiary A: EUR 10 000 (negative balance of EUR 10 000 must be returned to the consortium; otherwise JU will start a recovery procedure).

Interim payments

How much? The amount of the interim payments will be calculated by the JU on the basis of the financial statements and the payments already made.

How to calculate interim payments:

Step 1 — **Calculation of the accepted JU contribution (application of the reimbursement rates to the eligible costs)**

In order to calculate the amount of accepted JU contribution, the JU will, for each beneficiary and linked third party, calculate the accepted costs (i.e. eligible/not rejected costs declared in the financial statement; *see Articles 6 and 42*), apply the reimbursement rate(s) and then sum them up to a total amount for the consortium.

If a beneficiary/linked third party requested in the financial statements less than the JU contribution, the accepted JU contribution will be this lower requested amount.

Step 2 — **Limit to 90 % of the maximum grant amount**

If the total for the consortium is more than 90 % of the maximum grant amount minus pre-financing and previous interim payments, it will be capped.

Step 3 — **Interim payment letter**

The JU will inform the coordinator about the amount due (interim payment letter).

Examples for calculating interim payments:

Case 1:

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.

Interim payment RP1:

Costs declared by the consortium for RP1: EUR 500 000 (direct costs) + EUR 125 000 (25% flat rate for indirect costs) = EUR 625 000.

After checking the reports EUR 20 000 of the direct costs claimed by beneficiary A and EUR 12 000 of those claimed by beneficiary B are considered not eligible and rejected. The JU therefore rejects EUR 32 000 direct costs + EUR 8 000 (25% flat rate for indirect costs) = EUR 40 000.

Total accepted costs RP1: EUR 585 000.

Application of reimbursement rate: 100% = EUR 585 000 (total accepted JU contribution).

Limit to 90% of the maximum grant amount minus pre-financing = EUR 900 000 – EUR 333 334 = EUR 566 666.

Amount to be paid out to the consortium as interim payment for RP1: EUR 566 666.

Interim payment RP2:

Total accepted costs RP2: EUR 162 500.

Amount to be paid out to the consortium as interim payment for RP2: EUR 0 (the 90% limit has already been reached in RP1: 333 334 + 566 666 = 900 000).

Case 2 (grant with terminated beneficiary):

Grant with three beneficiaries (A, B and C) and two reporting periods.

Maximum grant amount: EUR 500 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 200 000; B= EUR 200 000; C= EUR 100 000).

Reimbursement rate: 100%.

Pre-financing: EUR 200 000.

Beneficiary A was terminated before the end of RP1 and the amount due was its accepted costs :EUR 62 500 EUR (no grant reductions applied).

Interim payment RP1:

Costs declared by beneficiary A for RP1: EUR 50 000 (direct costs) + EUR 12 500 (25% flat rate for indirect costs) = EUR 62 500.

Costs declared by beneficiary B for RP1: EUR 115 000 (direct costs) + EUR 28 750 (25% flat rate for indirect costs) = EUR 143 750.

Costs declared by beneficiary C for RP1: EUR 90 000 (direct costs) + EUR 22 500 (25% flat rate for indirect costs) = EUR 112 500.

Total costs declared RP1: EUR 62 500 + EUR 143 750 + EUR 112 500 = EUR 318 750.

Costs of beneficiary A are not capped since there were no grant reductions at beneficiary termination.

Some direct costs declared by beneficiary B are rejected for an amount of EUR 10 000 + EUR 2 500 (25 % flat rate for indirect costs) = EUR 12 500.

Total accepted costs RP 1: EUR 318 750– EUR 12 500 = EUR 306 250.

Application of the reimbursement rate 100%: EUR 306 250 (total accepted JU contribution).

Limit to 90 % of the maximum grant amount minus pre-financing: EUR 450 000 – EUR 200 000 = EUR 250 000.

Amount to be paid out to the consortium as interim payment for RP1: EUR 250 000.

Case 3:

Grant with three beneficiaries (A, B and C) and three reporting periods.

Maximum grant amount: EUR 500 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 200 000; B= EUR 200 000; C= EUR 100 000).

Reimbursement rate: 100%.

Pre-financing: EUR 200 000.

Interim payment RP1:

Costs declared by beneficiary A for RP1: EUR 95 000 (direct costs) + EUR 23 750 (25% flat rate for indirect costs) = EUR 118 750.

Costs declared by beneficiary B for RP1: EUR 115 000 (direct costs) + EUR 28 750 (25% flat rate for indirect costs) = EUR 143 750.

Costs declared by beneficiary C for RP1: EUR 90 000 (direct costs) + EUR 22 500 (25% flat rate for indirect costs) = EUR 112 500.

Total costs declared RP1: EUR 118 750 + EUR 143 750 + EUR 112 500 = EUR 375 000.

Some direct costs declared by beneficiary A are rejected for an amount of EUR 10 000 + EUR 2 500 (25 % flat rate for indirect costs) = EUR 12 500.

Total accepted costs RP 1: EUR 375 000 – EUR 12 500 = EUR 362 500.

Application of the reimbursement rate 100%: EUR 362 500 (total accepted JU contribution).

Limit to 90 % of the maximum grant amount minus pre-financing: EUR 450 000 – EUR 200 000 = EUR 250 000.

Amount to be paid out to the consortium as interim payment for RP1: EUR 250 000.

Interim payment RP2:

Costs declared by beneficiary A for RP2: EUR 20 000 (direct costs) + EUR 5 000 (25% flat rate for indirect costs) = EUR 25 000.

Costs declared by beneficiary B for RP2: EUR 30 000 (direct costs) + EUR 7 500 (25% flat rate for indirect costs) = EUR 37 500.

Costs declared by beneficiary C for RP2: EUR 30 000 (direct costs) +EUR 7 500 (25% flat rate for indirect costs) = EUR 37 500.

Total costs declared RP2: EUR 25 000 + EUR 37 500 + EUR 37 500 = EUR 100 000.

Costs rejected for beneficiary B at RP2: EUR 10 000 (direct costs) + EUR 2 500 (25% flat rate for indirect costs) = EUR 12 500.

Costs rejected for beneficiary C at RP2: 5 000 (direct costs) + 1 250 (25% flat rate for indirect costs) = EUR 6 250.

Total accepted costs RP2 = EUR 81 250.

Application of the reimbursement rate 100%: EUR 81 250 (total accepted JU contribution).

Amount to be paid out to the consortium as interim payment for RP2: EUR 0 (the 90% limit has already been reached in RP1: EUR 200 000 + EUR 250 000 = EUR 450 000).

Payment of the balance

How much? The amount to be paid (or recovered) at payment of the balance (final payment) will be calculated by the JU on the basis of the financial statements, the final grant amount, the payments already made and the report on the distribution of payments *(see also Articles 5.3 and 44.1.2)*.

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*.

How to calculate the payment of the balance:

Final grant amount

Step 1 — **Calculation of the accepted JU contribution (application of the reimbursement rates to the eligible costs)**

In order to calculate the amount of accepted JU contribution, the JU will, for each beneficiary/linked third party, calculate the accepted costs (i.e. eligible/not rejected costs declared in the financial statements; *see Articles 6 and 42*), apply the reimbursement rate(s) and then sum them up to a total amount for the consortium.

If a beneficiary/linked third party requested less than the maximum JU contribution, the accepted JU contribution will be this lower requested amount.

Step 2 — **Limit to the maximum grant amount**

If the total for the consortium is more than the maximum grant amount for the action *(see Article 5.1)*, it will be capped at that amount

Step 3 — **Calculation of receipts & deduction of profit (no-profit rule)**

From this amount, the JU will deduct any profit made due to receipts.

Thus, the total accepted JU contribution + receipts are capped at the total accepted costs; the amount resulting from Steps 1 and 2 plus receipts cannot exceed the accepted costs.

If grant amount + receipts > total accepted costs ➔ deduction of profit

⚠ Profit is assessed at the level of the action, NOT at the level of the individual beneficiaries (⚠ new in Horizon 2020).

The amounts taken into account are the total accepted JU contribution (following Steps 1 and 2), the total receipts and the total accepted costs.

The **receipts** that must be taken into account are receipts which have been, during the action duration *(see Article 3)*:

- established (i.e. revenue that has been collected AND entered in the accounts)

- generated (i.e. revenue that has not yet been collected, but which has been generated) or
- confirmed (i.e. revenue that has not yet been collected, but for which the beneficiary has a commitment or written confirmation).

The following **are** considered **receipts**:

- 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 action duration)*

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

  Receipts from the sale of assets are capped at the amount of costs declared for the asset.

  Example:

  Machine bought for EUR 21 000 in year X, sold in year X + 4 (both within the action duration) 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/linked third party specifically for being used for the action)*

- 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)*

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

  Receipts due to free of charge in-kind contributions are capped by the amount declared as third party costs for the contribution.

- Financial contributions given by beneficiaries not receiving JU funding which are constituent or affiliated entities of the IMI2 JU Members other than the Union (e.g. EFPIA companies), or of the IMI2 JU Associated Partners, not eligible for, or requesting zero JU funding.It may be established in the Work Plan (call topic text) and/or agreed within the consortium during the preparation of the full proposal or during the project implementation that (part of) the activities set out in Annex 1 to the GA to be implemented by one or more beneficiaries receiving funding (BRF) can be supported through financial contribution provided by one or more beneficiaries not receiving funding (BNRF) which, according to Council Regulation [557/2014], are constituent or affiliated entities of IMI2 JU Members other than the Union (e.g. EFPIA) or of the IMI2 JU Associated Partners (AP).

  In the case of such financial contribution, Annex 1 to the GA must identify:

  - the BRF (recipient) and BNRF (donor);
  - the activities to be supported and related explanation taking into account the specific characteristics of the action;
  - the estimated costs to be supported by financial contribution.

  Such financial contribution will be considered as receipt and the related amount will be declared by the BRF in its individual financial statement of the last reporting period. If there is a profit (grant amount plus receipts exceed the total eligible costs), it will be deducted from the final grant amount.

  The financial contributions by BNRF may concern activities:

- initially allocated to a BNRF which could be more efficiently implemented by a BRF (if approved through an amendment of the GA):

Example: *Instead of carrying out a specific research in-house by recruiting a specific staff member, an EFPIA company (BNRF) agrees with a University (BRF) which is member of the same consortium and have the relevant know-how/expertise that this activity is actually carried out as follows: A Postdoc is hired by the University for carrying out the specific research and the cost of the salary paid by the University is entirely reimbursed through a financial contribution by the EFPIA company to the University.*

- to be directly supported by a BNRF through financial contribution as its part of contribution to the specific IMI2 JU action

Example: *A Charity organisation (BNRF) having a specific interest in funding research in a given scientific area (e.g. Diabetes, Alzheimer, Ebola etc.) becomes an IMI2 JU Associated Partner in the course of implementation of the GA. In Annex 1 to the GA it is foreseen that the Charity organisation will provide financial support to one or more BRFs in this specific IMI2 JU action selected under an IMI2 Work Plan topic addressing the scientific area of its interest. The Charity organisation's financial contribution is provided, as foreseen in Annex 1, to one or more BRFs for carrying out specific activities which are identified in the Annex 1 to the GA. However, the Charity organisation's financial contribution, which would originally be considered as mere donation not to be reported , is now a contribution to the IMI2 JU thus to be considered as a receipt for the action, due to the Charity organisation having now become an IMI2 JU Associated Partner.*

The following are **NOT** considered **receipts**:

- in-kind contributions given by a **third party (donor)** free of charge — if they were not given specifically to be used for the action

Example: *A university professor whose costs are charged by the beneficiary university in the GA, but whose salary is paid by the ministry and not reimbursed by the university: This in-kind contribution 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 given by a third party (donor) specifically to be used for the action — if they may be used according to the donor's rules to cover also costs *other* than the eligible costs

Example: *currency exchange losses*

- financial contributions given by a third party (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

  In this case, the *full* amount of the financial contribution is considered not a receipt (not only the unused amount).

- financial contributions made by one beneficiary which is NOT a constituent or affiliated entity of the IMI2 JU Members other than the Union (e.g. an EFPIA company), or of a IMI2 JU Associated Partner, to another beneficiary within the same action. Conversely, such a financial contribution cannot either be declared as cost for the action.

- income generated by exploiting the results of the project *(e.g. the IPR)* — since successfully exploiting the results is one of the main objectives of the action

Receipts will be taken into account by the JU only at the moment of the payment of the balance *(i.e. the final payment at the end of the action)*. They must be declared in the final report.

In many cases they will not affect the grant amount since they do not lead to a profit (at the level of the action). 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: The potential implications of receipts should be addressed in the consortium agreement *(see Article 41.3)*.

➔ Amount resulting from Steps 1-3.

Step 4 — **Grant reductions (substantial errors, irregularities or fraud or serious breach of obligations)**, if any

In order to calculate the amount of grant reductions (if any), the JU will, for each beneficiary/linked third party, calculate the grant reductions at their level, add any reductions that must be made at action-level and then sum them up to a total amount for the consortium *(see Article 43)*.

This total amount of grant reductions for the consortium is then deducted from the maximum grant amount for the action set out in *Article 5.1*.

For more guidance on grant reductions, *see the Guidance on grant reductions*.

➔ Amount resulting from Step 4.

The **final grant amount** is the lower of the 2 (amount resulting from Steps 1-3 and amount resulting from Step 4).

Balance

Step 5 — **Calculation of the balance & Guarantee Fund release**

In order to calculate the balance, the JU will deduct the total amount of pre-financing and interim payments made from the final grant amount.

If the final grant amount is *higher* than the payments already made, the balance will take the form of a payment. In addition, the Guarantee Fund contribution (5% that were kept from the pre-financing) will be released with a separate payment.

If the final grant amount is *lower* than the payments made, the balance will take the form of a recovery (amount overpaid needs to be paid back to the JU; *see Article 44*). In this case, the amount to be paid back will be directly compensated against the Guarantee Fund release and if this amount is sufficient to cover the debt, the recovery process ends (instead the consortium will be paid the remainder of the Guarantee Fund contribution, if any is left). If the Guarantee Fund amount is not sufficient, further steps will be taken to recover the rest *(see below)*.

Step 6 — **Payment of the balance letter & debit note**

The JU will inform the coordinator about the amount due to the consortium or the amount that needs to be paid back (payment of the balance letter).

If the final payment involves a grant reduction or recovery, there will be two letters: a pre-information letter (opening a contradictory procedure) and a confirmation letter *(see* Articles 43 *and* 44*)*.

If there is still an amount to be recovered after compensation with the Guarantee Fund release, the confirmation letter will include a debit note to the coordinator for the amount and the division of final grant amount table *(see below)*.

Recovery (if any)

Step 7a — **Recovery from the coordinator**

If the coordinator pays the debt by the date specified in the debit note, the recovery process ends.

If the coordinator does NOT repay the JU by the date specified AND if it has NOT submitted the report on the distribution of payments, the JU will pursue recovery against the coordinator alone (enforced recovery, *see below*).

Step 7b — **Recovery from the beneficiaries**

If the coordinator does NOT repay the JU by the date specified, BUT has submitted the report on the distribution of payments, the JU will:

- identify the beneficiaries that received funds in excess and
- calculate the amount each beneficiary owes to the JU.

Step 7ba — **Identifying the beneficiaries with excess funding**

In order to identify the beneficiaries that received excess funding, the JU will compare the amount each beneficiary *actually* received (report on the distribution of payments) with its *share of the final grant amount* (beneficiary's accepted JU contribution divided by total accepted JU contribution and obtained percentage then applied to final grant amount).

Beneficiary's final grant share formula:

{{{beneficiary's accepted costs

multiplied by

reimbursement rate}

divided by

accepted JU contribution calculated under Step 1}

multiplied by

final grant amount for the action}

This means that the final grant amount is redistributed between the beneficiaries in proportion to their accepted costs (especially important for overspent grants, i.e. where the consortium declared costs *above* the maximum grant amount limit and each beneficiary's accepted JU contribution must therefore be adjusted to bring it into line with the maximum grant amount) and then compared to the amounts they received from the coordinator.

Recovery will be pursued only against the beneficiaries with a negative result (i.e. excess of payments received over final grant amount share).

Step 7bb — **Division of the debt**

In order to calculate the amount each of those beneficiaries has to pay back, the JU will split the amount to be recovered between them (in proportion to their relative share of the total payments in excess; division of final grant amount table).

Step 7bc — **Beneficiary recovery letter & debit note**

The JU will cancel the debit note sent to the coordinator and inform the beneficiaries concerned about the amounts to be paid back, together with a debit note for each beneficiary (beneficiary recovery letter).

Step 8 — **Enforced recovery**

If the coordinator/beneficiaries do not honour the debit note within the deadline, the JU will enforce its claim(s) by one of the following *(see Article 44)*:

- by **offsetting** it

'Offsetting' means to deduct the amount the debtor owes to the JU from another amount that the JU owes to debtor. With the offsetting both amounts are considered paid.

- by drawing on the Guarantee Fund and then follow it up with a **debit note on behalf of** the **Guarantee Fund**, to continue the recovery procedure by:
  - if the JU has requested joint and several liability from a linked third party: by **holding** the **linked third party liable**

  or

  - taking legal action in a national court or the European Court of Justice (see *Article 57.2*)

Examples for calculating the payment of the balance:

Case 1 (payment):

Grant with three beneficiaries (A, B and C) and three reporting periods.

Maximum grant amount: EUR 1 000 000.

Reimbursement rate: 100%.

Payments made (pre-financing and interim): EUR 900 000 (limit of 90% of the maximum grant amount).

Guarantee Fund contribution: 5% of EUR 1 000 000 = EUR 50 000.

Payments received: EUR 900 000 – EUR 50 000 = EUR 850 000.

Final grant amount:

Total accepted costs: EUR 1 045 000.

Application of the reimbursement rate: 100 % = EUR 1 045 000 (total accepted EU contribution).

Limit to the maximum grant amount: EUR 1 000 000.

No receipts/profit.

No grant reductions.

Final grant amount: EUR 1 000 000.

Balance & Guarantee Fund release:

Payments made: EUR 900 000.

Balance: EUR 1 000 000 (final grant amount) - EUR 900 000 (payments made) = EUR +100 000 (positive balance to be paid to the consortium).

Release of Guarantee Fund: EUR 50 000 (to be paid to consortium).

Amounts to be paid out to the consortium: EUR 100 000 (positive balance) + EUR 50 000 (Guarantee Fund release)

Case 2 (grant with terminated beneficiary):

Grant with three beneficiaries (A, B and C) and three reporting periods.

Maximum grant amount: EUR 500 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 200 000; B= EUR 200 000; C= EUR 100 000).

Reimbursement rate: 100%.

Beneficiary A was terminated before the end of RP1 and the amount due calculated was EUR 62 500 EUR.

Payments made (pre-financing and interim): EUR 450 000 (limit of 90 % of the maximum grant amount).

Guarantee Fund contribution: 5% of 500 000 = EUR 25 000.

Payments received: EUR 450 000 - EUR 25 000 = EUR 425 000.

Final grant amount:

Total accepted costs: EUR 362 500.

Application of the reimbursement rate: 100% = EUR 362 500 (total accepted JU contribution).

Limit to maximum grant amount: EUR 362 500 (no limitation; costs below maximum grant amount).

No receipts/profit.

Amount resulting from Steps 1 to 3: EUR 362 500.

10% grant reduction beneficiary B: 10% of EUR 200 000 = EUR 20 000.

No other grant reductions.

Amount resulting from Step 4: 500 000 – 20 000 = EUR 480 000.

Lower amount of the two: EUR 362 500.

Final grant amount: EUR 362 500.

Balance & Guarantee Fund release:

Payments made: EUR 450 000.

Balance: EUR 362 500 (final grant amount) - EUR 450 000 (payments made) = EUR -87 500 (excess payments of EUR 87 500).

Offsetting against Guarantee Fund release: EUR 87 500 – EUR 25 000 = EUR -62 500.

Payment:

Amount to recovered from the consortium: EUR 62 500.

Case 3 (recovery – underspent grant):

Grant with four beneficiaries: A, B, C, D.

Maximum grant amount: EUR 3 000 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 800 000; B= EUR 1 200 000; C= EUR 600 000; D= EUR 400 000).

Reimbursement rate: 100 %.

Payments made (pre-financing and interim): EUR 2 700 000 (limit of 90 % of the maximum grant amount).

Guarantee Fund contribution: 5% of 3 000 000 = EUR 150 000.

Payments received: EUR 2 700 000 - EUR 150 000 = EUR 2 550 000.

Final grant amount:

Total accepted costs: EUR 2 430 000.

Application of the reimbursement rate: 100% = EUR 2 430 000 (total accepted JU contribution).

Limit to maximum grant amount: EUR 2 430 000 (no limitation; costs below maximum grant amount).

No receipts/profit.

Amount resulting from Steps 1 to 3: EUR 2 430 000.

10% grant reduction beneficiary B: 10% of EUR 1 200 000 = EUR 120 000.

No other grant reductions.

Amount resulting from Step 4: 3 000 000 - 120 000 = EUR 2 880 000.

Lower amount of the two: EUR 2 430 000.

Final grant amount: EUR 2 430 000 (underspent grant ➔ beneficiary shares: A= EUR 600 000; B= EUR 1 100 000; C= EUR 400 000; D= EUR 330 000).

Balance & Guarantee Fund release:

Payments made: EUR 2 700 000.

Balance: EUR 2 430 000 (final grant amount) - EUR 2 700 000 (payments made) = EUR -270 000 (excess payments of EUR 270 000).

Offsetting against Guarantee Fund release: EUR 270 000 – EUR 150 000 = EUR 120 000.

Recovery:

Amount to be recovered from the consortium: EUR 120 000 (negative balance of EUR 120 000 must be paid back by coordinator, otherwise the JU will start a recovery procedure against the beneficiaries that received excess funding).

Recovery from coordinator:

The coordinator does not reimburse the JU and sends the report on the distribution of the payments among beneficiaries (distribution: A= EUR 400 000; B= EUR 1 200 000; C= EUR 600 000; D= EUR 350 000).

Recovery from beneficiaries:

Identifying the beneficiaries with excess funding:

- *A: EUR 600 000 (final grant share) - EUR 400 000 (payments received) = EUR 200 000 (no payment in excess)*
- *B: EUR 1 100 000 (final grant share) - EUR 1 200 000 (payments received) = EUR -100 000 (excess payment of EUR 100 000)*
- *C: EUR 400 000 (final grant share) - EUR 600 000 (payments received) = EUR -200 000 (excess payment of EUR 200 000)*
- *D: EUR 330 000 (final grant share) - EUR 350 000 (payments received) = EUR -20 000 (excess payment of EUR 20 000).*
- *Beneficiaries B, C and D received payments in excess of their JU contribution and will have to reimburse the JU.*
- *Beneficiary A will have to recover the money owed to it (if any) from the other beneficiaries in the consortium.*

Division of the debt:

Relative share of total payments in excess:

- *Total payments made in excess = 320 000.*
- *B: 100 000/320 000 = 31.25 %.*
- *C: 200 000/320 000 = 62.5 %.*
- *D: 20 000/320 000 = 6.25 %.*

Total to be recovered: EUR 120 000.

- *B: 31.25 % x 120 000 = EUR 37 500*
- *C: 62.5 % x 120 000 = EUR 75 000*
- *D: 6.25 % x 120 000 = EUR 7 500.*

Case 4 (recovery – overspent grant):

Grant with three beneficiaries (A, B and C).

Maximum grant amount: EUR 3 000 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 1 000 000; B= EUR 1 500 000; C= EUR 500 000)

Reimbursement rate: 100%.

Payments made (pre-financing and interim): EUR 2 700 000 (limit of 90 % of the maximum grant amount).

Guarantee Fund contribution: 5% of 3 000 000 = EUR 150 000.

Payments received: EUR 2 700 000 - EUR 150 000 = EUR 2 550 000.

Receipts:

Beneficiary A was 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.

Beneficiary B (a university) received as in-kind contribution from its government the secondment of a scientist specifically assigned to the project. The salary of this seconded scientist (EUR 80 000) was declared as cost by this beneficiary, even if paid by the government.

Final grant amount:

Total accepted 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.

Application of the reimbursement rate: 100% = EUR 3 075 000 (total accepted JU contribution).

Limit to maximum grant amount: EUR 3 000 000.

Calculation of receipts and deduction of profit: Profit: EUR 3 140 000 (total accepted JU contribution + receipts : EUR 3 000 000 + EUR 60 000 + EUR 80 000) – EUR 3 075 000 (total accepted costs) = EUR 65 000

Amount after deducting profit: EUR 3 000 000 – EUR 65 000 = EUR 2 935 000.

Amount resulting from Steps 1 to 3: EUR 2 935 000.

10% grant reduction beneficiary A: 10% of EUR 1 000 000 = EUR 100 000.

No other grant reductions.

Amount resulting from Step 4: 3 000 000 - 100 000 = EUR 2 900 000.

Lower amount of the two: EUR 2 900 000.

Final grant amount: EUR 2 900 000.

Balance & Guarantee Fund release:

Payments made: EUR 2 700 000.

Balance: EUR 2 900 000 (final grant amount) - EUR 2 700 000 (payments made) = EUR +200 000 (positive balance to be paid to the consortium).

Release of Guarantee Fund: EUR 150 000 (to be paid to consortium).

Amounts to be paid out to the consortium: EUR 200 000 (positive balance) + EUR 150 000 (Guarantee Fund release)

Audit implementation after payment of the balance — Revised final grant amount

The amount to be recovered (or paid) after the final payment will be calculated by the JU on the basis of the final grant amount and the revised final grant amount *(see also Articles 5.4 and 44.1.3)*.

If the revised final grant amount is *lower* than the beneficiary's share of the final grant amount (beneficiary final grant share), the difference will be recovered.

How to calculate recoveries after payment of the balance:

Revised final grant amount

Step 1 — **Re-calculation of the accepted JU contribution**

In order to calculate the revised amount of accepted JU contribution for the beneficiary concerned, the JU will calculate the revised amount of accepted costs for the beneficiary (i.e. eligible/not rejected costs declared in the financial statements; *see Articles 6 and 42*) and apply the reimbursement rate.

If the audit concerns a linked third party, the revised final grant amount will be calculated for its beneficiary.

➔ Amount resulting from Step 1.

Step 2 — **Grant reductions (substantial errors, irregularities or fraud or serious breach of obligations)**, if any

In order to calculate the amount of grant reductions, the JU will calculate the grant reduction for the beneficiary concerned (if any; see *Article 43*).

This amount of grant reduction is then deducted from the beneficiary's maximum grant amount set out in Annex 2.

If the audit concerns a linked third party, the grant reduction will be calculated for the linked third party (i.e. deducted from its maximum grant amount), but the revised final grant amount will be calculated at beneficiary-level.

For beneficiaries that overspent (i.e. declared more costs at payment of the balance than their maximum grant amount), the reduction rate (percentage) will be applied directly to their share of the final grant amount and the resulting amount will be recovered (—short cut to ensure a proportionate result for beneficiaries that contributed more to the action than initially planned in the estimated budget; avoids disproportionate grant reductions compared to the real project participation; *see also Article 4.2*).

For more guidance on grant reductions*, see the Guidance on grant reductions*.

➔ Amount resulting from Step 2.

The revised final grant amount is the lower of the two (amount resulting from Step 1 and amount resulting from Step 2).

Balance & recovery (if any)

Step 3 — **Calculation of the beneficiary balance**

In order to calculate if the beneficiary has to pay back any amounts, the JU will compare the beneficiary's revised final grant amount with its final grant share *(see above)*.

Beneficiary's final grant share formula:

{{{beneficiary's accepted costs

multiplied by

reimbursement rate}

divided by

accepted JU contribution calculated under Step 1}

multiplied by

final grant amount for the action}

If the revised final grant amount is *lower* than its final grant share, the difference will be recovered.

If exceptionally the audit (or check, review or investigation) showed that the beneficiary made errors resulting in less cost declared than its eligible costs, there will be no recovery. Instead, the beneficiary will be allowed to submit corrected financial statements to claim the difference.

Step 4 — **Audit implementation letters & debit note**

The JU will inform the beneficiary about the amounts put in question (audit implementation letter).

If the audit implementation involves a grant reduction or recovery (generally the case), there will be two letters: a pre-information letter (opening a contradictory procedure) and a confirmation letter *(see Articles 43 and 44)*.

If there is an amount to be recovered, the confirmation letter will include a debit note for the amount.

In case of European Court of Auditor audits, OLAF investigations and Member State judgments with a financial impact on the grant, similar procedures and letters will be used.

Step 5 — **Enforced recovery**

If the beneficiary does not honour the debit note within the deadline, the JU will enforce its claim by one of the following *(see Article 44)*:

– by **offsetting** it

'Offsetting' means to deduct the amount the debtor owes to the JU from another amount that the JU owes to debtor. With the offsetting both amounts are considered paid.

– by drawing on the Guarantee Fund and then follow it up with a **debit note on behalf of** the **Guarantee Fund**, to continue the recovery procedure by:

– if the JU has requested joint and several liability from a linked third party: by **holding** the **linked third party liable**

or

– by taking legal action in a national court or the European Court of Justice (see Article 57.2) or

Examples for calculating recoveries after payment of the balance:

Case 1 (recovery – underspent grant):

Grant with three beneficiaries (A, B and C).

Maximum grant amount: EUR 500 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 200 000; B= EUR 200 000; C= EUR 100 000).

Reimbursement rate: 100 %.

Final grant amount:

Total accepted costs: EUR 187 500 + EUR 156 250 + EUR 150 000 = EUR 493 750

A: EUR 150 000 (direct costs) + EUR 37 500 (25 % flat rate for indirect costs) = EUR 187 500

B: EUR 125 000 (direct costs) + EUR 31 250 (25 % flat rate for indirect costs) = EUR 156 250

C: EUR 120 000 (direct costs) + EUR 30 000 (25 % flat rate for indirect costs) = EUR 150 000

Application of the reimbursement rate: 100% = EUR 493 750 (total accepted JU contribution).

Limit to maximum grant amount: EUR 493 750 (no limitation; costs below maximum grant amount).

No receipts/profit.

No grant reductions

Final grant amount: EUR 493 750 (underspent grant ➔ beneficiary shares: A= 187 500 EUR; B= EUR 156 250; C= EUR 150 000).

Beneficiary revised final grant amount:

An audit concluded that the direct costs of beneficiary A were not eligible for an amount of EUR 30 000 and that there were issues with the visibility of JU funding and IPR.

Re-calculation of accepted EU contribution for beneficiary A: EUR 150 000 (direct costs) — EUR 30 000 (rejected direct costs) = EUR 120 000 + EUR 30 000 (25 % flat rate for indirect costs) = EUR 150 000.

Application of the reimbursement rate: 100% = EUR 150 000.

Amount resulting from Step 1: EUR 150 000.

10% grant reduction for beneficiary A: 10% of 200 000 = EUR 20 000.

Amount resulting from Step 2: 200 000 – 20 000 = EUR 180 000.

Lower amount of the two: EUR 150 000.

Beneficiary A revised final grant amount: EUR 150 000.

The other beneficiaries final grant amounts (i.e. their final grant shares) remain unchanged.

Beneficiary balance:

Balance: EUR 150 000 (revised final grant amount) - EUR 187 500 (final grant share) = EUR –37 500 (excess of EUR 37 500).

Recovery:

Amount to be recovered from beneficiary A: EUR 37 500 (negative balance of EUR 37 500 must be paid back by the beneficiary).

Case 2 (recovery – overspent grant):

Grant with three beneficiaries (A, B and C).

Maximum grant amount: EUR 500 000 (beneficiary maximum grant amounts in Annex 2: A= EUR 200 000; B= EUR 100 000; C= EUR 200 000).

Reimbursement rate: 100%.

Final grant amount:

Total accepted costs: EUR 200 000 + EUR 150 000 + EUR 250 000 = EUR 600 000

A: EUR 160 000 (direct costs) + EUR 40 000 (indirect costs) = EUR 200 000

B: EUR 120 000 (direct costs) + EUR 30 000 (indirect costs) = EUR 150 000

C: EUR 200 000 (direct costs) + EUR 50 000 (indirect costs) = EUR 250 000.

Application of the reimbursement rate: 100% = EUR 600 000 (total accepted JU contribution).

Limit to the maximum grant amount: EUR 500 000.

Final grant amount = EUR 500 000.

Beneficiary revised final grant amounts:

An audit concluded that direct costs of beneficiary A were not eligible for an amount of EUR 30 000.

Another audit concluded that direct costs of beneficiary C were not eligible for an amount of EUR 20 000 and that there were issues with the confidentiality obligations.

Calculation of the beneficiaries final grant shares:

A: (200 000/600 000) x 500 000 = EUR 166 667

B: (150 000/600 000) x 500 000 = EUR 125 000

C: (250 000/600 000) x 500 000 = EUR 208 333.

Beneficiary A:

Re-calculation of accepted JU contribution for beneficiary A: EUR 160 000 (direct costs) – EUR 30 000 (rejected costs) = EUR 130 000 + EUR 32 500 (25% flat rate for indirect costs) = EUR 162 500.

Application of the reimbursement rate: 100% = EUR 162 500.

No grant reductions

Beneficiary A revised final grant amount: EUR 162 500.

Beneficiary C:

Re-calculation of accepted JU contribution for beneficiary C: EUR 200 000 (direct costs) – 20 000 (rejected costs) = EUR 180 000 + EUR 45 000 ((25% flat rate for indirect costs) = EUR 225 000.

Application of the reimbursement rate: 100% = EUR 225 000.

Amount resulting from Step 1: EUR 225 000.

10% grant reduction beneficiary C: 10% of 200 000 = EUR 20 000.

Amount resulting from Step 2: 200 000 – 20 000 = EUR 180 000.

Lower amount of the two: EUR 180 000.

Beneficiary C revised final grant amount: EUR 180 000.

Beneficiary B's final grant amounts (i.e. its final grant amount share) remains unchanged.

Beneficiary balance:

Beneficiary A:

Balance: EUR 162 500 (revised final grant amount) - EUR 166 667 (final grant share) = EUR –4 167 (excess of EUR 4 167).

Beneficiary C:

Balance: EUR 180 000 (revised final grant amount) - EUR 208 333 (final grant share) = EUR -28 333 (excess of EUR 4 167).

Recovery:

Amount to be recovered from beneficiary A: EUR 4 167 (negative balance of EUR 4 167 must be paid back by the beneficiary).

Amount to be recovered from beneficiary C:

In principle: EUR 28 333 (negative balance according to normal calculation).

However, since normal calculation leads to disproportionate grant reductions for beneficiaries that overspent at payment of the balance: shortcut calculation (see above): 10% of EUR 208 333 = EUR 20 833.

ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS

ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS

22.1 Checks, reviews and audits by the JU and the Commission

22.1.1 Right to carry out checks

The JU 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 JU may be assisted by external persons or bodies.

The JU may also request additional information in accordance with Article 17. The JU 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

The JU 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 JU 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 JU performs a plagiarism check on documents submitted by the consortium.*

3. *After receiving information about misconducts concerning a certain beneficiary that participates in actions, the JU checks all the grant agreements in order to see if it needs to take action.*

4. *After the end of the action, the JU 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 checks itself are **internal**. They may however have external effects, since the JU may lead to a **request for information** *(see Article 17.1)* or it may take Chapter 6 measures in view of the results.

Example: *The beneficiaries did not clearly explain the allocation and use of resources in their periodic report. The JU asks for more information by a certain date.*

The checks may also extend to third parties involved in the action (which is why beneficiaries must ensure that the JU 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*).

The JU may carry out checks using its own staff or with the assistance of external expert(s) or bodies — without asking the beneficiaries for approval before appointing them. In this case, the JU will ensure that there is no conflict of interest by asking the expert(s) to sign a declaration.

If the check shows **ineligible costs** or serious **breach of obligations**, it may lead to cost rejection or grant reduction and, if necessary, recovery *(see Articles 42, 43 and 44)*. If a more in-depth examination is required, the JU may start a review or audit.

22.1.2 Right to carry out reviews

The JU 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 JU 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 JU 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 JU 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. Project reviews

The JU 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 and may exceptionally also concern issues related to only one specific beneficiary.

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 JU 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 JU 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 **ineligible costs** or **substantial errors, irregularities or fraud** or serious **breach of obligations** (including non- or improper implementation of the action as described in Annex 1), it may lead to suspension, termination, cost rejection, grant reduction and recovery *(see Articles 42-44, 47-50)* and to exclusion and/or financial penalties *(see Article 45)*.

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 (or, exceptionally, the beneficiary concerned) via the Funding & Tenders Portal.

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 a **review meeting** (on JU premises or anywhere relevant for the action).

If there is a meeting, 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 review report together with the JU comments will be notified to the coordinator (or, exceptionally, the beneficiary concerned) for comments within 30 days (**contradictory review procedure**). (This is NOT the contradictory procedure described in Article 42. It is a separate

procedure that may, if necessary, be followed by a second contradictory procedure for cost rejection, grant reduction, etc. under Articles 41 to 46.)

The JU operational services (authorising officers) will analyse the comments received and decide on the follow-up, if any.

22.1.3 Right to carry out audits

The JU or the Commission 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 JU or the Commission 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 JU or the Commission 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 JU or the Commission 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 JU or the Commission 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 JU or the Commission may also access the beneficiaries' statutory records for the periodical assessment of unit costs or flat-rate amounts *[or lump sums]*.

1. Audits

The JU or the Commission may — at any moment and up until 2 years after the payment of the balance — carry out an audit.

⚠ **Record-keeping —** Once an audit has started, the beneficiary must keep ALL the records and supporting documents until the audit procedure AND its follow-up (including cost rejection, grant reduction, recovery and litigation) is completed.

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.*

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.

They consist in an in-depth examination (by professional (external or JU or Commission) 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 JU or the Commission auditors can exercise their 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 JU or the Commission 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 JU or the Commission will also notify the beneficiary about the launching the audit, as well as about a summary of its conclusions.*

2. *The JU or the Commission 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 formally be with the beneficiary and the beneficiary will be responsible for ensuring that the auditors have access to all necessary documents and to the third party's premises, if necessary.*

3. *The JU or the Commission 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 IMI2 JU GA (ensuring best value for money or, if appropriate, the lowest price, absence of conflict of interest)*
- *see if payments made under the contract/subcontract match the costs declared by the beneficiary*
- *assess the technical work carried out by the subcontractor.*

The audit procedure will formally be with the beneficiary and the beneficiary will be 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. The audit will not aim to check the contractors'/subcontractors' costs or accounts, because the remuneration they get is a set price, not a reimbursement of costs (except in cases of fraud).

4. *The JU or the Commission 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 formally be with the beneficiary and the beneficiary will be responsible for ensuring that the auditors have access to all necessary documents and to the recipient's premises, if necessary. The audit will normally not aim to assess the costs incurred by the recipients (since they are not relevant for the eligibility of the beneficiary's costs) — unless Annex 1 of 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**, **substantial errors, irregularities or fraud** or serious **breach of obligations**, it may lead to suspension, termination, cost rejection, grant reduction and recovery *(see Articles 42-44, 47-50)* and, in very serious cases, to exclusion and/or financial penalties *(see Article 45)*.

In some cases, findings may result in the **acceptance** of additional costs (if the beneficiary declared them).

Specific cases (audits):

Audits for periodical assessment of simplified cost forms — The JU or the Commission may also audit the accounting records of beneficiaries to obtain general information about real costs of cost items for which it has fixed 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 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.

2. Procedure

The audit will be initiated by a **letter** sent to the beneficiary concerned (via the Funding & Tenders Portal or by registered post with proof of delivery; *see Article 52*).

If the JU or the Commission uses an external audit firm, this letter will mention its name. The beneficiary may object on grounds of commercial confidentiality (together with the reasons why) and — if justified — the JU or the Commission may decide to appoint another external auditor (or, in exceptional circumstances, to carry out the audit itself).

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).

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.

Where the records and documentation contain personal data, the JU or the Commission will process it in compliance with Regulation 2018/1725 and the beneficiary must inform the persons concerned about this processing *(see Article 39)*.

Confidential data will be processed in accordance with Article 36.

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.).

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 includes granting access to research facilities and interviewing the researchers that worked on the action.

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 audit procedure**). (This is NOT the contradictory procedure described in Article 42. It is a separate procedure that may, if necessary, be followed by a second contradictory procedure for cost rejection, grant reduction, etc. under Articles 41 to 46.)

The audit procedure will be closed (by the JU or the Commission auditors) with the **final audit report** and the **letter of audit conclusions** (LoC) - and the file will then be passed on to the JU (authorising officer) for the follow-up, if any.

⚠ If there are cost adjustments in favour of the JU budget to be made on the basis of the audit, please do not take any immediate action (do NOT deduct them from the next financial statement). If needed, the adjustments will be done by the JU and you will be informed about them in the payment letter or audit implementation pre-information letter (with the possibility to take position).

22.2 Investigations by the European Anti-Fraud Office (OLAF)

Under Regulations No 883/2013[39] and No 2185/96[40] (and in accordance with their provisions and procedures), and Article 50 of the JU Financial Rules[41], 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 there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

[39] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.09.2013, p. 1).

[40] Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

[41] The JU Financial Rules are available on the JU's web-site.

1. OLAF investigations

OLAF is the EU's anti-fraud office, responsible for investigating fraud against the EU budget.

If the JU or the Commission 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 outcome of the investigation to the JU or the Commission, who will then decide how to proceed.

If an OLAF investigation shows **ineligible costs**, **substantial errors, irregularities or fraud** or serious **breach of obligations**, it may lead to suspension, termination, cost rejection, grant reduction and recovery *(see Articles 42-44, 47-50)*, to exclusion and/or financial penalties *(see Article 45)*, as well as 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 50 of the JU Financial Rules, 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. ECA checks and audits

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 JU 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.

If an ECA check or audit shows **ineligible costs**, **substantial errors, irregularities or fraud** or serious **breach of obligations**, this may lead to suspension, termination, cost rejection, grant reduction and recovery *(see Articles 42-44, 47-50)* and to exclusion and/or financial penalties *(see Article 45)*.

22.4 Checks, reviews, audits and investigations for international organisations

***[OPTION 1 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 2:** Not applicable;**]

1. Checks, reviews, audits and investigations for international organisations

Checks, reviews, audits and investigations may also be made with regard to beneficiaries that are **international organisations (IOs)**.

⚠ Checks, reviews, audits and investigations must however respect the privileges and immunities accorded to an international organisation by its constituent documents or international law.

If there is a specific agreement concluded with the international organisation (and this agreement covers checks, reviews, audits and investigations), the JU will apply the agreement.

***Example:** A Financial and Administrative Framework Agreement (FAFA) signed between the European Union and the international organisation.*

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 JU, 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 JU or the Commission 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 JU, 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 JU or the Commission will formally notify the beneficiary concerned the systemic or recurrent errors and its intention to extend these audit findings, together with the list of grants affected.

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 JU or the Commission 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 JU or the Commission in justified cases.

The JU or the Commission may then start a rejection procedure in accordance with Article 42, on the basis of:

- the revised financial statements, if approved
- the proposed alternative correction method, if accepted

or

- the initially notified correction rate for extrapolation, if it 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.

22.5.3.2 If the **findings concern substantial errors, irregularities or fraud or serious breach of obligations,** 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 JU or the Commission 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.

The JU or the Commission may then start a reduction procedure in accordance with Article 43, on the basis of:

- the proposed alternative flat-rate, if accepted

or

- the initially notified flat-rate, if it does not receive any observations or does not accept the observations or the proposed 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.

1. Extension of findings (rejection and grant reduction)

If the JU or the Commission finds (typically in a review, audit or OLAF investigation) **substantial errors, irregularities or fraud** or serious **breach of obligations** which are **systemic** or **recurrent**, it may make a correction (cost rejection or grant reduction; *see Articles 42 and 43*) in:

- the grant, both for
  - reporting periods that where audited/reviewed and
  - reporting periods that were not audited/reviewed (extension of the findings)

– other grants of the beneficiary (extension of the findings).

'Recurrent' means an infringement found in several grants of the beneficiary (and therefore likely to also have occurred in the other grants of that beneficiary).

Examples (recurrent): *In several grants, the beneficiary claimed deductible VAT as an eligible cost; increased the remuneration of its personnel solely for its contracts with the JU did not clearly display the JU funding despite the GA's visibility requirements.*

'Systemic' means an infringement that is inherently related to the beneficiary's methodologies, accounting, management or internal control practices (and therefore, by its very nature, likely to have occurred in all other transactions of the beneficiary that are comparable/similar (i.e. governed by the same methodologies, accounting management or internal control practices, and thus part of the same 'system').

Examples (systemic):

The beneficiary does not keep records of a certain type of transactions; the beneficiary set up a fraudulent network to overcharge personnel costs .

The findings may be extended both to *on-going* grants (i.e. grants for which the payment of the balance has not yet been carried out) and to *closed* grants — up to two years after the payment of the balance.

Findings may be extended to all other JU, EU or Euratom grants awarded under similar conditions.

⚠ Findings will normally be extended only within one programme *(e.g. findings in an H2020 audit to all H2020 grants)* but they may exceptionally also be extended to similar programmes *(e.g. if justified by the nature of the findings and the similarity of the applicable grant agreements or in case of serious irregularities or fraud).*

2. Procedure

If findings are systemic or recurrent, this will already have been mentioned in the audit or review report and — like the other aspects of the report — they have been subject to the contradictory audit/review procedure.

If the findings also impact other JU/EU/Euratom grants, the audit/review procedure will be followed by an extension procedure, to fix the list of impacted grants and ask the beneficiary's views on the method for correction. In order to minimise the administrative burden, this procedure is usually centralised.

Procedure for extension of findings:

Step 1 — After the end of the contradictory audit/review procedure, the JU or the Commission auditors send the letter closing the audit/review procedure (**letter of audit conclusions**), together with

- the final audit/review report
- the list of grants/reporting periods to which the audit findings will be extended
- an invitation to submit comments on the list of grants/reporting periods
- for cost rejection:
  - a request to submit revised financial statements for the grants/reporting periods on the list (via a specific form annexed to the letter of audit conclusions)
  - the proposed correction rate for extrapolation (if the beneficiary does not submit revised financial statements)
  - the conditions for external counter-audits to propose an alternative correction method *(see below)*

– for grant reduction: the proposed flat-rate for the correction.

The correction rate for cost rejection will normally correspond to the average correction rate calculated in the sample of audited grants (for the flawed cost category(ies) or even for the total costs claimed).

The flat-rate for grant reductions will normally be based on the relative importance of the tasks improperly implemented or the seriousness of the breach of obligations — compared to the action (i.e. calculated according to the principle of proportionality).

⚠ The rate will be used if:

– the beneficiary explicitly requests it

Example: *if the beneficiary considers that the administrative workload related to submitting revised financial statements for all the grants affected would be disproportionate or impossible and so it decides to accept the correction rate.*

– the beneficiary does not submit revised financial statements or refuses to cooperate (in time)

– the JU or the Commission cannot approve the revised financial statements (because they do not properly reflect the audit/review findings)

– the JU or the Commission cannot accept the alternative correction method proposed by the beneficiary.

Step 2 — The beneficiary has 90 days to:

– submit comments on the list of grants

If the beneficiary considers that some (or all) of the grants on the list are not affected, it must explain why. If the explanation is not sufficient, the JU or the Commission may request additional information or clarifications.

– submit revised financial statements (free of the errors or irregularities raised).

Example: *An audit finds that the beneficiary claimed the deductible VAT as an eligible cost and qualifies this finding as recurrent. The beneficiary agrees with the audit conclusions. It submits revised financial statements correcting the VAT for each grant affected.*

– if it does not intend to submit revised financial statement, but disagrees with the proposed correction rate, the beneficiary may:

– for cost rejection: present an **alternative correction method** (alternative correction rate), substantiated by an audit performed by an independent external auditor

The purpose of the independent audit can ONLY be to determine a more precise error rate for the audit/review findings of the JU or the Commission (NOT to contest those findings themselves).

– grant reduction present an **alternative correction method** (alternative flat rate), substantiated by a note explaining why the alternative rate is more appropriate than the rate proposed by the JU.

⚠ The beneficiary must choose one method for the entire extension procedure, i.e. submit for all grants either revised financial statements or an alternative correction method.

⚠ The JU or the Commission have **full discretion** to accept or refuse the alternative correction method proposed by the beneficiary; there is NO entitlement to it.

After the extension procedure is completed, the list of grants and beneficiary position is handed to the operational services which are in charge of managing the concerned grants. They will decide on the actions to be taken in their grants.

The implementation will be done on the basis of the:

– revised financial statements — if the beneficiary sent revised statements and they were approved

- initially notified correction rate for extrapolation — if the beneficiary did not send any revised statements or they could not be approved
- alternative correction method — if the beneficiary sent an alternative method and it was accepted.

ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION

ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION

23.1 Right to evaluate the impact of the action

The JU or the Commission may carry out interim and final evaluations of the impact of the action measured against the objective of the EU programme.

Evaluations may be started during implementation of the action and up to ***[OPTION 1 by default:*** *five]* ***[OPTION 2 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 JU or the Commission 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 JU may apply the measures described in Chapter 6.

1. Evaluations

The JU or the Commission may carry out **interim** and **final evaluations** of the actions for the monitoring and evaluation of the IMI Programme implementation.

⚠ These evaluations have NO effect on the grant.

They are based on the performance indicators and issues specified in Annexes II and III to the H2020 Specific Programme. These performance indicators vary according to the specific programme's objectives. Performance indicators may be refined during the implementation of H2020.

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 JU or the Commission 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

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[42].

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 JU may apply any of the measures described in Chapter 6.

[42] 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 in the **Code of Practice**[71] annexed to the EU Recommendation on the management of intellectual property in knowledge transfer activities.

⚠ This is a **best effort obligation**: If not already done so, these beneficiaries must ensure that they consider the principles set out in Points 1 and 2 of the Code of Practice in the design and implementation of their IP management and knowledge transfer policies.

The 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 (— with Point 1: Principles for an internal intellectual property policy and Point 2: Principles for a knowledge transfer policy).

[71] 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

SUBSECTION 2 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND

ARTICLE 24 — AGREEMENT ON BACKGROUND

24.1 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 (see Article 25.3 and Article 25.4).

24.2 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. 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).

⚠ In what concerns access, under the IMI2 provisions the term 'exploit' as used in the definition of background is divided into two distinct notions (research use and direct exploitation) as set out in Article 25.3. Access to background must be understood essentially as access for research use, since the beneficiaries must grant access rights to other beneficiaries or third parties on this background only for such type of exploitation. Access rights to background that would be needed for direct exploitation of results must only be given if specifically agreed upon on a case-by-case basis between beneficiaries and/or third parties (see Article 25.3).

'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.

Best practice: Although not obligatory, beneficiaries are strongly 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 making research use of its results).

***Examples** of background: prototypes; cell lines; patents; database rights; clinical data and the like.*

Note that the H2020 definition of background is different from IMI1. As set out in the H2020 definition of background the three conditions need to be fulfilled in order to be considered as background. Therefore, anything not identified and agreed expressly as background (e.g. materials) by the beneficiaries is not background and therefore is not subject to any access 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[72]).

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)*

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)*.

Best practice: It is recommended that the agreement on background be either part of Annex 1 to the GA (Description of the Action) or may be part of the consortium agreement.

If access to background is subject to **legal restrictions** or limits (legal or otherwise), the beneficiary must inform the other beneficiaries — before signing the GA *(see Article 25)*.

Example: *Beneficiaries may agree to exclude specific background such as materials (bio-banks, tissue samples, animals, cell strains, substances, components with physical properties, such as chemical (e.g. semiconductors) or biological (e.g. tissues) materials, etc. Such an exclusion may be temporary (e.g. to permit the adequate protection of the background beforeproviding 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. Note that for any exclusion which affects access rights for third parties under Article 25.4, the JU must be involved as indicated in the said Article.*

⚠ Under IMI1, beneficiaries were also entitled but not obliged to designate as background additional data, know-how or information which is generated or lawfully held by beneficiaries **after the signature of the GA**. Under IMI2, beneficiaries may agree to treat such additions as background, i.e. the obligations regarding access would apply without them formally becoming part of background.

Example: *Intellectual Property (IP) rights filed after the grant agreement is signed, but relating to elements that are listed as background.*

Best practice: If beneficiaries agree to use this possibility to treat such additions as background, it is recommended to do so in writing (for example in the consortium agreement or in another separate agreement) and indicate that they may be added at any time during the implementation of the action by the owning beneficiary at his or her sole discretion.

⚠ As under IMI1, ownership of background is not affected by participation in an IMI2 JU action. However, do not forget to notify the JU of any changes in ownership that are likely to affect the action implementation *(see Article 17.2.)* and the provisions in Article 24a.

[72] Available at http://www.wipo.int/treaties/en/convention/trtdocs_wo029.html.

ARTICLE 24a — TRANSFER AND LICENSING OF BACKGROUND

ARTICLE 24a — TRANSFER AND LICENSING OF BACKGROUND

Each beneficiary remains free to license, transfer or otherwise dispose of its ownership rights in background, subject to any rights and obligations under this Agreement and the consortium agreement.

Where a beneficiary transfers ownership of background, it must pass on its obligations specified under this Agreement and the consortium agreement, regarding that background, to the transferee, including the obligation to pass those obligations on to any subsequent transferee.

A beneficiary may without the consent of the other beneficiaries, but provided that the other beneficiaries are informed without undue delay and that the transferee agrees in writing to be bound by this Agreement and the consortium agreement transfer its background to any of the following:

(a) its affiliated entity,

(b) any purchaser of all or a substantial amount of its relevant assets, and

(c) any successor entity resulting from the merger with or consolidation of such a beneficiary.

The delay referred to in the third subparagraph must be agreed by the beneficiaries in the consortium agreement.

1. Transfer and licensing of background

The beneficiaries are free to transfer or otherwise dispose of their ownership rights in background as they see fit.

When a beneficiary intends to transfer ownership of its background to another party, it must pass on its obligations specified under the grant agreement and the consortium agreement regarding that background.

A beneficiary may - without the permission of the other beneficiaries but provided that other beneficiaries are informed without **undue delay** after the said transfer and that the transferee agrees in writing to be bound by the grant agreement and the consortium agreement- transfer (ownership of) its background to (a) its affiliated entity; or (b) any purchaser of all or substantially all of its relevant assets; or (c) any successor entity resulting from the merger with or consolidation of such a participant.

The beneficiaries are free to license their rights in background as they see fit. However, if a beneficiary grants licences on the background it owns or lawfully holds, it must ensure that access rights granted to others as defined in the grant and consortium agreement can be preserved and that obligations to grant access rights to others can be fulfilled (*see* Article 25).

ARTICLE 25 — ACCESS RIGHTS TO BACKGROUND

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. However, any legal entity that enjoys access rights in order to complete the action or for research use (see Article 25.3) may authorize another legal entity to exercise those rights on its behalf, provided that the following conditions are fulfilled:

(a) the legal entity that enjoys access rights is liable for the acts of the other legal entity as if those acts had been performed by this former legal entity;

(b) access rights granted to the other legal entity do not include the right to sub-license.

25.2 Access rights for other beneficiaries, for implementing their own tasks under the action

During the action, the beneficiaries enjoy (unless prevented or restricted from doing so by obligations to others which exist at the date of accession to this Agreement) access rights to the background of the other beneficiaries, solely for the purpose and to the extent necessary for undertaking and completing the action. Such access must be granted on a royalty-free basis.

25.3 Access rights for other beneficiaries and their affiliated entities, for exploiting results

The following definitions as regards exploitation shall apply:

(a) 'research use' means the use of results or background needed to use results, for all purposes other than for completing the action or for direct exploitation and which includes but is not limited to the application of results as a tool for research, including clinical research and trials and which directly or indirectly contributes to the objectives set out in the Societal Challenge health, demographic change and well-being referred to in Regulation (EU) No 1291/2013.

(b) 'direct exploitation' means developing results for commercialization, including through clinical trials, or commercializing results themselves.

During and after completion of the action, beneficiaries and their affiliated entities enjoy (unless prevented or restricted from doing so by obligations to others which exist at the date of accession to this Agreement) access rights to the background of the other beneficiaries, only to the extent reasonably required for the purpose of the research use of results.

Such access rights for research use must be granted on a non-exclusive basis under fair and reasonable conditions (i.e. appropriate conditions, including financial terms or royalty-free, taking into account the actual or potential value of the background to which access is requested and other characteristics of the research use envisaged).

Beneficiaries are not required to grant access rights for direct exploitation to their own background and may use, exploit, sublicense or otherwise commercialize their background as they see fit, subject to access rights for research use.

Where direct exploitation by a beneficiary or third party, requires background necessary to use results owned by another beneficiary, the access rights may be negotiated between the parties involved.

Beneficiaries must agree in the consortium agreement on a time-limit in respect of requests for access.

25.4 Access rights for third parties

After completion of the action, (unless prevented or restricted from doing so by obligations to others which exist at the date of accession to this Agreement) third parties have the right to request and receive access rights to the background of the beneficiaries, only to the extent reasonably required for the purpose of the research use of results.
Such access rights must be granted on a non-exclusive basis, under conditions considered appropriate by the owner of the background and the third party concerned.

Before the signature of this Agreement or when identifying and agreeing on background (see Article 24) thereafter, a beneficiary may identify specific elements of the background and provide a reasoned request to the JU Programme office that such elements must be wholly or partially, excluded from the obligations referred to in the first subparagraph. The JU Programme office will only grant such request in exceptional circumstances and in making its decision will consider the objectives referred to in Article 2 of Regulation (EU) No 557/2014, the tasks of JU referred to in its statutes and the legitimate interests of the beneficiary concerned. It may grant such request on conditions agreed with the beneficiary. Any exceptions must be included in this Agreement and cannot be changed unless such change is permitted by this Agreement.

Beneficiaries must agree in the consortium agreement on a time-limit in respect of requests for access.

[OPTION 1 for trans-national access to research infrastructure: *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 users royalty-free access to background 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 2: *Not Applicable**]***

25.5 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 any of the other measures described in Chapter 6.

1. Access rights principles

The provisions of the GA constitute "minimal" provisions that cannot be set aside or restricted further. However, additional access rights may be granted.

When discussing access rights in IMI2 (as there are important differences with the general H2020 framework), the beneficiaries should:

- have in mind the identified background,

- understand the nature of the foreseen results, and

- understand the concepts of research use and direct exploitation as laid down in Article 25.3.

2. Access to background

Requesting modalities - How?

Access rights are not automatic; they must be **requested** (in writing).

⚠ Contrary to IMI1, the IMI2 IP provisions do not foresee the possibility of the waiver of written request. However, the beneficiaries may set certain conditions in the consortium agreement to facilitate the requesting process (*e.g. short deadlines for the reply, written request by e-mail, tacit approval in case no reply within the deadline etc.*), if needed to allow smooth execution of the action. Beneficiaries may also decide to set up specific written request procedures e.g. for certain types of background or results, for a specific purpose only with regards to certain beneficiaries, or systematically when access rights are to be granted. The granting of access rights for research use may also be subject to the acceptance of specific conditions that may apply equally to all requests for access rights.

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.

The **agreement** by the beneficiary owning the background (on the request for access) may be in any form (tacit, explicit, in writing or oral).

In case of **disagreement**, 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*).

If a conflict on access rights to background is likely to affect the action implementation, the beneficiaries must immediately **inform** the JU *(see Article 17.2)*.

Obligations to others

Beneficiaries may have already concluded agreements (e.g. licensing, non-disclosure) relating to their background before joining the action, creating possible obligations to others relating to its use for completing the action or for research use.

> ***Example*:** *A pre-existing agreement (e.g. an exclusive licence) which precludes the granting of access rights.*

Before signing the grant agreement or during the action, each beneficiary shall communicate any obligations to others, for example legal restrictions, which exist at the date of accession to the GA or at the date of introduction of newly introduced background (e.g. IP right), and which prevent or restrict the enjoyment of access rights to such background by beneficiaries.

The impact of such obligations should be analysed in detail by the consortium, to make sure that they will not interfere with the proper implementation of the action, nor with the research use or dissemination of the results.

Obligations do not only include restrictions derived from the law but also from prior contractual agreements (e.g. exclusive licence).

> **Best practice:** To ensure transparency between the beneficiaries and with the JU, it is recommended that any such obligations be identified in the agreement on background which may, for example, be part of the consortium agreement, as was the case under IMI1.

Sub-licences

Access rights do not automatically give the right to sub-license 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).

However, the legal entity that enjoys access rights may authorise another legal entity to exercise those rights on its behalf, e.g. as a subcontractor according to the provisions set out in Article 13.1, or for its affiliated entities, subject to the conditions applicable to access rights specified in Article 25.1. The legal entity that enjoys access rights remains liable for any acts of any legal entity it has authorised to act on its behalf.

For affiliated entities, this means that if a beneficiary has requested access rights for implementation or for research use purposes, this beneficiary may authorize its affiliated entities, to exercise those rights on its behalf, without the affiliated entities having to specifically request those rights.

Although, by virtue of Article 25.1., another legal entity (e.g., an affiliated entity or a subcontractor) may enjoy the same access rights as those that have been granted to a beneficiary, such other legal entity cannot sub-license those rights.

The beneficiaries owning the background or results may however agree, e.g. in the consortium agreement, that access rights do confer the entitlement to grant sub-licences. Sub-licensing is only allowed if the beneficiary owning or holding the background agrees.

If no deviating rules are agreed in the consortium agreement, then no license granted under the access rights regime contains the right to grant sub-licenses.

In the event the parties should want to make a general deviation from this principle, it is advisable that the right of sublicensing and its scope are clearly defined in the consortium agreement in order to reduce legal uncertainty. Moreover, any discussion to include a right to sublicense should be viewed in connection with the requesting modalities. For example, if the beneficiaries agree to grant access rights by tacit approval and with the right of sublicensing, access rights may be extended to any entity in the world, including competitors, without full traceability.

> **Best practice:** To avoid legal uncertainty, if sub-licensing is agreed upon, the beneficiaries are advised to agree in writing on clear terms and conditions of the sub-licensing (at the level of the consortium agreement or separately).
>
> ***Example:*** *In such an agreement, they could foresee that sub-licensing could apply to the results (or part of them) under Article 31, but not to the background; sub-licensing could apply to affiliated entities of (some of) the beneficiaries, but not to other third parties.*

Time-limits

Contrary to IMI1, beneficiaries must agree in the consortium agreement on a time-limit in respect of requests for access for research use.

This time-limit applies to the time during which a request for access is possible but does not define the period for which the access will be granted.

There is no minimum/maximum value prescribed for time limits. The objective is to allow beneficiaries to establish the most appropriate time limit based on the concrete purpose of each action depending on, inter alia, the nature of results and/or necessary background, the purpose and duration of use, and the category of the requesting beneficiary.

> ***Example:*** *an efficacy project may require setting longer time limits than, for example, a training project, in order to accommodate the drug development cycle which is typically between 12 and 15 years. In this context, beneficiaries could, for example, envisage setting time limits of at least 15 years.*

As third parties are not parties to the consortium agreement, such time limits (Article 25.5) would have to be clearly communicated by the beneficiaries to the external community.

Access rights for implementing the action

Access rights to a beneficiary's background for the purpose of completing the action are to be granted by the beneficiary owning or holding the background on a royalty-free basis.

In the context of implementing the action, royalty-free basis means free of charge – free of any payment.

Such access rights are granted in order to allow a beneficiary, and by virtue of an authorization according to Article 25.1., its affiliated entities carrying out some activities under the action, to perform its activities under the action. Such access rights may not be interpreted as allowing a beneficiary to use the background for activities outside the relevant action.

> **Best practice:** Similarly to IMI1, specific conditions aiming at ensuring that these rights will be used only for the intended purpose and appropriate confidentiality obligations may be set up.

Access rights to beneficiaries and their affiliated entities for research use and direct exploitation

The term “exploitation” is divided into research use and direct exploitation as defined in Article 25.3. above.

> ⚠ Similar to the IMI1 rules.

Research use

The definition of research use is specifically tailored to the IMI2 objectives of fostering the accessibility of enabling technologies for drug research and development purposes. In this respect, it should be noted that the "research use" definition of IMI2 intentionally goes beyond the legal concepts of the research use or research exemption in most patent legislation or academic research.

> An example of research use is the application of results (e.g. a cell, an animal model or a molecule that can be isolated from an organism and which is an indicator of a biologic state (biomarker)) as a tool for research including clinical research and trials and which directly or indirectly contributes to the objectives set out in the Societal Challenge health, demographic change and well-being referred to in Regulation (EU) No 1291/2013.

The field of research use should therefore be understood as including all pre-clinical research and development activities, all human clinical studies, all activities relating to developing the ability to commercialise any drug substance or drug product (including process development work), and all activities relating to seeking, obtaining and/or maintaining any regulatory approvals from regulatory authorities.

> ⚠ However, note that clinical trials performed on a compound per se with a view to market that compound is considered as direct exploitation and not research use.

> ⚠ Understanding the definition of research use is crucial when identifying the background, determining the objectives of the action and discussing the conditions for access rights, especially in relation to granting access rights to background, to affiliated entities and third parties.

Direct exploitation

Commercialisation of the results itself, as well as activities linked to development of the results for commercialisation, is called “direct exploitation”. Direct exploitation should be interpreted in a broad sense to also include such exploitation through licensing activities.

> ***Example:*** *An example of direct exploitation would be the development for commercialisation or the commercialisation of a molecule resulting from the action (e.g. a nucleotide isolate X encoding a protein Y, an antibody which specifically binds to protein Y or a small RNA that interferes with the expression of protein Y) or a cell (e.g. a cell over-expressing protein Y) as a therapeutic, a diagnostic, a screening, an imaging or a recombinant production tool or the development for commercialisation or the commercialisation of an animal model (e.g. an animal over expressing protein Y or an animal with a defective nucleotide X) as a screening or a recombinant production tool.*

To illustrate the distinction between research use and direct exploitation, for example: use of a biomarker in the conduct of a clinical trial would fall into research use; but the commercialisation of the biomarker itself as a diagnostic kit, would be direct exploitation.

Affiliated entities

The scope of the definition of "affiliated entity" includes 'upwards', 'downwards' and 'sideways' companies including parents for all the beneficiaries. It is furthermore not limited to entities established in EU Member States or associated countries.

The scope of access rights under IMI2 for affiliated entities is limited to research use only.

Similarly to IMI1, this is a key feature of IMI2 which was specifically provided for to promote dissemination and exploitation of results.

Affiliated entities are not parties to the grant agreement. However by their affiliation with entities participating in **the grant agreement, they have certain rights for the implementation of the action.**

> ***Example:*** *For example, a beneficiary who has requested access rights for implementation or for research use purposes, may authorise its affiliated entities to exercise those rights on its behalf (see Article 25.1). Although not compulsory, the beneficiaries may discuss whether to list their affiliated entities at the date of signature of the consortium agreement or at later stage to accompany a beneficiary's request for access rights to background. This would help in identifying which entities may benefit from access rights, notably if the affiliated entities are non-EU based. Note, however, that beneficiaries may already apply general safety measures when dealing with their affiliated entities and with the information provided to these affiliated entities (such as non-disclosure agreements), and therefore some guarantees may be provided to the beneficiary providing access regarding any transfer of its background to affiliated entities.*

Access rights for research use

Access rights to background for beneficiaries and their affiliated entities are only available to the extent reasonably required for the purpose of research use of results and are to be granted under fair and reasonable conditions.

> ⓘ For more information on fair and reasonable conditions, *see* Article 31.

Beneficiaries may agree on different fair and reasonable conditions depending on e.g. the type of beneficiary, the nature of the background concerned, and the research use foreseen.

Affiliated entities may, for research use purposes, enjoy the access rights granted to the beneficiary they are affiliated to (see paragraph "affiliated entities") or, alternatively, may request access rights to background or results directly from a beneficiary owning or holding such background.

Access rights for direct exploitation

Beneficiaries are not required to grant access rights for direct exploitation to their background.

However should they decide to agree otherwise, then the particular terms and conditions attached to the granting of such access rights should be negotiated as and when appropriate. Consequently they may be the subject of more specific arrangements between the beneficiaries concerned (for example, in the consortium agreement, the beneficiaries may set up basic principles and granting conditions depending on whether the access rights are to be granted between themselves, to affiliated entities or to third parties).

They may also identify possible direct exploitation opportunities/activities for which they already agree on basic financial conditions.

Access rights for third parties

After completion of the action, third parties shall have the right to request and receive access rights to the background of the beneficiaries, but only to the extent reasonably required for the purpose of research use of results.

Such access rights shall be granted on a non-exclusive basis under conditions considered appropriate by the owner of the background and the third party concerned.

Requests for access rights will be subject to the time-limits agreed by the beneficiaries (see paragraphs on “time-limits” above).

Exclusion of specific elements of background from the obligation to grant access rights to third parties.

Before the signature of the grant agreement or during the action, when identifying and agreeing on background being included in the action, beneficiaries may identify specific elements of the background and provide a reasoned request to the JU that such elements shall be wholly or partially excluded from the obligation to grant access rights to third parties for research use.

Approval of such exclusion(s) by the IMI2 Programme office shall only occur under exceptional circumstances (it is the aim of the JU that the results of the JU actions are widely used to ensure the rapid uptake of the newly developed methods and technologies into industry and/or clinical or regulatory practice) and considering inter alia the legitimate interests (including commercial interests) of the beneficiaries concerned.

Clear and complete identification of background together with any obligations to others and specific exclusions from access rights for third parties is therefore a key aspect of the IP negotiation process in order to avoid uncertainties and ensure transparency with regards to the other beneficiaries and third parties.

SUBSECTION 3 RIGHTS AND OBLIGATIONS RELATED TO RESULTS

ARTICLE 26 — OWNERSHIP OF RESULTS

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.

Results do not include any sideground, defined as tangible or intangible output generated by a beneficiary under the action, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, but which are outside of the action objectives as defined in this Agreement and which therefore are not needed for implementing the action or for research use of results.

Each beneficiary remains the exclusive owner of its sideground but a different allocation of ownership may be agreed upon in the consortium agreement.

Beneficiaries are not required to grant access rights to sideground.

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 JU ownership, to protect results

26.4.1 The JU — 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 JU 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 JU 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 JU takes a positive decision, until it has taken the necessary steps to protect the results.

26.4.2 The JU 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 JU 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 JU 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 any of the other measures described in Chapter 6.

⚠ Article 26.4 does not apply to beneficiaries not receiving JU funding.

When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contributions to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA. For more details, please refer to annotations under article 9 and the applicable section of *the IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

1. Ownership of results and sideground

Results belong normally to the beneficiary that produced them.

⚠ Contrary to IMI1, a different allocation of initial ownership may not be agreed between the beneficiaries in the consortium agreement. However, in accordance with Article 30, each beneficiary may transfer ownership of its results, e.g. through the consortium agreement. In case of joint ownership any agreement to transfer results can only be made once the results have been generated.

'Results' means the action's tangible outputs *(e.g. materials, prototypes)* and intangible outputs *(e.g. knowledge, data, know-how, formulas, methods, tests, experimental procedures),* 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. Results do not include sideground (see below).

***Example of results** : bio-banks, tissue samples, cell lines, transgenic models and the like, substances, components with physical properties, such as chemical (e.g. semiconductors) or biological (e.g. tissues) materials*.

⚠ **Record-keeping**

Best practice: To avoid or resolve ownership disputes, beneficiaries should keep documents such as laboratory notebooks to show how and when they produced the results

Sideground

Similarly to IMI1, **sideground** (as defined in Art 26.1.) is output generated under the action but outside the action's objectives as defined in the grant agreement and which are not therefore needed for implementing the action or for the research use of the results.

⚠ Since results are defined with reference to sideground which is, in turn, defined with reference to the action's objectives, the importance of careful drafting of (and understanding) the action's objectives, which are part of the Annex 1 ("Description of the Action") of the GA, must be emphasized.

***Example:** if a specific action objective relates to the development of a particular cell line 'X', sideground could be a new method of storing cells developed while carrying out the action but which can be applied to cells other than cell line 'X'. The scope of sideground is the application of the new method to cells other than cell line 'X'.*

Sideground belongs to the beneficiary that generates it, as well as any rights attached to it, including intellectual property rights, and there is no obligation to give access rights. The beneficiaries may however decide differently (both on the ownership regime and access rights) in the consortium agreement.

Specific cases (ownership of results):

⚠ Similarly to IMI1, the IMI2 IP provisions provide for joint ownership in the cases where two or more beneficiaries have jointly generated results.

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 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)

  A ceiling for fair and reasonable compensation should be fixed only if the expected results can be determined with precision already before the action starts.
- 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 should 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 provided 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.

Joint owners may abandon joint ownership only after the jointly-owned results have been produced (⚠ new in Horizon 2020).

⚠ Prior to the generation of the results, beneficiaries may make arrangements (i.e.advance arrangements) concerning the transfer of ownership of such results if it is possible to establish their respective contributions to those results before they are generated and if it is known that it will be possible to separate those results for the purpose of applying for, obtaining or maintaining the relevant IPR protection.

The automatic joint ownership provisions described in art 26.2 (i.e. that owners of such jointly owned results may not agree to apply another regime than joint ownership (such as, for instance, transfer to a single owner) prior to their generation), does not apply when it is possible to fulfil the two conditions of article 26.2 (b). (See above box and ***Examples*** of Advance Arrangements). In such cases, beneficiaries may enter into advance arrangements to apply another regime.

Example: *In an action where as background an experimental product or vaccine is introduced, and one or more hospitals generate clinical data, an upfront agreement on transfer of ownership may be possible if (i) clinical data generated can be defined and, specifically, beneficiaries respective contributions to those results (e.g. patient data from hospital A, lab data from analytical lab B, regulatory interpretation by investigator C) can be established , and if (ii) it is known that it will be possible to separate those results for the purpose of IPR protection. More specifically such protection could be ensured by e.g. protecting the intellectual property on such specific data by keeping them confidential as secret know-how, enjoying such protection under the Data Exclusivity Regulation on protection of clinical trial data.*

Example: *In an action where chemical compounds are jointly generated with the aim of constituting part of a screening library allowing beneficiaries to screen their proprietary targets to identify new chemical structure as starting points for discovery research programmes, an upfront agreement on transfer of ownership of the data associated with these chemical structures to the beneficiaries owning the targets may be possible if (i) contributions made by the beneficiaries generating or contributing these chemical matters may be clearly identified throughout the project as appropriate e.g. by proper governance and IT tracking tools and if (ii) it is known that it will be possible to separate those results for the purpose of IPR protection e.g. tracking the origin of and clustering the chemical matter could allow the possibility for delineating matter on which patent protection may be applied for.*

⚠ Article 26.2 does not change or affect the possibilities for the beneficiaries to grant access rights for direct exploitation under Article 31 of the Grant Agreement

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.*

JU 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 JU may — under certain circumstances — assume ownership of the results.

2. Third parties with rights on results

The beneficiaries must ensure that they can fulfil their obligations under the GA regarding results, by making **arrangements** with any **third parties** that could claim rights to them *(e.g. subcontractors, linked third parties, international partners, employees, 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 (if they have rights under national law or their contract) beneficiaries for which linked third parties carry out a significant part of the work.*

Examples (arrangements): *transferring ownership to the beneficiary; granting access rights to the beneficiary with a right to sub-license.*

Specific cases (third parties with rights on results):

Joint research units (JRUs) — Where the internal arrangements of a JRU (*see Article 14*), 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.

ARTICLE 27 — PROTECTION OF RESULTS — VISIBILITY OF JU FUNDING AND SUPPORT FROM JU MEMBERS

ARTICLE 27 — PROTECTION OF RESULTS — VISIBILITY OF JU FUNDING AND SUPPORT FROM JU MEMBERS

27.1 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 JU 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 JU may — under certain conditions (see Article 26.4) — assume ownership to ensure their (continued) protection.

27.3 Information on JU funding and support from JU members [and *associated partners*]

Applications for protection of results (including patent applications) filed by or on behalf of a beneficiary must — unless the JU requests or agrees otherwise or unless it is impossible — include the following:

> "The project leading to this application has received funding from the Innovative Medicines Initiative 2 Joint Undertaking (JU) under grant agreement No [number]. The JU receives support from the European Union's Horizon 2020 research and innovation programme and [insert names of the JU members other than the EU] *[and [insert name(s) of the associated partner(s)]]*."

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

⚠ In contrast to IMI1 which was silent, the IMI2 IP provisions explicitly assign the responsibility for examining the possibility of protection to the owner(s) of the 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 EU 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 JU funding *(see Article 9)*.

The beneficiaries are in principle free to choose any available **form** of protection.

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):

1. For an invention: e.g. patent, confidential information.

2. For the design of a technology: e.g. industrial design, copyright.

3. For a website: e.g. industrial design, copyright, trademark.

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: (better not to protect for the moment): *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.)*.

Costs related to protection may be eligible *(see Article 6.2.D.3).*

When deciding on protection, the beneficiaries must also consider the **other beneficiaries**' legitimate **interests** (e.g. commercial 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.*

If a beneficiary intends not to protect its results, to stop protecting them or not seek an extension of protection, the IMI2 JU may want to take ownership of these results to ensure their (continued) protection. Specific conditions of Art. 26.4 apply.

⚠ This obligation only applies to beneficiaries receiving JU funding. When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contributions to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA. For more details, please refer to annotations under article 9 and the applicable section of the *IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

2. Visibility of JU funding and of support from the EU and JU members (and associated partners)

Applications for protection must include, unless (technically or legally) impossible, the reference to JU funding, to the EU support and to contributions from EFPIA and Associated Partners, as set out in the GA *(see Article 38)*.

Best practice: Where possible, beneficiaries should make this reference in the language of their application (i.e. using the text of the GA language version available on Funding & Tenders Portal Reference Documents).

ARTICLE 28 — EXPLOITATION OF RESULTS

ARTICLE 28 — EXPLOITATION OF RESULTS

28.1 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 plan:** 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 JU funding and support from JU members *[and associated partners]*

[OPTION for results that could contribute to standards if foreseen in the work plan:** 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 JU.**]

If results are incorporated in a standard, the beneficiary concerned must — unless the JU 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 Innovative Medicines Initiative 2 Joint Undertaking (JU) under grant agreement No [number]. The JU receives support from the European Union's Horizon 2020 research and innovation programme and [insert names of the JU members other than the EU] *[and [insert name(s) of the associated partner(s)]]*.

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.

⚠ Article 28.1 (with the exception of additional exploitation obligations) and 28.2 do not apply to beneficiaries not receiving JU funding. When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contributions to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA. For more details, please refer to annotations under article 9 and the applicable section of the *IMI2 JU Guidelines for reporting in-kind and financial contributions by Members other than the Union and Associated Partners.*

1. Exploitation of results

The beneficiaries must take measures aiming to ensure **exploitation** of their results, i.e. for research use and/or direct exploitation — either by themselves (*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*). Under IMI2, the access rights for research use available to other beneficiaries and third parties (Article 31) may be important in order to enable the beneficiaries to fulfil their exploitation obligation.

⚠ This obligation only applies to beneficiaries receiving JU funding. When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contributions to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA. For more details, please refer to annotations under article 9 and the applicable section of *the IMI2 JU Guidelines for reporting in kind and financial contributions by Members other than the Union and Associated Partners*.

In the particular case where results would have been transferred by a beneficiary to a beneficiary not receiving JU funding, for example an EFPIA beneficiary, the granting of access rights by the beneficiary not receiving JU funding to such results for the purpose of research use to other beneficiaries or third parties may be important in order to fulfil the exploitation obligation.

⚠ 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).

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'.

If the GA provides for **additional exploitation obligations**, these must also be fulfilled. (Such additional exploitation obligations will already be mentioned in the work plan/call.)

⚠ Additional exploitation obligations apply to ALL beneficiaries.

If the GA includes the option for **information on standardisation**, the beneficiaries must moreover inform the JU on any results that could contribute to European or international standards.

> ***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 obligaton applies only if it is foreseen in the IMI2 JU's annual work plan and in the relevant call for proposals.

Visibility of JU funding and of support from the EU and JU members (and associated partners

Applications for protection must include a reference to JU funding and to the EU support and to contributions from EFPIA and Associated Partners, as specified in the grant agreement.

> *ⓘ For more information on visibility of JU funding and contribution from the JU Members and Associated Partners, see* Article 38.

ⓘ For more guidance on dissemination and exploitation, *see the Funding and Tenders Online Manual.*

ARTICLE 29 — DISSEMINATION OF RESULTS — OPEN ACCESS — VISIBILITY OF JU FUNDING AND SUPPORT FROM JU MEMBERS

ARTICLE 29 - DISSEMINATION OF RESULTS - OPEN ACCESS - VISIBILITY OF JU FUNDING AND SUPPORT FROM JU MEMBERS

29.1 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 plan: *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 plan: *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 plan: *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 JU 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 "Innovative Medicines Initiative 2 Joint Undertaking"; "European Union (EU)", "Horizon 2020"; and "[insert names of the JU members other than the EU]"[and "[*insert name(s) of the associated partner(s)*]"];
- 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 1a 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) **[OPTION A for health actions that participate in the Open Research Data Pilot, if foreseen in the work plan:** data which is relevant for addressing a public health emergency, if specifically requested by the JU or the Commission and within the deadline specified in the request**][OPTION B:** not applicable**];***

(iii) 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 under point (a)(i) and (iii), 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.**]***

*[**additional OPTION for health actions that participate in the Open Research Data Pilot, if foreseen in the work plan:** As an exception, the beneficiaries do not have to ensure open access also to the research data under Point (a)(ii), if the JU or the Commission agrees to replace the open access obligation by special access rights for third parties that need the data to address the public health emergency. These access rights must include the right to access, mine, exploit and reproduce the data free of charge.**]]***

***[OPTION 1b for health actions that do NOT participate in the Open Research Data Pilot, if foreseen in the work plan:** The JU or the Commission may require beneficiaries to:*

(a) deposit digital research data, which is generated in the action and relevant for addressing a public health emergency, in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate the data free of charge for any user

or

(b) give specific access rights to third parties that need the digital research data to address the public health emergency (including the right to access, mine, exploit and reproduce the data free of charge)
within the deadline specified in the JU's or the Commission's request.

*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.**]***

***[OPTION 1c for health actions targeting public health emergencies, if foreseen in the work plan:** The beneficiaries must deposit the digital research data generated in the action in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate the data free of charge for any user, at the latest within 30 days after it has been generated.*

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, if the JU or the Commission agrees to replace the open access obligation by special access rights for third parties that need the research data to address the public health emergency. These access rights must include the right to access, mine, exploit and reproduce the data free of charge.**]***

[OPTION 2:** Not applicable;**]

29.4 Information on JU funding and support from JU members *[and associated partners]* — Obligation and right to use the logos and the EU emblem

Unless the JU requests or agrees otherwise or unless it is impossible, any dissemination of results (in any form, including electronic) must:

(a) display the JU logo, the logo of *[insert* names of the JU Members other than the Union*]* ***[Option for grant agreements where associated partners are involved:** and of name(s) of the associated partner(s)**]*** *and*

(b) display the EU emblem, and

(c) include the following text:

> "This project has received funding from the Innovative Medicines Initiative 2 Joint Undertaking (JU) under grant agreement No [Number]. The JU receives support from the European Union's Horizon 2020 research and innovation programme and [insert names of the JU members other than the EU] *[and [insert name(s) of the associated partner(s).*]]."

When displayed together with another logo, the logos and the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the logos and the EU emblem without first obtaining approval from the JU, the Commission or the JU Members [and Associated Partners].

This does not however give them the right to exclusive use.

Moreover, they may not appropriate the logos or the EU emblem or any similar trademark or logo, either by registration or by any other means.

29.5 Disclaimer excluding JU responsibility

Any dissemination of results must indicate that it reflects only the author's view and that the JU 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

Unless it goes against their legitimate interest, the beneficiaries must — as soon as possible (but not before a decision on their possible protection) — **disseminate** their results (i.e. make them public).

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.)*.

⚠ **Security obligations —** Dissemination may be restricted/NOT possible for results that are subject to **limited disclosure/dissemination** in Annex 1 of the GA *(see Article 37)*.

⚠ Results that contain **EU-classified information**, can be disclosed only after approval by the JU *(see Article 37)*.

ℹ For more guidance on security obligations, *see the Guidelines for the handling of classified information in EU research projects and, more generally, the Funding and Tenders Portal Online Manual.*

The beneficiaries may choose the **form** for disseminating their results.

Standard 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.

When deciding on dissemination, the beneficiaries must also consider the **other beneficiaries'** legitimate **interests** (e.g. commercial interests).

The beneficiary that intends to disseminate must give the other beneficiaries — unless otherwise agreed, for example in the consortium agreement — at least **45 days advance notice** (together with sufficient information on the dissemination).

Any other beneficiary may **object** to dissemination— unless otherwise agreed — within **30 days** of receiving notification, 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 should 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).

While the beneficiaries remain responsible for the dissemination of their results, they may entrust another party with it, e.g. agree that for a specific category of results (e.g. a clinical study carried out on a drug), a specific beneficiary (e.g. the originator of the drug) - who is other than the owner of the results - will have the right to disseminate.

If the GA provides for **additional dissemination obligations**, these must also be fulfilled. Such additional dissemination obligations will already have been mentioned in the IMI2 JU annual work plan for a specific call.

For more guidance on dissemination and exploitation, *see the Funding and Tenders Portal Online Manual.*

2. Open access to scientific publications

What?

Beneficiaries must ensure **open, free-of-charge access** to the end-user to **peer-reviewed scientific publications** relating to their results.

'Peer-reviewed publications' means publications that have been evaluated by other scholars *(e.g. articles in scientific journals)*.

Other types of scientific publications, such *as non-peer-reviewed articles as well as monographs, books, conference proceedings and 'grey literature'* (i.e. informally published material not having gone through a classic publishing process, e.g. reports), are not covered by the open access obligation.

Best practice: However, to ensure fuller and wider access, beneficiaries are encouraged to provide open access also to these other types of scientific publications (where possible).

The requirement of Horizon 2020 for open access does NOT imply that the beneficiaries *are obliged to publish* their results; it only sets requirements that must be fulfilled *if* they do decide to publish them.

Open access means ensuring that, at the very least, such publications can be **read online**, **downloaded** and **printed** — via a repository for scientific publications, a publication platform or publisher site.

Best practice: In order to increase the utility of the publication, beneficiaries are encouraged to provide additional rights such as the right to copy, distribute, search, link, crawl and mine).

Beneficiaries/authors are encouraged to

retain copyright and grant appropriate licences to publishers. They are encouraged to use Creative Commons (CC) or similar licenses. CC BY is a good legal tool for providing open access in its broadest sense.

Open access can be provided through:

a) **publishing in open access ('gold' open access)**

Publishing in open access' means that open access is provided immediately via the publication venues, at the time that an article is published (i.e. in open access journals/platforms or in 'hybrid' journals combining subscription access and open access to individual articles).

Some publishers levy author processing charges for open access publishing. These costs are eligible *(see Article 6.2.D.3)*, if incurred before the end of the action and if all other eligibility conditions are fulfilled.

⚠ Although publishing in open access already ensures access via the publisher, the beneficiaries must still deposit their publication in a repository *(see below)*, in order to ensure the long-term preservation and availability of the publication. This is part of the open access requirement.

b) **self-archiving ('green' open access) '**

Self-archiving' means that the published article or the final peer-reviewed manuscript is archived by the researcher (or a representative) in a repository and made available in open access through that repository.

A 'repository for scientific publications' is an online archive, where researchers deposit research publications, research data and other scientific outputs and can provide open access to them. Repositories help preserve, manage and provide access to scientific outputs. They collect and disseminate digital research outputs from individual research organisations (institutional repositories, *e.g. the repository of University X*) or specific research communities (thematic/disciplinary repositories, *e.g. Europe PMC for life sciences including biomedicine and health or arXiv for physics, mathematics, computer science, quantitative biology, quantitative finance and statistics*). They can also be centralised repositories, *such as for example Zenodo, developed by CERN*.

Best practice: Identify the repository that suits your need in the Directory of Open Access Repositories (OpenDOAR). The Open Access Infrastructure for Research in Europe (OpenAIRE) can help you to find such repositories. We recommend that you use a repository that is compliant with the requirements of OpenAIRE and that you use the OpenAIRE database as a point of departure. OpenAIRE also offers support services for researchers, by providing information on open access requirements, a general Helpdesk and country-specific helpdesks (National Open Access Desks) that answer questions on open access and Horizon 2020 .

Beneficiaries without institutional/thematic repositories may deposit their publications in Zenodo, at no cost to them.

Beneficiaries should NOT use a repository with rules which could conflict with open access.

A *template* for an **open access clause** addendum which can be added to **publishing agreements** to enable open access through self-archiving in repositories is available on the Funding & Tenders Portal.

How? Open access to scientific publications involves four actions:

1. Deposit, in a repository for scientific publications, a machine-readable electronic copy of the published version of the publication (or the final peer-reviewed manuscript as accepted for publication, author's version).

This must be done at the latest on publication (in some cases, the final version can be deposited before publication, *e.g. once accepted by the journal*).

'Machine readable copy' means a format that can be used and understood by a computer; copies must be stored using text file formats that are either standardised or otherwise publicly known, so that anyone can develop new tools for working with them.

Best practice: Where possible, the article as published (in terms of layout, pagination, etc.) should be deposited.

2. Provide open access to the scientific publication — either via open access publishing (i.e. via the publication venue AND via the repository) or as self-archiving (i.e. via the repository only).

Open access must be given:

– in case of 'open access publishing': at the latest on publicationin all other cases: within 6 months (12 months for publications in the social sciences and humanities)

3. Ensure open access, via the repository, to certain bibliographic metadata that identify the publication

This is needed for visibility, traceability and monitoring.

It must be done in a standard format and include:

– the terms "Innovative Medecine Initiative 2", " European Union (EU)", "Horizon 2020" and "names of the JU Members other than the EU, e.g. EFPIA [and "the name(s) of the associated partner(s)], if any

– the name of the action, acronym and grant number

– the publication date, and length of embargo period if applicable and

– a 'persistent identifier' *(e.g. a stable digital object identifier which identifies the publication and links to an authoritative version)*.

Best practice: For ease of tracking, beneficiaries should also include the digital object identifier for 'Horizon 2020' (http://dx.doi.org/10.13039/501100007601) and IMI2 JU in the funding acknowledgement field in their metadata.

The metadata compliance of the repository can be checked using OpenAIRE.

4. Aim to deposit at the same time, ideally in a data repository, the research data needed to validate the results in the deposited publication.

This is linked to rapid evolution of the concept of 'publication' in the digital era. The underlying data needed to validate the results presented in scientific publications is now seen as a crucial part of the publication and therefore an important element of scientific best practice.

⚠ Beneficiaries do NOT have to grant open access to the deposited underlying research data — unless they are participating in the Pilot on Open Research Data (*see below*).

ℹ For more guidance on open access, *see the Funding and Tenders Portal Online Manual.*

3. Open access to research data (Extended Open Research Data Pilot)

What? Beneficiaries of actions that participate in the Open Research Data Pilot (ORDP) must :

- develop a **data management plan (DMP)** as a deliverable of the project and
- give open, free-of-charge access to the end-user to digital research data generated during the action

⚠ As of the Horizon Work Programme 2017, the Open Research Data pilot has been extended to all thematic areas of Horizon 2020 (except ERC PoC actions, SME instrument Ph1 actions, ERA-NET Cofund actions that do not produce data, EJP Cofund actions, and prizes).

Participation is therefore now in principle **the default**. However, actions may **opt out** at any stage — both before signing the GA and afterwards (through an amendment; *see Article 55*) —, if:

- participation is incompatible with the obligation to protect results *(see Article 27)*
- participation is incompatible with the security obligations *(see Article 37)*
- participation is incompatible with rules on protection of personal data
- participation would mean that the project's main aim might not be achieved
- the project will not generate/collect any research data or
- there are other legitimate reasons not to take part.

The purpose of the ORDP is therefore twofold: research data management and open access.

Open access to digital research data means taking measures to make it possible for end-users to **access, mine, exploit, reproduce** and **disseminate** the data via a research data repository without any charges for them.

'Digital research data' are information in digital form (in particular facts or numbers), collected to be examined and used as a basis for reasoning, discussion or calculation; this includes statistics, results of experiments, measurements, observations resulting from fieldwork, survey results, interview recordings and images.

Only data that are generated by beneficiaries in the course of the action are concerned. Actions are encouraged to digitise any other data and provide open access to them, but they are not obliged to do so.

The pilot applies to **2 types** of digital research **data**:

- the data needed to validate the results presented in scientific publications and associated metadata (i.e. data describing the deposited research data) and
- other data and associated metadata, as specified by the beneficiaries in their data management plan.

Examples: *curated data not directly attributable to a publication or raw data*

⚠ Beneficiaries participating in the ORPD should NOT provide open access to specific datasets if this would go against other GA obligations *(e.g. to protect results or personal data)* or if the action's main objective, as described in Annex 1, would be jeopardised by giving open access to those specific datasets. In this case, the reasons must be explained in the data management plan, which is a deliverable for projects participating in the ORDP *see below*).

A 'research data repository' means an online archive for research data; this can be subject-based/thematic, institutional or centralised.

Best practice: Useful listings of repositories include the Registry of Research Data Repositories *(Re3data)* and the Core Trust Seal certified repositories. One key entry point for accessing and depositing related data and tools is Zenodo. For further details on general and discipline-specific repositories visit the EUDAT Collaborative Data Infrastructure.

Actions participating in the pilot must moreover develop a **data management plan (DMP)** as a deliverable of the project within the first 6 months of the project implementation.

The DMP must support the management life-cycle for all data that will be collected, processed or generated by the action. It must cover how to make data findable, accessible, interoperable and re-usable (FAIR), including:

- the handling of data during and after the projectwhat data will be generated or reused
- what methodology and standards will be applied
- whether data will be shared / made open access (and how) and, if any, what data will not be shared / made open access (and why) and
- how data will be curated and preserved.

The DMP should be updated (and become more precise) as the project evolves. New versions should be created whenever important changes to the project occur (*e.g. new data sets, changes in consortium policies, etc.*), at least as part of the mid-term review (if any) and at the end of the project.

For more guidance on data management plans (and a template), *see the H2020 proposal forms and the Funding and Tenders Portal Online Manual.*

Best practice: FAIRsharing provides a curated and searchable portal of data standards, databases, and policies in the life sciences and other scientific disciplines. For more information on disciplinary metadata standards, visit Digital Curation Centre and Research Data Alliance Metadata Directory. Additional information on DMPs, repositories and the FAIR principles can be found in this Practical Guide.

Costs related to the implementation of the ORDP *(e.g. costs for providing open access, related research data management costs, data curation and data storage costs)* are eligible if incurred before the end of the action and if all the other eligibility conditions are fulfilled *(see Article 6.2.D.3)*.

How? Open access to digital research data involves 4 actions:

Procedure for open access (research data):

1) Develop a **data management plan (DMP)** by month six of the project as a deliverable. The DMP is a 'living document' to be revised as appropriate in the duration of the project

2) Deposit the digital research data, preferably in a research data repository.

3) Provide **open access** by taking measures to enable users to access, mine, exploit, reproduce and disseminate the data free of charge *(e.g. for databases: by attaching an appropriate creative commons licence (*CC-BY *or* CC0 tool) to the data; if the access/use is not subject to any rights: by indicating that no licence is needed). Open access must not necessarily be given immediately; for data needed to validate the results presented in scientific publications, as soon as possible; for other data, beneficiaries are free to specify embargo periods for their data in the data management plan (as appropriate in their scientific area).

4) Provide **information**, via the repository, about tools and instruments for validating the results.

Where possible, the beneficiaries should provide those tools and instruments (*e.g. specialised software or software code, algorithms, analysis protocols, etc.*).

For more guidance on the research data pilot, see *the Funding and Tenders Portal Online Manual.*

4. Data sharing for public health emergencies

If foreseen in the work plan/call, grant agreements for health actions will include specific contractual provisions concerning the sharing of research data for public health emergencies.

Public health emergencies are for instance:

- public health emergencies of international concern ('PHEIC') according to the World Health Organisation, or
- public health emergencies under Decision 1082/2013/EU, or
- public health emergencies under applicable national frameworks and regulations.

What? The data-sharing obligations for public health emergencies refer to any type of quality-controlled digital research data *(see point 3)* and associated metadata which is generated in the action and is relevant for the response to the public health emergency.

Personal data must be processed in accordance with applicable EU and national law (including international practices and standards; *see Article 39.2*).

For IMI2 JU/H2020 actions *targeting* public health emergencies, the beneficiaries must moreover:

- provide a data management plan (DMP) preferably with the proposal or at the latest before grant signature

  The data management plan should address the relevant aspects of making the data findable, accessible, interoperable and re-usable (FAIR), including:

  - what data the project will generate
  - whether and how the data will be made accessible for verification and re-use and
  - how it will be circulated and preserved.

  For more guidance on data management plans (and a template), *see the H2020 proposal forms and the Funding and Tenders Portal Online Manual.*

- for relevant data (as agreed with the JU): provide open access within 30 days after it has been generated
- for other data: provide open access as soon as possible.

If agreed with the JU/Commission, the open access obligation can exceptionally be replaced by special access rights to specific third parties that need the data to address the public health emergency.

In this case, the access rights must include the right to access, mine, exploit and reproduce the data free of charge (as further specified by the JU/Commission, if needed) — but they may be

used only for the access needed and only for addressing the public health emergency (i.e. limited both in scope and in time). Sub-licensing is only allowed if the beneficiary agrees.

For *other* IMI2 JU/H2020 actions, the special open access obligation (or the special access rights to specific third parties) is linked to a specific request by the JU/Commission and limited to datasets agreed with the JU/Commission.

5. Visibility of JU funding and of support from the EU and JU members (and associated partners)

Any dissemination of results (in any form), even when combined with other data, must include the reference to JU funding, to EU support and contribution of EFPIA, of other JU Members and of Associated Partners, as set out in the GA *(see Article 38)*.

Best practice: Where possible, beneficiaries should make this reference in the language of the dissemination activity (using the text of the GA language version available on Funding & Tenders Portal Reference Documents).

Do NOT refer to JU funding when describing outputs of activities that are not described in Annex I, i.e. outputs developed outside the action (in other words for dissemination activities which do not concern results of the action).

⚠ **Combining H2020 & other EU grants —** If the outputs were developed in another EU-funded action (funded not by H2020, but another EU programme, including Structural Funds/ESIF Funds), do NOT forget the visibility obligations under those grant agreements.

ARTICLE 30 — TRANSFER AND LICENSING OF RESULTS

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 (or less if agreed in writing) 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) for specifically-identified third parties, any other beneficiary may object within 30 days of receiving notification (or less if agreed in writing), 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.

Notwithstanding the above, a beneficiary may, without the consent of the other beneficiaries but provided that the other beneficiaries are informed without undue delay and that the transferee agrees in writing to be bound by this agreement and the consortium agreement, transfer its results to any of the following:

(i) its affiliated entity;

(ii) any purchaser of all or a substantial amount of its relevant assets;

(iii) any successor entity resulting from the merger with or consolidation of such a beneficiary.

The delay referred to in the sixth subparagraph must be agreed by the beneficiaries in the consortium agreement.

30.2 Granting licences

Provided that any access rights to the results can be exercised and that any additional obligations under this Agreement or consortium agreement are complied with by the beneficiary who owns results, the latter may grant licences to its results (or otherwise give the right to exploit them) to any legal entity.

This does not change the dissemination obligations in Article 29 or security obligations in Article 37, which still apply.

30.3 JU right to object to transfers or licensing

[OPTION 1: *The JU 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 with Horizon 2020 and*

(b) *the JU 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 JU 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 JU may request additional information.

If the JU 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 JU decision, within the period set out above;*
- *if the JU objects;*
- *until the conditions are complied with, if the JU objection comes with conditions.]*

[OPTION 2:** 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.

⚠ Article 30.3 does not apply to results generated by beneficiaries not receiving JU funding. When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contributions to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA. For more details please refer to annotations under article 9 and the applicable section of the *IMI2 JU Guidelines for reporting inkind and financial contributions by Members other than the Union and Associated Partners.*

1. Transfers of ownership

The beneficiaries may transfer ownership of their results to another beneficiary or to a third party – unless prohibited (or restricted) by security-related obligations *(see Article 37)*. For example, transfers of ownership can be foreseen in the consortium agreement e.g. for specific categories of results to specific participants.

Examples:

(i) *where an action requires a specific expertise or technology which is a key asset of an SME (e.g. platform research tool, software), the SME may need to retain all commercialisation rights on arising results in this technology in order to remain competitive, and indeed may be the beneficiary best placed to develop the results for commercialisation and effective delivery to the research community at large.*

(ii) *where results are compounds which might be developed as pharmaceutical products, a pharmaceutical company might be the beneficiary best placed to develop a pharmaceutical product to market.*

(iii) *where results are generated by one beneficiary as a result of cash contribution from another beneficiary, the results could be transferred to that second beneficiary.*

⚠ Don't forget to notify the JU of any changes in ownership that are likely to affect the action's implementation *(see Article 17.2.)* and that abandoning jointly owned results is only possible after they have been generated (see Article 26.2).

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:

- Joint ownership-related obligations *(see Article 26.2)*
- The JU's right to assume ownership, to protect results *(see Article 26.4)*
- Protection of results and visibility of JU funding *(see Article 27)*
- Exploitation of results and visibility of JU funding *(see Article 28)*
- Dissemination of results, open access and visibility of JU 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 (e.g. commercial interests)**.

In contrast to transfer of background as foreseen in Article 24a, 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** (or less if agreed in writing) **advance notice** (together with sufficient information – e.g. concerning the intended new owner, to allow them to properly assess the extent to which their access rights may be affected).

Unless agreed otherwise (in writing), any other beneficiary (with such access rights) may **object** to the transfer within **30 days** of receiving notification, 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 (transfers of ownership of results):

A beneficiary may, without the permission of the other beneficiaries but provided that other beneficiaries are informed without undue delay (to be agreed in the consortium agreement) and that the transferee agrees in writing to be bound by the grant agreement and the consortium agreement, transfer (ownership in) its results to (a) its affiliated entity; or (b) any purchaser of all or substantially all of its relevant assets; or (c) any successor entity resulting from the merger with or consolidation of such a beneficiary. This includes the case where a successor entity results from divestment from a parent company.

> ***Example:*** *subject to the obligation to inform the other beneficiaries without undue delay, nothing could preclude an owner from assigning its ownership rights on results to an affiliated entity, e.g. start-up company who would then take on the obligations of the owner and therefore would be the entity granting access rights to the other beneficiaries & third parties, as specified in the consortium agreement, either for research use or direct exploitation.*

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). It will only be necessary to inform the other beneficiaries after the merger/acquisition has taken place.*

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 *(other than affiliated entities/purchasers/successor entities).* 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, beneficiaries should carefully consider the situation (and in particular the identity of the third party concerned), to determine if their 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 JU has the right to object to transfers *(see point 3)*, the beneficiary must **formally notify in advance** (via the Funding & Tenders Portal) any transfer to a specifically-identified third party established in a non-associated third country — and the JU 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 for direct exploitation may be granted provided that any access rights to the results are respected and any other obligations under the GA are complied with (see Article 31).

3. JU right to object to transfers or exclusive licensing

If the GA provides for this option, the JU may **object** to transfers or *exclusive* licences to third parties established in a non-associated third country (i.e. not EU Member State or Horizon 2020 associated country).

⚠ As of the H2020 Work Programme 2018, the calls will normally already indicate if this option will be activated in the GAs. The option may however still be activated (without such indication):

- for calls which do not fix the type of research and innovation activities ("bottom-up" calls, such as FET Open or MSCA) or
- in other calls, exceptionally, if justified by the nature of the research and innovation activities or other action-related reasons.

Grounds for objection:

- Planned transfer/licence 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*

- Planned transfer/licence 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*

- Planned transfer/licence not consistent with **security considerations**

  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*

This right does NOT apply to results generated by beneficiaries not receiving JU funding *(see Article 9)*.

⚠ When a beneficiary eligible for IMI2 JU funding receives financial transfers counting as contributions to the IMI2 Programme from another beneficiary (beneficiary not receiving funding), such funding will be considered as "JU Funding" in the context of the applicable obligations under the GA. For more details, please refer to annotations under article 9 and the applicable section of *IMI2 JU Guidelines for reporting in-kind and financial contributions by Members other than the Union and Associated Partners*.

The beneficiary must **formally notify** the JU **in advance** (via the Funding & Tenders Portal; *see Article 52*) of any planned transfer or exclusive licence.

A notification before the results are generated is allowed, if the specific results concerned (and the details of the transfer/licence) can already be identified.

ARTICLE 31 — ACCESS RIGHTS TO RESULTS

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

During the action, beneficiaries enjoy access rights to the results of the other beneficiaries solely for the purpose and to the extent necessary for undertaking and completing the action.

Such access must be granted on a royalty-free basis.

31.3 Access rights for other beneficiaries and their affiliated entities, for exploiting results

During and after completion of the action, beneficiaries and their affiliated entities enjoy access rights to the results of the other beneficiaries for research use (see Article 25.3).

Access rights for research use must be granted on a non-exclusive basis under fair and reasonable conditions (i.e. appropriate conditions including financial terms or royalty-free, taking into account the actual or potential value of the results to which access is requested and other characteristics of the research use envisaged).

Where direct exploitation by a beneficiary or third party requires results owned by another beneficiary, the access rights may be negotiated between the parties involved.

Beneficiaries must agree in the consortium agreement on a time-limit in respect of requests for access.

31.4 Not applicable

31.5 Access rights for the JU, the EU institutions, other EU bodies, offices or agencies and EU Member States

The beneficiaries must give access to their results — on a royalty-free basis — to the JU, and to EU institutions, other EU 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).

31.6 Access rights for third parties

After the completion of the action, third parties shall have the right to request and receive access rights to the results of the beneficiaries for research use.

Such access rights must be granted on a non-exclusive basis under conditions considered appropriate by the owner of the results and the third party concerned. Those conditions may not be more favorable than the conditions applied to beneficiaries and affiliated entities for research use.

Beneficiaries must agree in the consortium agreement on a time-limit in respect of requests for access.

***[OPTION 1a for additional access rights for complementary grants if foreseen in the work plan**: The beneficiaries must give — under the conditions set out in Article 31.2 and 31.3 — access to their results to complementary beneficiaries[43], for the purposes of the complementary grant agreement(s) (see Article 2).]*

[OPTION 1b for additional access rights for interoperability if foreseen in the work plan:** The beneficiaries must give third parties — up to four years after the period set out in Article 3 and [**OPTION A:** under fair and reasonable conditions (see Article 25.3)] [**OPTION B:** on a royalty-free basis] — access to their results needed for interoperability.**]

***[OPTION 1c for additional access rights for cross-border interoperability if foreseen in the work plan:** 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 1d for trans-national access to research infrastructure:** The access provider must give the users royalty-free access to the results needed to implement the action.**]

[OPTION 2:** 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.

[43] **Complementary Beneficiary**' means a beneficiary of a complementary grant agreement.

1. Requesting modalities

Access rights are not automatic; they **must be requested** (in writing).

ⓘ *For more information on written request and time-limits, see* Article 25.

2. Conditions for access: Royalty free — Fair and reasonable conditions

Access must be given:

- for the implementation of action tasks: royalty-free i.e. free of charge or any other payment.
- for research use of results by beneficiaries and their affiliated entities: under fair and reasonable conditions i.e. appropriate conditions, including possible financial terms or royalty-free, taking into account the actual or potential value of the results to which access is requested and other characteristics of the research use envisaged.

  'Fair and reasonable conditions' includes also royalty-free conditions i.e. free of charge or any other payment (⚠ new in Horizon 2020).

  ***Examples of financial terms (e.g. monetary compensation):** a lump sum, a royalty percentage, or a combination of both; a technology transfer fee.*

Best practice: Beneficiaries must agree on what constitutes fair and reasonable conditions, preferably in writing.

3. Scope of access: Sub-licensing / Licensing — Additional access rights — More favourable terms — Additional conditions

The access rights set out in the grant agreement **cover** only the **access needed**.

Access rights do not automatically give the right to **sub-license** by the requesting beneficiary. (If this were the case, access rights to results would be extended — without consent — to virtually any company in the world, including the beneficiary's competitors).

> ⓘ *For more information on sub-licences, see* Article 25*.*

The beneficiaries remain free to grant **licenses** (including quasi-exclusive licenses), beyond the rights foreseen in the GA, 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 for direct exploitation.

> **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 than those foreseen in the grant agreement *(e.g. include the right to sub-license)* or be made subject to **additional conditions** *(e.g. appropriate confidentiality obligations, obligations related to existing license agreements)*.

> **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. Access rights for beneficiaries for implementing the action

Access rights to results for the purpose of completing the action are to be granted by their owner on a royalty-free basis.

Royalty-free basis means free of charge – free of any payment.

Such access rights are granted in order to allow a beneficiary, and its authorized affiliated entities in accordance with Article 31.1, to perform its activities under the action. Such access rights may not be interpreted as allowing a beneficiary to use the results for activities outside the specific action.

> ***Example:*** *Specific conditions aiming at ensuring that these rights will be used only for the intended purpose and appropriate confidentiality obligations may be set up.*

Furthermore, the additional access rights to results for complementary grant agreements apply ONLY if (and to the extent that) the access is needed for the purposes of the complementary grant (i.e. the access is needed for implementing the action tasks under the complementary grant or for exploiting the results of the beneficiaries in the complementary grant).

5. Access rights for beneficiaries and their affiliated entities for research use

Access rights to results for beneficiaries and their affiliated entities for the purpose of research use of results are to be granted under fair and reasonable conditions.

> ⓘ *For more information on fair and reasonable conditions, see above under point 2*

These conditions for access rights should be extensively discussed and agreed within the consortium, and shall respond to a common need considering the IMI2 objectives to achieve fair allocation of rights and reward innovation, and to achieve the action's objectives.

In this regard, beneficiaries may agree on different terms depending on whether access rights will be granted to a beneficiary including affiliated entities, on the nature of the results concerned and of the research use foreseen.

Affiliated entities are not parties to the grant agreement, but by their affiliation with entities participating in the grant agreement, have access rights for research use on the same basis as beneficiaries.

ⓘ For more information on affiliated entities, see Article 25*.*

Similarly to IMI1, this is a key feature of IMI2 which was specifically provided for to promote dissemination and exploitation of results.

The scope of access rights for affiliated entities is limited to research use only.

6. Access rights for third parties for research use

One of the key objectives of IMI2 is to deliver the right treatment to the right patients at the right time, by speeding up the discovery and development process. As for IMI1, the IMI2 IP provisions promote swift disclosure and exploitation of results, by foreseeing access rights for third parties for research use. Some third parties may indeed be in a better position to ensure a swift and appropriate dissemination and/or exploitation by way of research use in the discovery and development of new medicines.

Third parties have the right to **request** and **receive** access rights under fair and reasonable conditions to be agreed on a case-by-case basis between the owner(s) of the results and the third party(ies) concerned.

⚠ These conditions may not be more favorable than the conditions applied to beneficiaries for research use.

The beneficiaries may already define in the consortium agreement basic criteria for negotiating the financial terms for example, based on the geographical location of the third party, the scope of its activities, possible future collaboration, exchange of know-how and knowledge, etc.

Contrary to IMI1, beneficiaries in an IMI2 JU action must agree in the consortium agreement on a time-limit in respect of requests for access rights to results for research use. This relates to access rights for both beneficiaries and third parties.

ⓘ For more information on time-limits, see Article 25*.*

7. Access rights for direct exploitation

Beneficiaries are not required to grant access rights for direct exploitation to their results.

However should they decide to agree otherwise, then the particular terms and conditions attached to the granting of such access rights should be negotiated as and when appropriate. Consequently they may be the subject of more specific arrangements between the beneficiaries concerned (for example, in the consortium agreement, the beneficiaries may set up basic principles and granting conditions depending on whether the access rights are to be granted between themselves, to affiliated entities or to third parties).

They may also identify possible direct exploitation opportunities/activities for which they already agree on basic financial conditions.

8. Specific access rights for the JU, EU institutions, bodies, offices or agencies

The JU as well as EU institutions, bodies, offices or agencies have specific access rights for policy purposes.

SECTION 4 OTHER RIGHTS AND OBLIGATIONS

ARTICLE 32 — RECRUITMENT AND WORKING CONDITIONS FOR RESEARCHERS

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 beneficiaries 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[44], in particular regarding:

- **working conditions;**
- **transparent recruitment processes based on merit, and**
- **career development.**

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

32.2 Consequences of non-compliance

If a beneficiary breaches its obligations under this Article, the JU may apply any of the measures described in Chapter 6.

[44] Commission Recommendation 2005/251/EC of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (OJ L 75, 22.3.2005, 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[73] and the Code of Conduct for their Recruitment[74].

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.

⚠ **Record-keeping —** Beneficiaries should keep appropriate **documentation** about the steps taken and measures put in place *(see Article 18)*.

[73] Available at http://ec.europa.eu/euraxess/index.cfm/rights/europeanCharter
[74] Available at http://ec.europa.eu/euraxess/index.cfm/rights/codeOfConduct

The JU 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

The beneficiaries must in particular implement the General Principles and Requirements of the Charter[75] and of the Code of Conduct[76] 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[77])*
- 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

[75] Available at http://ec.europa.eu/euraxess/index.cfm/rights/europeanCharter
[76] Available at http://ec.europa.eu/euraxess/index.cfm/rights/codeOfConduct
[77] Available at http://ec.europa.eu/euraxess/jobs

– 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 a research fellowship)*.

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.

For more guidance on researcher rights, *see the Human Resources Strategy for Researchers tool.*

ARTICLE 33 — GENDER EQUALITY

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 JU 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).

⚠ **Record-keeping —** Beneficiaries should keep appropriate **documentation** about the steps taken and measures put in place *(see Article 18)*.

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, the reasons should moreover be explained in the first **periodic technical report** and in the **final report** *(see Articles 20.3 and 20.4)*.

The JU will verify compliance with this obligation, when monitoring the action implementation and in case of checks, reviews, audits and investigations *(see Article 22)*.

ℹ For more guidance on gender in research, *see the Funding and Tenders Portal Online Manual*.

ARTICLE 34 — ETHICS AND RESEARCH INTEGRITY

ARTICLE 34 — ETHICS AND RESEARCH INTEGRITY

34.1 Obligation to comply with ethical and research integrity principles

The beneficiaries must carry out the action in compliance with:

(a) ethical principles (including the highest standards of research integrity)

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 or for activities which destroy human embryos (for example, for obtaining stem cells).

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.

In addition, the beneficiaries must respect the fundamental principle of research integrity — as set out in the European Code of Conduct for Research Integrity[45].

- This implies compliance with the following fundamental principles:**reliability**in ensuring the quality of research reflected in the design, the methodology, the analysis and the use of resources;

- **honesty** in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair and unbiased way;

- **respect** for colleagues, research participants, society, ecosystems, cultural heritage and the environment;

- **accountability** for the research from idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts

and means that beneficiaries must ensure that persons carrying out research tasks follow the good researchpractices and refrain from the research integrity violations described in this Code.

This does not change the other obligations under this Agreement or obligations under applicable international, EU or national law, all of which still apply.

[45] The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011. http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/h2020-ethics_code-of-conduct_en.pdf

34.2 Activities raising ethical issues

Activities raising ethical issues must comply with the '**ethics requirements**' set out as deliverables in Annex 1.

Before the beginning of an activity raising an ethical issue, each beneficiary must have obtained:

(a) any ethics committee opinion required under national law and

(b) any notification or authorisation for activities raising ethical issues required under national and/or European law

needed for implementing the action tasks in question.

The documents must be kept on file and be submitted upon request by the coordinator to the JU (see Article 52). If they are not in English, they must be submitted together with an English summary, which shows that the action tasks in question are covered and includes the conclusions of the committee or authority concerned (if available).

34.3 Activities involving human embryos or human embryonic stem cells

Activities involving research on human embryos or human embryonic stem cells may be carried out, in addition to Article 34.1, only if:

- they are set out in Annex 1 or
- the coordinator has obtained explicit approval (in writing) from the JU (see Article 52).

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.

1. Ethical principles

The beneficiaries must carry out the action in compliance with:

- ethical principles (including the highest standards of research integrity) and
- 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

The key sources 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 Protocols (for other texts). Another important source is the UN Convention on the Rights of Persons with Disabilities (UN CRPD).

Compliance to the ethical principles and legislation is ensured by the **H2020 ethics appraisal scheme** (i.e. the H2020 policy on ethics issues in research as well implemented by the JU), which includes all of the following:

– ethics *self-assessment* (by the applicants, in their proposal)

– two-stage ethics review, with an ethics screening and, if necessary, an ethics assessment (by the JU, 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 more guidance on ethics, *see How to complete your ethics self-assessment, Research involving dual use items, Research focusing exclusively on civil applications, Potential misuse of research results and more generally, the Funding and Tenders Portal Online Manual.*

2. Activities carried out outside the EU

Activities carried out in a non-EU country must comply with the laws of that country AND be allowed in at least one EU Member State.

The beneficiaries must confirm in the ethics self-assessment section of their proposal that this condition is met.

3. Exclusive focus on civil applications

Activities under the action must have an exclusive focus on civil applications.

This does not mean that the research results cannot peripherally 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 prohibited. However, activities that *focus* on military applications will NOT be funded.

4. Research integrity

In order to ensure the necessary level of research integrity, the beneficiaries must follow principles listed in this Article and ensure that the persons carrying out research tasks comply with the European Code of Conduct for Research Integrity[78] (i.e. follow the good research practices listed in this Code and refrain from any research integrity violations it describes).

[78] Available at http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/h2020-ethics_code-of-conduct_en.pdf.

Fundamental research integrity principles:

- **reliability** in ensuring the quality of research reflected in the design, the methodology, the analysis and the use of resources
- **honesty** in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair and unbiased way
- **respect** for colleagues, research participants, society, ecosystems, cultural heritage and the environment
- **accountability** for the research from the idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts.

The Code constitutes a general reference framework and takes into account the legitimate interests of the beneficiaries (i.e. regarding IPRs and data sharing).

This does not change the other obligations under this Agreement or obligations under applicable international, EU or national law, all of which still apply. In addition, beneficiaries should rely on local, national or discipline-specific guidelines, if such documents exist and are not contrary to the Code.

3.0 The detailed research integrity obligations were introduced with GA version 3.0. For older grant agreements, these obligations were however already implicitly included in Article 34 (which already provided for the more general obligation to comply with the highest standards of research integrity and the European Code of Conduct for Research Integrity).

5. Activities raising ethics issues

If the ethics review (carried out by the JU during the selection procedure) identifies an ethics issue, the JU will define **ethics requirements** and include them as **deliverables** in Annex 1 of the GA.

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.*

Examples (ethics deliverables): *to submit to the JU a report on certain ethics issues during the course of the action.*

Other ethics requirements may have been required already before GA signature.

Examples (other ethics requirements): *confirmation that the research data of this study will not be transferred outside the EU.*

In addition, the beneficiary must obtain — before the start of the activity for which it is needed — all the necessary **ethics opinions, notifications** and **authorisations** *(e.g. to ethics committees, data protection authorities, dual-use authorities, etc.).*

Best practice: When preparing the applications for such opinions/notifications/ authorisations, beneficiaries should request the assistance of ethics experts, research ethics departments/committees and of their organisation's data protection officer (DPO).

⚠ **Record-keeping —** The documents no longer need to be submitted before the start of the action, but the beneficiary must keep them on file and provide them on request to the JU

(e.g. in case of ethics reviews, checks or audits; see Article 18).

The beneficiary must be able to show that the opinions/authorisations/notifications cover the tasks to be undertaken in the context of the action.

If the documents are not in English, the beneficiary may be asked to provide an English summary.

This summary should show that the opinions/authorisations/notifications cover the action activities and should include conclusions, recommendations and, if applicable, conditions imposed *(e.g. the use of animals is authorised but limited to a certain number).*

Translation costs may (exceptionally) be charged to the action *(see Article 6.2.D.3)* — at the rate of non-official translations.

The JU may carry out **ethics checks, reviews or audits**, to ensure that the beneficiaries have properly implemented the ethics requirements and obtained the opinions/notifications/authorisations *(see Article 22)*.

6. Activities involving human embryos (hE) or human embryonic stem cells (hESC)

Activities that involve human embryos (hE) or human embryonic stem cells (hESC) can only be funded, if:

- they comply with the Statement of the European Commission related to research activities involving human embryonic stem cells[79] (in particular, do NOT result in the destruction of human embryos)

and

- they are set out in Annex 1 or
- the coordinator has obtained explicit approval by the JU.

These activities raise ethics issues and must comply with the rules above (and in particular the ethics requirements set out in Annex 1; *see point 5*).

[79] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:373:0012:0015:EN:PDF

ARTICLE 35 — CONFLICT OF INTERESTS

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 JU 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 JU 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 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:

  1. *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.*

  2. *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.*

  3. *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:

  1. *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.*

  2. *If decisions made in the context of the action are taken not according to objective and impartial criteria, but because of these shared interests.*

  3. *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 coordinator must **inform** the JU (via the Funding & Tenders Portal), so that steps can be taken to resolve or avoid it.

This may result in the JU putting in place certain measures.

ARTICLE 36 — CONFIDENTIALITY

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 JU 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 JU may disclose confidential information to its staff, other EU institutions and bodies. It may disclose confidential information to third parties, if:

(a) this is necessary to implement the Agreement or safeguard the EU's or JU's financial interests and

(b) the recipients of the information are bound by an obligation of confidentiality.

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.

1. Confidentiality

The beneficiaries (and also the JU) must — during the action and for four years afterwards — keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed.

⚠ 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)*.

Best practice: Beneficiaries should inform each other (and the JU) about any laws that require disclosing confidential information (and to work together to minimise any negative effects).

A beneficiary may ask the JU to extend the period. This request must explain why and clearly identify the confidential information.

⚠ **Security obligations —** Stricter confidentiality obligations apply for information that is **EU-classified** or results that are subject to **limited disclosure / dissemination** in Annex 1 of the GA *(see Article 37)*.

ℹ For more guidance on security obligations, *see the Guidelines for the handling of classified information in EU research projects and, more generally, the Funding and Tenders Portal Online Manual*.

The JU will exchange confidential information with the European Court of Auditors (ECA), the European Anti-Fraud Office (OLAF) and other Agencies and H2020 funding bodies, to check double funding, pursue fraud and avoid plagiarism. (This is part of safeguarding the JU and EU financial interests).

ARTICLE 37 — SECURITY-RELATED OBLIGATIONS

ARTICLE 37 — SECURITY-RELATED OBLIGATIONS

37.1 Results with a security recommendation

[OPTION 1 if applicable to the grant: *The beneficiaries must comply with the 'security recommendation(s)' set out in Annex 1.*

For security recommendations restricting disclosure or dissemination, the beneficiaries must — before disclosure or dissemination to a third party (including linked third parties, such as affiliated entities) — inform the coordinator, which must request written approval from the JU.

*In case of changes to the security context, the beneficiaries must inform the coordinator, which must immediately inform the JU and, if necessary, request for Annex 1 to be amended (see Article 55).**]***

[OPTION 2: *Not applicable**]***

37.2 Classified information

[OPTION 1 if applicable to the grant: *The beneficiaries must comply with the security classification set out in Annex 1 ('security aspect letter (SAL)' and 'security classification guide (SCG)').*

Information that is classified must be treated in accordance with the security aspect letter (SAL) and Decision No 2015/*444*[46] *— until it is declassified.*

Action tasks involving classified information may not be subcontracted without prior explicit written approval from the JU.

In case of changes to the security context, the beneficiaries must inform the coordinator, which must immediately inform the JU and, if necessary, request for Annex 1 to be amended (see Article 55)].

[OPTION 2: *Not applicable**]***

37.3 Activities involving dual-use goods or dangerous materials and substances

[OPTION 1 if applicable to the grant: *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 JU (see Article 52) a copy of any export or transfer licences required under EU, national or international law.**]***

[OPTION 2: *Not applicable**]***

37.4 Consequences of non-compliance

[OPTION 1 to be used if 37.1, 37.2 and/or 37.3 are applicable: *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 2: *Not applicable**]***

[46] Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU classified information.

1. Results with a security recommendation — EU-classified information

If the GA provides for (one of) these options, the beneficiaries must comply with the **security obligations** set out in this Article, in Annex 1 and in the other provisions of the GA *(see Articles 13 and 19)*.

The options will be inserted if the JU finds during the selection procedure (security scrutiny) that the action raises security issues and must be subject to a security recommendation and/or EU-classification under Decision No 2015/444[80].

⚠ Be aware that national/third country security requirements *(national/third country security classification, etc)* may affect the project implementation (and even put it at risk). It is your responsibility to avoid this and to keep your project free of such restrictions (either by adapting your project or by obtaining all necessary authorisations to be able to comply with your obligations under the GA). Any potential security issues should immediately be notified to the JU.

ℹ For more guidance on security obligations, *see the Guidelines for the classification of information in research projects, Potential misuse of research results and, more generally, the Funding and Tenders Portal Online Manual.*

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[81].

Moreover, the coordinator must — before the start of the activity for which it is needed — submit a **copy** of any **export** or **transfer licence**.

⚠ Be aware that national/third country security requirements *(technology transfer restrictions, etc)* may affect the project implementation (and even put it at risk). It is your responsibility to avoid this and to keep your project free of such restrictions (either by adapting your project or by obtaining all necessary authorisations to be able to comply with your obligations under the GA). Any potential security issues should immediately be notified to the JU.

ℹ For more guidance on dual use goods, *see How to complete your ethics self-assessment* and *Research involving dual use items.*

[80] Commission Decision 2015/444/EC,Euratom of 13 March 2015 on the security rules for protecting EU classified Information (OJ L 72, 17.3.2015, p.53).

[81] 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 JU FUNDING AND SUPPORT FROM JU MEMBERS

ARTICLE 38 — PROMOTING THE ACTION – VISIBILITY OF JU FUNDING AND SUPPORT FROM JU MEMBERS

38.1 Communication activities by beneficiaries

38.1.1 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 JU (see Article 52).

38.1.2 Information on JU funding and support from JU members *[and associated partners]* — Obligation and right to use the logos and the EU emblem

Unless the JU 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, equipment and major results funded by the grant must:

(a) display the JU logo, the logo of [insert names of the JU Members other than the Union]***[Option for grant agreements where associated partners are involved:*** *and of [insert name(s)) of the associated partner(s)]**]*** and

(b) display the EU emblem and

(c) include the following text:

For communication activities:

"This project has received funding from the Innovative Medicines Initiative 2 Joint Undertaking (JU) under grant agreement No [Number]. The JU receives support from the European Union's Horizon 2020 research and innovation programme and [insert names of the JU members other than the EU] *[and [insert name(s) of the associated partner(s)]]*.".

For infrastructure, equipment and major results:

"This *[infrastructure][equipment][insert type of result]* is part of a project that has received funding from the Innovative Medicines Initiative 2 Joint Undertaking (JU) under grant agreement No [Number]. The JU receives support from the European Union's Horizon 2020 research and innovation programme and [insert names of the JU members other than the EU] *[and [insert name(s) of the associated partner(s)]]*.".

When displayed together with another logo, the logos and the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the logos and the EU emblem without first obtaining approval from the JU, the Commission or the JU Members [and Associated Partners].

This does not, however, give them the right to exclusive use.

Moreover, they may not appropriate the logos and the EU emblem or any similar trademark or logo, either by registration or by any other means.

38.1.3 Disclaimer excluding JU responsibility

Any communication activity related to the action must indicate that it reflects only the author's view and that the JU is not responsible for any use that may be made of the information it contains.

1. Communication activities (consortium) — Promoting the action and its results

The beneficiaries must promote the action and its result, 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 — throughout the action duration).

'Promoting the action' means 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.

The beneficiaries are free to choose the type of communication activities[82].

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 beneficiary in a mono-beneficiary grant)*
- address audiences that go beyond the action's own community (including the media and the public).

Ad hoc efforts or mere dissemination of results are NOT sufficient. (Dissemination of results *(see Article 29)* cannot replace communication activities (or vice-versa); both provisions must be complied with.)

Moreover, the activities must make the research activities known to **multiple audiences** (in a way that they can be understood by non-specialists) and include the public policy perspective of EU research and innovation funding, by addressing aspects such as:

- transnational cooperation in a European consortium (i.e. how working together has allowed to achieve more than otherwise possible)
- 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.)*

[82] For the definition of 'communication activities', *see the Glossary.*
[83] Available at http://ec.europa.eu/dpo-register/search.htm.

– better use of results and spill-over to policy-makers, industry and the scientific community.

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 JU.

Security obligations — Information given may NOT include **EU-classified information** or information on results that are subject to **limited disclosure/dissemination** in Annex 1 of the GA *(see Article 37)*.

For more guidance on security obligations, *see the Guidelines for the classification of information in research projects and, more generally, the Funding and Tenders Portal Online Manual.*

The communication activities during the action must already be part of the proposal (either as a specific work package for communication or by including them in another work package; *see the H2020 proposal templates*) and be included in Annex 1 and 2.

For guidance on promoting the action, *see the Social media guide for EU funded R&I actions and the Funding and Tenders Portal Online Manual.*

2. Visibility of JU funding

The beneficiaries must — during the action and afterwards — ensure the visibility of JU funding and the support from the EU, JU Members and Associated Partners for any communication activity related to the action (including in electronic form, via social media, etc.) and on any infrastructure, equipment or major result (including prototypes) funded by the grant, by:

– displaying the JU logo, the logo of the JU Members other than the Union (e.g. EFPIA) and, as the case may be, the logo of the Associated Partners;

AND

– displaying the **EU emblem**

AND

– including the **reference to JU funding** set out in the GA.

Best practice: Where possible, beneficiaries should make this reference in the language of the communication activity or, for infrastructure, equipment or major results, the official language(s) of the country where they are located (using the text of the GA language version available on the Funding & Tenders Portal Reference Documents).

The EU emblem, and reference to JU funding must be displayed in a way that is easily visible for the public and with sufficient prominence (taking also into account the nature of the activity or object).

Examples: *a sticker or poster for equipment and major results, a plaque or billboard for infrastructure.*

For guidance on using the EU emblem, *see the Guide to using the EU emblem.*

38.2 Communication activities by the JU

38.2.1 Right to use beneficiaries' materials, documents or information

The JU 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 received 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.

If the JU's use of these materials, documents or information would risk compromising legitimate interests, the beneficiary concerned may request the JU 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 JU 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[47], 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 JU.

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 JU will insert the following information:

> "© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the Innovative Medicines Initiative 2 Joint Undertaking 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).

Such breaches may also lead to any of the other measures described in Chapter 6.

[47] 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 (JU)

The JU may use (free of charge) 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 the JU website general information about the action such as its name, a project summary, the participating partners, the JU 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 JU needs to edit or redraft the material, it will be careful not to distort any content.

Beneficiaries may ask the JU to include a copyright notice *(e.g. by including such a notice in the material)*.

The beneficiaries must ensure that the JU can use the documents or materials by making **arrangements** with any **third parties** that could claim rights to them.

ARTICLE 39 — PROCESSING OF PERSONAL DATA

ARTICLE 39 — PROCESSING OF PERSONAL DATA

39.1 Processing of personal data by the JU and the Commission

Any personal data under the Agreement will be processed by the JU or the Commission under Regulation No 45/2001[48] and according to the 'notifications of the processing operations' to the Data Protection Officer (DPO) of the JU or the Commission (publicly accessible in the DPO register).

Such data will be processed by the '**data controller**' of the JU or the Commission for the purposes of implementing, managing and monitoring the Agreement or protecting the financial interests of the JU, EU or Euratom (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 privacy statement(s) that are published on the JU and Commission websites.

They also have the right to have **recourse** at any time to the **European Data Protection Supervisor (EDPS)**.

[48] 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 (JU or EU)

The JU or the Commission will process personal data in compliance with Regulation 2018/1725 and as set out in its Funding & Tenders Portal privacy statements.

Personal data will be processed only for the purpose of implementing, managing and monitoring the GA or protecting JU, EU financial interests (including controls on eligibility of 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 or protecting the financial interests).

⚠ When the JU collects and processes personal data under the GA, national data protection law is NOT applicable and will NOT be accepted as a pretext for not complying with obligations under the GA.

Disclosure of staff data under the GA *(e.g. data requested by the JU project officer or auditors)* is automatically justified under Article 5(c) of Regulation 45/2001.

The processing of personal data under the GA (manual or electronic) will be first **notified** (by the data controller) to the JU Data Protection Officer (DPO).

The notifications are available via the Register of the DPO[83] (and describe the processing operations, legal basis, security safeguards, retention period, possible data transfer, etc.).

In addition, for processing that implies specific risks to the rights and freedoms of the data subjects (*e.g. processing of data relating to health*), the European Data Protection Supervisor (EDPS) will be consulted.

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 privacy statement), to:

- correct errors in the data, block access or delete their data
- complain about the data collection and use, and claim compensation for any damage.

3. Complaints to the EDPS

Persons whose data is being processed by the JU or the Commission can lodge a complaint with the European Data Protection Supervisor (EDPS) (i.e. the independent supervisory authority for data processing by EU institutions).

Best practice: The beneficiaries should first contact the data controller (via the contact information in the privacy statement), since s/he might be able to solve the problem quickly.

[83] Available at http://ec.europa.eu/dpo-register/search.htm.

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 JU or the Commission. For this purpose, they must provide them with the privacy statement(s) (see above), before transmitting their data to the JU or the Commission.

39.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 39.2, the JU may apply any of the measures described in Chapter 6.

1. Processing of personal data (consortium)

The beneficiaries must process personal data under the GA in accordance with EU and national law on data protection (in particular, Directive 95/46/EC[84] and the corresponding national law).

⚠ The Directive is currently under revision. The new General Data Protection Regulation No 2016/679 will apply from 25 May 2018.

'**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 considered NOT '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. [85]

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

[84] 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).

[85] *See Article 8 of Directive 95/46/EC.*

- retrieval and consultation
- use
- disclosure by transmission, dissemination or otherwise making available
- alignment or combination
- blocking, deleting or destruction.

Examples (processing of personal data): *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**.[86]

The beneficiaries must give their staff access to the personal data ONLY on a **need to know** basis, for carrying out their functions under 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 **inform their staff** (whose personal data are collected and processed by the JU) about the disclosure of their data to the JU (by providing them with the relevant Funding & Tenders Portal privacy statements).

Examples:

1. *Before encoding staff data in the Participant Register or into a proposal, the beneficiary must provide the staff concerned with the privacy statement.*

2. *If in an ex-post audit, the JU or 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 inform the staff concerned and provide them with the privacy statement.*

Processing of personal data is also part of the ethics obligations *(see Article 34).* Both provisions must be complied with.

[86] *See Articles 6, 16, 17 of Directive 95/46/EC.*

ARTICLE 40 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE JU

ARTICLE 40 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE JU

The beneficiaries may not assign any of their claims for payment against the JU to any third party, except if approved by the JU on the basis of a reasoned, written request by the coordinator (on behalf of the beneficiary concerned).

If the JU 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 JU.

1. Assignment of claims for payment

What? The beneficiaries may assign (i.e. transfer, sell or give) claims for payment (for work carried out under the action) to a third party, if the JU has explicitly agreed in writing.

⚠ Assignments of rights under this Article are limited to ***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)*.

⚠ Assignment has NO effect on the beneficiary's obligations under the GA; it remains **fully bound** by them.

Only *actual* (i.e. existing) claims for payment may be assigned (including pre-financing). Assignment is NOT possible for future claims.

How? Assignment of payment claims must be **requested**.

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 JU will assess the reasons given and approve or reject the request in writing.

Examples (reasonable requests for assignment):

1. *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.*

2. *Assignment for the benefit of creditors in a bankruptcy procedure.*

If the assignment is linked to bankruptcy, the approval will be subject to compliance with national law.

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

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 JU

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 JU funding for doing so), unless the JU expressly relieves them of this obligation.

The **financial responsibility** of each beneficiary is governed by Article 44.

1. Division of roles and responsibilities — Responsibilities towards the JU

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 (towards the JU) for the tasks performed by its subcontractors and linked third parties
- the JU 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. The Consortium Agreement (*see* Article 41.3) may include appropriate clauses addressing such a situation in order to mitigate potential negative impact of withdrawal and clarifying project governance, leadership, roles and responsibilities[87].

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, the JU expressly agrees otherwise (exceptional; only for specific reasons). They will have to do this without any additional funding (although — in case of beneficiary termination — the Guarantee Fund may intervene for the defaulting beneficiary; *see* Article 50).

> ***Example:*** *Legal entities A, B and C are members of a consortium that signed a GA with the JU 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 in principle limited to its own debt and undue amounts paid for costs declared by its linked third parties. It is only for the 5% contribution to the Guarantee Fund that financial responsibility is shared; *see Article 21.4*).

Specific cases (beneficiaries' responsibilities):

ERIC (European Research Infrastructure Consortium)[88]: If the beneficiary is an ERIC which does not have its own resources, it may exceptionally delegate the following responsibilities to one of its members:

- monitor that the action is implemented properly *(see Article 7)*
- inform about events or circumstances likely to affect significantly or delay the action implementation *(see Article 17.2)*
- submit deliverables and reports *(see Articles 19 and 20)*
- submit documents or information required.

⚠ An ERIC using one of its members remains **fully responsible** for it under the GA.

[87] For project governance, leadership, roles and responsibilities please also refer to the introduction of this IMI2 JU AGA.

[88] Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (OJ L 206, 08.08.2009, p.1).

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 Participant Portal Beneficiary Register (via 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 JU under the Agreement, unless the Agreement requires the beneficiary to submit this information directly to the JU.

(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 JU (in particular, providing the JU with the information described in Article 17), unless the Agreement specifies otherwise;

(iii) request and review any documents or information required by the JU and verify their completeness and correctness before passing them on to the JU;

(iv) submit the deliverables and reports to the JU (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 JU of the amounts paid to each beneficiary, when required under the Agreement (see Articles 44 and 50) or requested by the JU.

The coordinator may not delegate or subcontract the above-mentioned tasks to any other beneficiary or third party (including linked third parties).

[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 JU contribution and for compliance with the obligations under the Agreement.**]***

[OPTION to be used when the coordinator is an European Research Infrastructure Consortium (ERIC)[49] without own resources: *As an exception, the coordinator delegates the tasks set out in Point 2(b)(i) to (iv) above to [insert name of member of the ERIC]. The coordinator retains sole responsibility for compliance with the obligations under the Agreement.**]***

[49] See Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 08.08.2009, p.1).

41.3 Internal arrangements between beneficiaries — Consortium agreement

***[OPTION 1 to be used, unless the work plan specifies that there is no need for a consortium agreement**: The beneficiaries must have internal arrangements regarding their operation and co-ordination 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, including allocation of scientific tasks among beneficiaries;*
- *management of access to the electronic exchange system;*
- *distribution of JU 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 of Chapter 4);*
- *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 2:** Not applicable**]

41.4 Relationship with complementary beneficiaries — Collaboration agreement

***[OPTION 1 for complementary grants if foreseen in the work plan**: 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 collaboration 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 2:** Not applicable**]

41.5 Relationship with partners of a joint action — Coordination agreement

***[OPTION 1 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 2:** 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 JU

- 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, for specific cases, the JU requests them to provide such information directly *(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 JU and represents the consortium (towards the JU).

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 JU of the amounts paid to each beneficiary, if requested to do so *(see Article 44.1.2)*

The coordination tasks listed in Article 41.2 can normally NOT be subcontracted or outsourced to a third party (including linked third parties). They can NOT be carried out by other beneficiaries. (By contrast, the coordinator remains free — like any other beneficiary — to subcontract or use linked third parties for *other* tasks; *see Articles 13*, *14*).

Specific cases (coordinator's responsibilities):

Authorisation to administer — Coordinators that are secondary or higher education establishments and coordinators that are public bodies may exceptionally delegate the administration of the payments to another legal entity (third party), in most cases a foundation.

The third party must fulfil the following conditions:

- they must have been granted the 'authorisation to administer'

AND

- it must be affiliated, controlled or set up by the coordinator in order to handle its administrative affairs (and those must include receiving and administering JU funds).

⚠ **Project management —** Coordination and administration tasks are considered **action tasks**.

⚠ Coordinators using a third party with authorisation to administer remain **fully responsible** for it under the GA.

In this case, the option in Article 41.2(b) for authorisations to administer must be added to the grant agreement. The bank account number to be provided under Article 21.8 must be that of the entity with the authorisation to administer and the payments will be transferred directly to it. The entity must therefore be registered in the Participant Register and validated by the JU. It will get its own PIC — although it is not a beneficiary.

The costs of the entity may be declared by the coordinator as in-kind contributions (free of charge or against payment; *see Articles 6, 11 and 12*).

ERICs (European Research Infrastructure Consortia)[89]*:* —Beneficiaries that are ERICs and do not have their own resources may exceptionally delegate the following coordination tasks to one of its members:

- monitor that the action is implemented properly *(see Article 7)*;
- act as intermediary for communications *(see Article 17)*;
- request and review documents or information required and verify completeness and correctness;
- submit deliverables and reports *(see Articles 19 and 20)*;

⚠ ERICs using one of their members remain **fully responsible** for it under the GA.

Scientific coordinator — Non-administrative coordination tasks (i.e. tasks not listed in this Article, *e.g. scientific coordination of the action by a project leader – see introduction IV.D.)* can be carried out by any beneficiary. For instance the consortium may decide to entrust a specific role or tasks to another beneficiary and possibly appoint a scientific project leader. Specific roles or tasks should be detailed in the annex I and the consortium agreement.

[89] Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (OJ L 206, 08.08.2009, p.1)

Such a beneficiary may internally (i.e. within the consortium) be called 'scientific coordinator' or 'scientific project leader' depending on the tasks. In the relationship with the JU, it will NOT be considered the action's coordinator (but one of the other beneficiaries).

Costs for scientific coordination can be eligible, if they comply with the eligibility criteria set out in Article 6.

3. Internal arrangements between beneficiaries — Consortium agreement

The beneficiaries must conclude a consortium agreement to ensure a smooth and successful project implementation — unless exceptionally provided otherwise in the work plan/call.

> **Best practice:** In view of their importance for avoiding disputes and ensuring a smooth implementation of the grant, the JU strongly recommends that every consortium sets up a consortium agreement, even if not mandatory.

The 'consortium agreement' is an agreement between members of the consortium, to set out their internal arrangements for implementing the grant. It is purely internal; the JU is not party and has NO responsibility for it (nor for any adverse consequences).

The consortium agreement should **complement** the GA and must NOT contain any provision contrary to it (or to the Rules for Participation Regulation No 1290/2013 or the Financial Regulation No 966/2012).

The consortium agreement should in principle be negotiated and concluded **before the signature of the GA** (i.e. each beneficiary should sign the consortium agreement before acceding to the GA). Otherwise, there is usually a serious risk that prolonged disagreement jeopardises the action. Of course, the consortium agreement does not have to remain the same during the lifetime of the action, it can be modified by the consortium at any moment.

The consortium agreement 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 should carefully consider the advantages and disadvantages of the different legal forms, and choose the one that best fits the consortium's specific needs.

For guidance on consortium agreements, *see How to draw up your consortium agreement and the Funding and Tenders Portal Online Manual.*

4. Relationship with complementary beneficiaries — Collaboration agreement

If the GA provides for this option, the beneficiaries must conclude a collaboration agreement to ensure a smooth and successful project implementation.

The option will be inserted ONLY for complementary actions *(see Article 2)*.

A 'collaboration agreement' is an agreement between the consortium and the beneficiaries of another complementary H2020 grant, to coordinate their work under the different GAs. It is purely internal; the JU is not party and has NO responsibility for them (nor for any adverse consequences).

The beneficiaries of complementary grants must — through the collaboration agreement — create and participate in common boards and advisory structures, to decide on collaboration and synchronisation of the activities. These boards and advisory structures complement the governance

of the project; they do not replace the consortium and other project governance mechanisms (if any).

5. Relationship with participants of a joint action — Coordination agreement

If the GA provides for this option, the beneficiaries must conclude a coordination agreement, to ensure a smooth and successful project implementation.

The option will be inserted ONLY for jointly funded actions *(see Article 2)*.

A 'coordination agreement' is an agreement between the consortium and the participants of the third country/international organisation (IO) action *(see Article 2)*. It is purely internal; the JU is not party and has NO responsibility for it (or for any adverse consequences).

The coordination agreement should **complement** the GA and must NOT contain any provision contrary to them (or to the Rules for Participation Regulation No 1290/2013 or the Financial Regulation No 966/2012).

Moreover, it must be in line with the consortium agreement. It can NOT replace the consortium agreement (and vice versa). The coordination agreement should in principle be negotiated and concluded **before any work is begun**. The work plan/call may require that proposals include a draft coordination agreement.

The coordination agreement can take **various forms**, but a standard written agreement is most common.

For guidance on coordination agreements, *see How to draw up your coordination agreement and the Funding and Tenders Portal Online Manual.*

CHAPTER 6 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — SANCTIONS — DAMAGES — SUSPENSION — TERMINATION — FORCE MAJEURE

SECTION 1 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — SANCTIONS

ARTICLE 42 — REJECTION OF INELIGIBLE COSTS

CHAPTER 6 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — SANCTIONS — DAMAGES — SUSPENSION — TERMINATION — FORCE MAJEURE

SECTION 1 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — SANCTIONS

ARTICLE 42 — REJECTION OF INELIGIBLE COSTS

42.1 Conditions

The JU will — after **termination of the participation of a beneficiary**, 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).

The rejection may also be based on the **extension of findings from other grants to this grant (**see 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 rejection of costs does not lead to a recovery (see Article 44), the JU will formally notify the coordinator or beneficiary concerned of 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 JU of its disagreement and the reasons why.

If the rejection of costs leads to a recovery, the JU will follow the contradictory procedure with pre-information letter set out in Article 44.

42.3 Effects

If the JU 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 statement (see Articles 20.3 and 20.4). It will then calculate the interim payment or payment of the balance as set out in Articles 21.3 or 21.4.

If the JU rejects costs **after termination of the participation of a beneficiary**, it will deduct them from the costs declared by the beneficiary in the termination report and include the rejection in the calculation after termination (see Articles 50.2 and 50.3).

If the JU — **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 JU 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. Cost rejection

If the JU finds **ineligible costs** *(in particular, following a check, audit, extension of audit findings, review or OLAF investigation)*, it will reject these costs (— in full, i.e. for the amount that is ineligible).

⚠ **Cost rejections** will be made for **violations of cost eligibility rules** (*see Articles 6, 8-16*) and will correspond to the amount that is ineligible.

Grounds for cost rejection (JU):

- **Costs** do **not comply with** the GA **eligibility rules (in this grant)**

  The JU will reject costs, if they do not comply with the eligibility rules set out in Articles 6 and 8-16.

- **Costs** do **not comply with** the GA **eligibility rules (in other grants)**

  The JU may also reject costs, if such ineligibility was found in *other* grants, if:

  - the other grants were awarded under similar conditions and
  - the ineligibility is:
    - systemic or recurrent and
    - has a material impact on this grant.

Rejection of costs can take place at any moment — at the time of beneficiary termination, interim payment, payment of the balance or afterwards.

2. Procedure

The procedure differs according to the situation:

- if cost rejection leads to a recovery: there will be an *ex ante* **contradictory procedure**
- if cost rejection does NOT lead to a recovery: there will be NO *ex ante* contradictory procedure, but the possibility to object *ex post* to the rejection (**payment review procedure**).

In both cases, the JU 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 payment review procedure allows the JU however to pay quickly without having to suspend the payment deadline (by postponing the discussion on the disputed costs).

Contradictory procedure:

Step 1 — The JU informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter**.

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations. An extension may be granted on justified request— if submitted within the 30 days.

Step 3 — The JU analyses the observations and either stops the procedure or **confirms** it (**notification of amounts due**; *see Article 21.5*).

Payment review procedure:

Step 1 — The JU 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 JU of its objections.

Step 3 — The JU 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 at the time of an interim payment or the payment of the balance: normally the coordinator
- for rejections after beneficiary termination and after payment of the balance: normally the beneficiary concerned.

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 its comments. It must also inform the other beneficiaries.

If it is directed at the beneficiary, the JU will inform the coordinator later on (in a way that preserves confidentiality).

⚠ **Information obligation** — Beneficiaries do not have to inform their coordinators or ask them to submit comments. However, they should inform them if there is the risk of a significant impact on the action *(see Article 17.2)*.

3. Effects

If the JU rejects costs at **beneficiary termination**, it will deduct the rejected amount from the costs the beneficiary declared in the termination report and calculate the amount due to the beneficiary. If the amount is lower than the (pre-financing and interim) payments received by the beneficiary, the JU will recover the difference *(see Articles 44 and 50)*.

Recovery at beneficiary termination during an ongoing action means that the beneficiary should pay back the amount to the *consortium*. If it doesn't, the Guarantee Fund will intervene and the JU will then recover the amount for the Guarantee Fund.

If the JU rejects costs 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 *(see Articles 5.3 and 21)*.

If ineligible costs are found **in-between payments**, the JU will reject them at the next payment (i.e. deduct the amount rejected from the costs declared in the next financial statement and calculate the amount to be paid accordingly; *see Article 21*).

If the JU rejects costs **after the payment of the balance**, it will deduct the amount rejected from the costs accepted for the beneficiary at the payment of the balance and calculate a **revised grant amount**. If the revised grant amount is lower than its share of the final grant amount, the JU will **recover** the difference *(see Articles 5.4 and Article 44)*.

The detailed calculations for all cases are described in Article 21.

ARTICLE 43 — REDUCTION OF THE GRANT

ARTICLE 43 — REDUCTION OF THE GRANT

43.1 Conditions

The JU may — **after termination of the participation of a beneficiary, at the payment of the balance** or **afterwards** — reduce the grant amount (see Article 5.1), if:

(a) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:

(i) substantial errors, irregularities or fraud or

(ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or

(b) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) 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).

43.2 Amount to be reduced — Calculation — Procedure

The amount of the reduction will be proportionate to the seriousness of the errors, irregularities or fraud or breach of obligations.

Before reduction of the grant, the JU 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 JU 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 JU reduces the grant **after termination of the participation of a beneficiary**, it will calculate the reduced grant amount for that beneficiary and then determine the amount due to that beneficiary (see Article 50.2 and 50.3).

If the JU reduces the grant **at 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 JU 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 JU will recover the difference (see Article 44).

1. Grant reduction

If the JU finds *(in particular, following a check, audit, extension of audit findings, review or OLAF investigation)* **substantial errors, irregularities or fraud** or **breach of obligations** under the GA or during the award procedure (*e.g. the action has not been properly implemented*), it may reduce the grant in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations.

⚠ **Grant reductions** will be made (at beneficiary termination, at the end of the action or after the payment of the balance) for substantial errors, irregularities or fraud or serious breach of obligations, in proportion to the seriousness of the error, irregularity, fraud or breach *(e.g. in case of fraud the reduction may be up to a 100%)*.

⚠ If the issues are 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.

Grounds for grant reduction (JU):

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in this grant)**

  The JU may make a grant reduction, if a beneficiary has committed substantial errors, irregularities or fraud or serious breach of obligations — either during the award procedure or under the GA.

  Serious breach of obligations covers all kinds of non-compliance with GA obligations (including obligations during the award procedure).

  Example: *false declarations in the proposal form, in order to obtain JU funding*

  In practice, the most frequent breach is improper implementation of the action/non-compliance with Annex 1 GA (i.e. if the work performed does not correspond to the activities described in Annex 1). This will normally be examined on the basis of the periodic and final technical reports and, if needed, a project review.

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in other grants)**

  The JU may also make a grant reduction, if such substantial errors, irregularities or fraud or serious breach of obligations were found in *other* grants, if:

  – the other grants were awarded under similar conditions and

  – the substantial errors, irregularities or fraud or serious breach of obligations are:

    – systemic or recurrent and

    – have a material impact on this grant.

3.0 Reduction for substantial errors, irregularities or fraud was introduced as explicit contractual ground with GA version 3.0. For older grant agreements, grant reduction on these grounds was however also possible directly on the basis of Article 135(4) and (5) of the Financial Regulation No 966/2012 (and in very exceptional cases involving fraud schemes also on the basis of Article 1116 of the Belgian Code Civil — as annulation ab initio pour dol[90]).

Grant reduction can take place:

– at beneficiary termination

[90] See judgment of 12 July 2016, Commission/Thales, T-326/13, points 119-128.

– at the payment of the balance or

– after the payment of the balance.

3.0 Reduction at beneficiary termination was introduced explicitly with GA version 3.0. For older grant agreements, there is NO grant reduction at beneficiary termination for serious breach of contract (since explicitly NOT foreseen). By contrast, grant reduction at beneficiary termination is possible for substantial errors, irregularities or fraud — directly on the basis of Article 135(4) and (5) of the Financial Regulation No 966/2012 *(see above)*.

For more guidance on grant reductions, *see the Guidance on grant reductions.*

2. Procedure

The JU will follow a **contradictory procedure** (for the basic contradictory procedure, *see Article 42*).

Contradictory procedure:

Step 1 — The JU informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter**.

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations. An extension may be granted on justified request — if submitted within the 30 days.

Step 3 — The JU analyses the observations and either stops the procedure or **confirms** it (**notification of amounts due**; *see* Article 21.5*)*.

Depending on the moment the reduction takes place, this procedure will be directed either at the **coordinator** or the **beneficiary concerned**:

– for reductions at beneficiary termination: normally with 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 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.

If it is directed at the beneficiary, the JU will inform the coordinator in copy (in a way that preserves confidentiality).

Information obligation — Beneficiaries normally do not have to inform their coordinators or ask them to submit comments. However, they should inform them, if there is the risk of a significant impact on the action *(see Article 17.2)*.

3. Effects

If the JU reduces the grant **at beneficiary termination**, it will calculate the reduction at beneficiary-level and calculate the amount due to the beneficiary. If the amount is lower than the (pre-financing and interim) payments received by the beneficiary, the beneficiary will have to pay back the difference *(see* Articles 44 *and 50)*.

Recovery at beneficiary termination during an ongoing action means that the beneficiary should pay back the amount to the *consortium*. If it doesn't, the Guarantee Fund will intervene and the JU will then recover the amount for the Guarantee Fund.

If the JU reduces the grant at the **payment of the balance**, it will calculate the reductions for each beneficiary and for the action (if any) and calculate the balance to be paid to the consortium (i.e. final grant amount) accordingly *(see Articles 5.3 and 21)*.

If the JU reduces the grant after the payment of the balance, it will calculate the reduction for the beneficiary and compare the revised grant amount with its share of the final grant amount. If the revised grant amount is lower, the JU will recover the difference (see Articles 5.4 and 44).

The detailed calculations for all cases are described in Article 21.

ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

44.1 Amount to be recovered — Calculation — Procedure

The JU will — after **termination of the participation of a beneficiary**, **at the payment of the balance** or **afterwards** — claim back 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 JU 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 JU will claim back 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 JU will **recover** the amount:

(a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the JU.

In exceptional circumstances, to safeguard the EU's or the JU's financial interests, the JU may offset before the payment date specified in the debit note;

(b) ***[OPTION 1 if Article 14 applies and joint and several liability has been requested by the JU:*** *if a linked third party has accepted joint and several liability (see Article 14), by **holding the third party liable** up to the maximum JU contribution indicated, for the linked third party, in the estimated budget (see Annex 2) and/or**][OPTION 2:*** *not applicable;**]***

(c) by **taking legal action** (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 JU 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[50] 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 JU 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

[50] Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 05.12.2007, p.1)

- inviting the coordinator to submit observations within 30 days of receiving notification.

If no observations are submitted or the JU 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 JU by the date in the debit note and has not submitted the report on the distribution of payments: the JU will **recover** the amount set out in the debit note from the coordinator (see below).

If the coordinator does not repay the JU by the date in the debit note, but has submitted the report on the distribution of payments: the JU 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 JU 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 JU multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned]}

divided by

the JU 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 JU will **recover** the amount:

(a) by **offsetting** it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the JU.

In exceptional circumstances, to safeguard the EU's or the JU's financial interests, the JU may offset before the payment date specified in the debit note;

(b) by **drawing on the Guarantee Fund.** The JU will formally notify the beneficiary concerned the debit note on behalf of the Guarantee Fund and recover the amount:

(i) ***[OPTION 1 if Article 14 applies and joint and several liability has been requested by the JU:*** *if a linked third party has accepted joint and several liability (see Article 14), by* ***holding the third party liable*** *up to the maximum JU contribution indicated, for the linked third party, in the estimated budget (see Annex 2) and/or****][OPTION 2:*** *not applicable;****]***

(ii) by **taking legal action** (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 JU 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 JU.

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 JU 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 JU multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned]}

divided by

the JU 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 JU will also recover these amounts.

The JU 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 JU decides to pursue recovery despite the observations it has received, it will **confirm** the amount to be recovered and formally notify to the beneficiary concerned a **debit note**. This note will also specify the terms and the date for payment.

If payment is not made by the date specified in the debit note, the JU will **recover** the amount:

(a) by **offsetting** it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the JU.

In exceptional circumstances, to safeguard the EU's or the JU's financial interests, the JU may offset before the payment date specified in the debit note;

(b) by **drawing on the Guarantee Fund.** The JU will formally notify the beneficiary concerned the debit note on behalf of the Guarantee Fund and recover the amount:

(i) ***[OPTION 1 if Article 14 applies and joint and several liability has been requested by the JU:*** *if a linked third party has accepted joint and several liability (see Article 14), by* ***holding the third party liable*** *up to the maximum JU contribution indicated, for the linked third party, in the estimated budget (see Annex 2) and/or****] [OPTION 2:*** *not applicable;****]***

(ii) by **taking legal action** (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 JU 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 early termination, cost rejection or grant reduction *(in particular, following a check, audit, extension of audit findings, review or OLAF investigation)* — the JU has **paid too much**, it will recover the amount that is undue.

⚠ The JU will **recover** the undue amounts from the beneficiary that owes the money (i.e. with a debt towards the JU).

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 (i.e. the 5% withheld from the pre-financing; *see Article 21.4*) is shared.

If the JU has requested **joint and several liability** of a **linked third party** *(see Article 14)*, 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 its maximum grant amount in Annex 2.

Grounds for recovery (JU):

- JU **paid too much**

  The JU will make a recovery, if the amounts paid out exceed the amounts that are due for the grant.

Recovery normally takes place only at **payment of the balance** or **afterwards**. Exceptionally, it can take place before, if a **beneficiary's participation is terminated**.

The JU will recover after beneficiary termination if the beneficiary did not pay back to the coordinator the amounts it received in excess and — following this — the Guarantee Fund had to intervene *(see Article 50)*.

The JU will recover at the payment of the balance if the sum of the pre-financing and the interim payments exceeds the final grant amount *(see Articles 5.3 and 21)*.

The JU will recover after payment of the balance if — due to cost rejection or grant reduction *(in particular, following a check, audit, extension of audit findings or OLAF investigation)* — it finds out that it has paid in excess (or that the coordinator did not distribute the payments received; *see Article 5.4*).

The detailed calculations for all cases are described in Article 21.

2. Procedure

The basic procedure for recovery is almost always the same: After a **contradictory procedure**, the JU claims repayment of the amounts and then enforces recovery.

Contradictory procedure:

Step 1 — The JU informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter**.

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations. An extension may be granted on justified request — if submitted within the 30 days.

Step 3 — The JU analyses the observations and either stops the procedure or **confirms** it (**notification of amounts due**; *see Article 21.5*) and issues a debit note.

Enforced recovery:

If the coordinator/beneficiary concerned does not pay by the date set out in the debit note, the JU will **recover** the amount (with interest at the rate set out in Article 21.11), in one of the following ways:

– by **offsetting** it[91]

'Offsetting' means to deduct the amount the debtor owes to the JU from another amount that the JU owes to debtor. With the offsetting both amounts are considered paid.

> ⚠ **Offsetting** is normally implemented as a **public law measure** (i.e. directly on the basis of Article 80(1) of the the Financial Regulation No 966/2012). Therefore, the dispute settlement normally follows the public law remedies (i.e. Article 263 TFEU action; *see Article 57.2*).
>
> For the cases not covered by the Financial Regulation, offsetting will — exceptionally — be implemented as a purely **contractual measure** *(e.g. offsetting with Commission and JU claims, offsetting against international organisations)*. In this case, the normal contractual means for dispute settlement apply (i.e. Article 272 TFEU action, arbitration, etc; *see Article 57.2*).

Normally, offsetting is carried out *after* the payment deadline has expired. However, in exceptional circumstances, the JU may offset before this date, in order to safeguard the JU financial interests.[92]

If the offsetting takes place after the deadline for payment has expired, the interest must also be offset. The interest is normally offset first, before the principal amount.

– 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 JU has requested joint and several liability from a linked third party: by **holding** the **linked third party liable**

  or

  – by taking **legal action** in a national court or the European Court of Justice *(see Article 57.2)*.

[91] *See Article 80(1) of the Financial Regulation No 966/2012.*
[92] *See Article 87 of the Rules of Application Regulation No 1268/2012.*

The contradictory procedure will normally be **combined** with the **contradictory procedure** for cost rejection and/or grant reduction (if any).

Specific case (recoveries):

International organisations — Offsetting is a measure that may be taken in relation to international organisations, however NOT as public law measure (i.e. not on the basis of Article 80(1) of the Financial Regulation No 966/2012), but as a purely contractual measure (i.e. on the basis of Article 44 of the GA). Offsetting for international organisations will therefore be subject to the contractual means for dispute settlement (i.e. arbitration; *see* Article 57.2).

ARTICLE 45 — ADMINISTRATIVE SANCTIONS

ARTICLE 45 — ADMINISTRATIVE SANCTIONS

In addition to contractual measures, the JU may also adopt administrative sanctions under Articles 33 and 35 of the JU Financial Rules read in conjunction with Articles 106 and 131(4) of the Financial Regulation No 966/2012 (i.e. exclusion from future procurement contracts, grants, prizes and expert contracts and/or financial penalties).

1. Administrative sanctions

If the JU finds *(in particular, following a check, audit, review or OLAF investigation)* that a beneficiary is in an exclusion situation under Article 106(1) of the Financial Regulation No 966/2012, it may impose administrative sanctions (— in proportion to the seriousness of the misconduct).

⚠ **Administrative sanctions** (financial penalties and/or exclusion from future procurement contracts, grants and expert contracts) are **public law measures** (i.e. taken directly on the basis of Articles 106 and 131(4) of the Financial Regulation No 966/2012) that may be applied *in addition* to the contractual measures (i.e. cost rejection, grant reduction, recovery, suspension and termination), for **serious misconducts** *(substantial errors, irregularities or fraud, serious breach of obligations, bankruptcy, non-compliance with tax or social security obligations, grave professional misconduct, fraud, corruption, or criminal/illegal activity).*

Examples: *plagiarism; absence of time recording systems (although required); false declaration concerning SME status.*

The **maximum sanctions** are as follows:

- for exclusion: up to **5 years** from the date on which the JU establishes the infringement, i.e. confirms the sanction and formally notifies this to the beneficiary.

  If, in that time, the beneficiary commits the same infringement again, the exclusion period may be extended to **10 years**.

- for financial penalties: between **2%** and **10%** of the maximum JU contribution to the beneficiary concerned according to the estimated budget (Annex 2) - depending on the seriousness of the infringement.

  If, within five years of the first infringement being established, the beneficiary commits the same infringement again, the rate may be increased to between **4%** and **20%**.

The decision to apply an administrative sanction may be **published** on the IMI website (— together with the name of the person responsible for the misconduct, information on the misconduct and the duration of the exclusion and/or amount of the financial penalty).

When deciding on publishing this information or not, the JU will take into account, in particular:

- the seriousness of the misconduct (including impact on the JU and EU financial interest and image)
- the time that has elapsed since it took place
- the duration and recurrence of the misconduct

– the intention or degree of negligence and

– the measures taken by the beneficiary to remedy the situation.

For avoidance of doubt, financial penalties shall not apply to beneficiaries not receiving JU funding (e.g. EFPIA companies having an annual turnover above EUR 500 million).

2. Procedure

The JU will follow the procedures set out in 106 of the Financial Regulation No 966/2012 (i.e. **contradictory procedure, panel, decision**).

If the JU imposes a financial penalty, it will also issue a debit note to **recover** the amount.

If the penalty is not paid by the date set out in the debit note, late-payment interest will be added to the amount to be recovered.

However, there is NO:

- intervention of the Guarantee Fund
- joint and several liability of linked third parties.

Specific case (administrative sanctions):

International organisations — Decisions on administrative sanctions (and other public law decisions) will not be taken against international organisations, where this would be contrary to the privileges and immunities accorded by their constituent documents or international law *(see Article 53.2)*.

SECTION 2 LIABILITY FOR DAMAGES

ARTICLE 46 — LIABILITY FOR DAMAGES

SECTION 2 LIABILITY FOR DAMAGES

ARTICLE 46 — LIABILITY FOR DAMAGES

46.1 Liability of the JU

The JU 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 JU cannot be held liable for any damage caused by any of the beneficiaries or third parties involved in the action, as a consequence of implementing the Agreement.

1. Liability for damages (JU)

The JU can NOT be held liable if — in implementing the GA — its own services cause damage (to a beneficiary or third party).

Moreover, the JU can NOT be held liable if — in implementing the GA — a beneficiary or third party involved in the action causes damage (to another beneficiary or third party).

Examples:

1. *An experiment carried out by a beneficiary leads to an accidental escape of pollutants into the local river.*
2. *A fire breaks out in a beneficiary's laboratory in the course of an experiment for the action.*

Subsidiary (secondary) liability is also excluded.

Non-liability extends to damages caused by third parties 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

Except in case of force majeure (see Article 51), the beneficiaries must compensate the JU 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.

1. Liability for damages (consortium)

If a beneficiary causes damage to the JU (in implementing the action), the JU may claim compensation.

Examples:

1. *Costs of legal proceedings borne by the JU.*
2. *At a meeting on JU premises, a beneficiary smokes and causes a fire.*

2. Procedure

The JU will follow the normal procedure for damages claims (i.e. bringing an action for contractual damages before the European Court of Justice; not direct claim via a debit note).

SECTION 3 SUSPENSION AND TERMINATION

ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE

SECTION 3 SUSPENSION AND TERMINATION

ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE

47.1 Conditions

The JU 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 JU will formally notify the coordinator of the suspension and the reasons why.

The suspension will **take effect** the day notification is sent by the JU (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 JU 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 JU may also terminate the Agreement or the participation of the beneficiary (see Article 50.3.1(1)).

1. Suspension of the payment deadline (JU)

The JU may stop the clock (suspend the deadline) if a payment request cannot be immediately approved, on the grounds listed in this Article.

⚠ Suspension of the payment deadline must be **distinguished** from **suspension of payments** (see *Article 48*). Suspension of the payment deadline is an ad hoc measure regarding the request for payment. Suspension of payments is a measure to avoid making payments to a beneficiary that is, for example, suspected of serious misconducts.

Grounds for suspension of the payment deadline (JU):

- **Payment request** does **not comply with** the provisions of the **GA**

  The JU 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 JU 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; additional information on the coordinator's new bank account is needed.*

- **Doubts on the eligibility of costs** in the financial statements that require additional verifications

  The JU 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.*

In practice, suspension is needed if there are issues with the payment request or with the costs declared which make it impossible for the JU to comply with the **payment deadline** (i.e. for interim payments and payment of the balance: 90 days after payment request; *see Article 21*).

Suspension **starts** on the day the notification (announcing suspension) is sent to the coordinator (and **ends** on the day it is lifted).

Late payment without suspension of the payment deadline gives rise to late-payment interest for the beneficiaries *(see Article 21.11)*.

2. Procedure

The JU will immediately formally notify the coordinator of the suspension of the payment deadline and explain the reasons why.

There is NO *ex ante* contradictory procedure. However, if the suspension exceeds **two months**, the coordinator may ask the JU 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 JU has **finished** the necessary **verifications** *(e.g. an audit),* it will lift the suspension and formally notify the coordinator.

Suspension will normally last until it is possible to make all the necessary checks and verifications that are needed for the payment (*e.g. analysis of technical reports and financial statements,eligibility of claimed costs, calculation of amount to be paid, approval and authorisation of payment*).

With the lifting of the suspension, the remaining payment period starts to run again.

If a deadline has been suspended for several reasons, it will be lifted only when the consortium has satisfactorily addressed ALL the reasons.

ARTICLE 48 — SUSPENSION OF PAYMENTS

ARTICLE 48 — SUSPENSION OF PAYMENTS

48.1 Conditions

The JU may — at any moment — suspend payments, in whole or in part and for one or more beneficiaries, if:

(a) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed or is suspected of having committed:

(i) substantial errors, irregularities or fraud or

(ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or

(b) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed — in other JU, 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).

If payments are suspended for one or more beneficiaries, the JU will make partial payment(s) for the part(s) not suspended. If suspension concerns the payment of the balance, — once suspension is lifted — the payment or the recovery of the amount(s) concerned will be considered the payment of the balance that closes the action.

48.2 Procedure

Before suspending payments, the JU will formally notify the coordinator or beneficiary concerned:

- 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 JU 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 JU.

If the conditions for resuming payments are met, the suspension will be **lifted**. The JU will formally notify the coordinator or beneficiary concerned.

During the suspension, the periodic report(s) for all reporting periods except the last one (see Article 20.3), must not contain any individual financial statements from the beneficiary concerned *[and its linked third parties]*. The coordinator must include them in the next periodic report after the suspension is lifted or — if suspension is not lifted before the end of the action — in the last 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 (JU)

The JU may suspend pre-financing, interim payments or the final payment (for one or more or for all beneficiaries), on the grounds listed in this Article.

⚠ **Suspension of payments** has NO impact on the action implementation. The consortium must 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.

Grounds for suspension of payments (JU):

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in this grant)**

  The JU may suspend payments, if a beneficiary has committed or is suspected of having committed substantial errors, irregularities or fraud or serious breach of obligations — either during the award procedure or under the GA.

  Example: *false declarations in the proposal form, in order to obtain JU funding*

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in other grants)**

  The JU may also suspend payments, if such substantial errors, irregularities- or, fraud or serious breach of obligations were found in *other* grants, if

  – the other grants were awarded under similar conditions and

  – the substantial errors, irregularities or 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 JU detected systemic irregularities in the calculation of personnel costs that also affect all other GAs signed by the audited beneficiary. The JU may suspend all outstanding payments for the audited beneficiary until the issue is resolved.*

Suspension **starts** on the day the notification (confirming suspension) is sent to the coordinator (and **ends** on the day it is lifted).

If necessary, the consortium may also decide to:

– suspend the GA *(see Article 49)*

– terminate the GA or the participation of the beneficiary concerned *(see Article 50)*.

2. Procedure

Before suspending payments, the JU will follow a **contradictory procedure**.

Contradictory procedure:

Step 1 — The JU informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter**.

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations. An extension may be granted on justified request — if submitted within the 30 days.

Step 3 — The JU analyses the observations and either stops the procedure or **confirms** it.

Depending on the situation and type of suspension, this procedure will be directed either at the coordinator or the beneficiary concerned:

- suspension linked to the consortium: normally the coordinator
- suspension linked to a beneficiary *(e.g. simultaneous suspension of payments in several grants after a beneficiary audit)*: normally the beneficiary concerned.

If it is directed at the coordinator, the coordinator must make sure that the other members of the consortium are informed and ask for their comments.

If it is directed at the beneficiary, the JU will inform the coordinator later on (in a way that preserves confidentiality).

⚠ **Information obligation** — Beneficiaries do not have to inform their coordinators or ask them to submit comments. However, they should inform them if there is the risk of a significant impact on the action *(see Article 17.2)*.

3. Effects

During suspension, NO **individual financial statements** may be submitted for the beneficiary (or beneficiaries) concerned with the periodic reports (except with the report for the last reporting period).

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. They must be included in the periodic report for the last reporting period (— even if suspension is still ongoing).

Technical reports submitted during suspension must include the work of the beneficiaries concerned.

Example:

1 May: *the JU informs the coordinator of its intention to suspend interim payments for beneficiary B because an audit for other IMI2 JU 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 JU 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 JU pays for all beneficiaries except B.*

25 October: *the JU 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.*

If payments for one (or some) of the beneficiaries are still suspended at the end of the action, the JU will make a partial payment of the balance for the amount that is not suspended (— but ONLY after having received all the necessary information for the final calculations for ALL consortium members, i.e. including the suspended beneficiaries).

⚠ The partial final payment is NOT the payment that closes the action. That payment will be made only after the payment suspensions are lifted.

ARTICLE 49 — SUSPENSION OF THE ACTION IMPLEMENTATION

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 JU 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 JU.

Once circumstances allow for implementation to resume, the coordinator must immediately formally notify the JU 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. GA suspension (consortium)

The beneficiaries may suspend the action (in full or in part), on the ground set out in this Article.

⚠ **GA suspension** may be used exceptionally if it is necessary to stop the action implementation, to fix specific problems. It should NOT be used in situations that cannot be resolved through a temporary interruption; in these cases, it may be better to terminate the GA *(see Article 50)*.

Ground for GA suspension (consortium):

- **Action can no longer be implemented (or becomes excessively difficult)**

  The beneficiaries may suspend the action (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.*

Suspension **starts** on the day the JU receives the notification (and **ends** on the resumption date specified in the amendment after resumption).

Information obligation — Depending on the reasons for suspension, the beneficiaries may also have to take other measures under the GA *(e.g. **inform** the JU under Article 17.2; **notify** a situation of force majeure under Article 51).*

2. Procedure

The coordinator must immediately **formally notify** the JU (via the Funding and Tenders Portal.)

3. Effects

The beneficiaries must immediately take all the necessary steps to **limit the damage** and do their best to resume (i.e. 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 incurred for the action, once action implementation is resumed.

If the **action can be continued** (resumed), the coordinator must notify it to the JU by requesting an amendment to the GA.

The amendment must be requested in accordance with *Article 55 (e.g. it must be signed by the coordinator's LSIGN)*.

It sets the resumption date and adapts the grant to the new situation *(e.g. by extending the action duration, modifying Annexes 1 and 2, updating the reporting periods)*.

If the JU approves the amendment, the suspension is lifted and will be resumed as from the **resumption date** set out in the amendment. The resumption date can be retroactive (i.e. back to the date when the problem stopped/issue was clarified).

Example: *The action was suspended on 24.03.2016 due to weather conditions. Once the conditions improve, the coordinator requests and amendment to lift the suspension (e.g. after 60 days, on 22.05.2016). Therefore, in accordance with Article 54 of the GA, the action will be resumed as from 23.05.2016.*

If the suspension is lifted and the action continues, the action's remaining budget can be used for action implementation. (Although it may be that the budget must be lowered in the amendment, to adapt the action to the new situation).

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) **can NOT be continued** (or the JU 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 GA termination, NO further **costs** (incurred after the date of suspension) can be declared, except the costs for the reports *(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 JU is notified, 1.12.2015 to 31.3.2016 and the suspension leads to the GA termination. 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 JU

49.2.1 Conditions

The JU may suspend implementation of the action or any part of it, if:

(a) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed or is suspected of having committed:

(i) substantial errors, irregularities or fraud or

(ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles);

(b) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other JU, 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) the action is suspected of having lost its scientific or technological relevance.

49.2.2 Procedure

Before suspending implementation of the action, the JU will formally notify the coordinator or beneficiary concerned:

- 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 JU 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 (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 or beneficiary concerned 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 JU (see Article 46).

Suspension of the action implementation does not affect the JU'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. GA suspension (JU)

The JU may suspend the action (in full or in part), on the grounds listed in this Article.

Grounds for GA suspension (JU):

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in this grant)**

  The JU may suspend the action, if a beneficiary has committed or is suspected of having committed substantial errors, irregularities or fraud or serious breach of obligations— either during the award procedure or under the GA

  Example: *false declarations in the proposal form, in order to obtain JU funding*

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in other grants)**

  The JU may also suspend the action, if such substantial errors, irregularities or fraud or serious breach of obligations were found in *other* grants, if

  - the other grants were awarded under similar conditions and
  - the substantial errors, irregularities or 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 JU detected systematic irregularities in the calculation of personnel costs that also affect all other GAs signed by the audited beneficiary. The JU may suspend the audited beneficiary's part of the action until the issue is resolved.*

- **Loss of scientific or technological relevance**

  The JU may suspend the action, 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 JU decides to suspend its implementation and to carry out a review.*

Suspension **starts** 5 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 JU).

2. Procedure

Before suspending the GA, the JU will follow a **contradictory procedure**.

Contradictory procedure:

Step 1 — The JU informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter**.

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations. An extension may be granted on justified request — if submitted within the 30 days.

Step 3 — The JU analyses the observations and either stops the procedure or **confirms** it.

Depending on the situation and type of suspension, this procedure will be directed either at the coordinator or the beneficiary concerned:

- suspension linked to the consortium: normally the coordinator
- suspension linked to a beneficiary *(e.g. simultaneous suspension of several grants after a beneficiary audit)*: normally the beneficiary concerned.

If it is directed at the coordinator, the coordinator must make sure that the other members of the consortium are informed and ask for their comments.

If it is directed at the beneficiary concerned, the JU will inform the coordinator later on (in a way that preserves confidentiality).

⚠ **Information obligation** — Beneficiaries normally do not have to inform their coordinators or ask them to submit comments. However, they should inform them, if there is the risk of a significant impact on the action *(see Article 17.2)*.

If possible, the JU will give an estimation of how long the suspension will be needed.

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 declared for the action, once the action is resumed.

If the **action can be continued**, the JU will lift the suspension and formally notify the coordinator. (together with the suspension **end date**).

The suspension can be lifted retroactively (i.e. back to the date when the problem stopped/issue was clarified).

The coordinator must then request an amendment to the GA *(see Article 55)*, to set the **resumption date** in the tools and adapt the grant to the new situation *(e.g. by extending the action duration modifying Annexes 1 and 2, updating the reporting periods)*.

If the **action** (or part of it) **can NOT be continued**, the GA (or the beneficiary concerned) may be terminated.

If the suspension leads to the GA termination, NO further **costs** (incurred after the date of suspension) can be declared, except the costs for the reports *(see Article 6.1)*.

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 JU 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 JU 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 GA termination.

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 JU will reject the ineligible personnel costs.

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 JU may also impose **administrative sanctions** (i.e. exclusion and/or financial penalties*; see Article 45*).

ARTICLE 50 — TERMINATION OF THE AGREEMENT OR OF THE PARTICIPATION OF ONE OR MORE BENEFICIARIES

ARTICLE 50 — TERMINATION OF THE AGREEMENT OR OF THE PARTICIPATION OF 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 JU (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 JU 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 JU 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 JU 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, 40, 42, 43 and 44) continue to apply.

1. GA termination (consortium)

The beneficiaries have the right to terminate the GA.

⚠ **GA termination** should be a last-resort measure, if all efforts to continue the action fail.

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.*

Grounds for GA termination (consortium):

- **Any ground** that **justifies** early termination of the action

  The beneficiaries may terminate the GA in principle on any ground — as long as there is a good reason *(e.g. circumstances make its implementation impossible or excessively difficult; loss of the action's scientific or technological relevance; force majeure)*.

  Examples:

  1. *The consortium decides to terminate the GA due to technical difficulties that result in the action no longer being viable.*

  2. *The consortium requests termination because the action was finished ahead of schedule.*

  If there are no legitimate reasons for discontinuing the action, the JU **can NOT oppose**, but termination will be considered **improper**.

  ⚠ **Improper termination** of the GA may lead to a grant reduction *(see Articles 5.3 and 43)*.

  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 JU via the coordinator. The JU 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 grant reduction.*

2. Procedure

The coordinator must **formally notify** the JU (via the Funding & Tenders Portal) of the termination — on behalf of the other beneficiaries.

Best practice: Beneficiaries should contact the JU beforehand, to discuss the termination.

The notification must specify the date on which termination will take effect (**termination date**).

This date must be a date after the notification: Terminations can**not** be **retroactive** (notably to be able to comply with the obligations and deadlines after termination; *see point 3*).

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 JU 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 JU will pay the balance *(see Article 21.4)*.

Only **costs** incurred *before* termination (i.e. generating event before the termination date; *see Article 6.1(a)*) are eligible — except for the:

- costs for the reports *(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 for (the part of) contracts or subcontracts delivered before termination *(see Article 6.1)*.

  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 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 final grant amount is calculated. The JU will NOT send a reminder and will NOT extend the deadline.

The detailed calculations are described in Article 21.

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 of the GA)*
- Maintaining confidentiality *(see Article 36)*
- Complying with the security obligations (if applicable) *(see Article 37)*
- Promoting the action and giving visibility to the JU funding *(see Article 38)*
- No assignment of claims for payment *(see Article 40)*
- Chapter 6 measures (i.e. rejection of costs *(see Article 42)*, grant reduction *(see Article 43)*, recovery *(see Article 44)*.

50.2 Termination of the participation of 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 JU (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 JU 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 JU (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 JU, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The JU will — on the basis of the periodic reports, the termination report and the report on the distribution of payments — **calculate** the amount which is due to the beneficiary and if the (pre-financing and interim) payments received by the beneficiary exceed this amount.

The **amount which is due** is calculated in the following steps:

Step 1 — Application of the reimbursement rate to the eligible costs

The grant amount for the beneficiary is calculated by applying the reimbursement rate(s) to the total eligible costs declared by the beneficiary *[and its linked third parties]* in the termination report and approved by the JU.

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.

Step 2 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations

In case of a reduction (see Article 43), the JU will calculate the reduced grant amount for the beneficiary by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations, in accordance with Article 43.2) from the grant amount for the beneficiary.

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 JU 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 JU 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 JU 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 JU the amount due and the JU 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 JU 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 JU the amount due. The JU 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 JU 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 JU 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, 40, 42, 43 and 44) continue to apply.

1. Beneficiary termination (consortium)

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 inform the beneficiary concerned, request the beneficiary's opinion in writing and provide it to the JU (or — if the beneficiary didn't reply — provide proof that the beneficiary's opinion has been requested in writing).

Grounds for beneficiary termination (consortium):

Any ground that **justifies** termination of the participation of the beneficiary

The beneficiaries may terminate the participation of one of their consortium members in principle on any ground — as long as there is a good reason *(e.g. withdrawal by a beneficiary because due to a change in ownership; the beneficiary cannot implement its tasks in the same way; bankruptcy)*.

⚠ For beneficiaries that are involved in **several JU GAs,** withdrawal from one GA does NOT necessarily imply that it has to also withdraw from the others.

⚠ **Information obligation** — In case of **bankruptcy** (or similar), the beneficiary or the coordinator must immediately inform the JU. Late information will be considered as a breach of the information obligation under the GA *(see Article 17.2)*.

If there are no legitimate reasons, the JU **can NOT oppose** beneficiarytermination, but it will be considered **improper**.

⚠ **Improper termination** of the participation of a beneficiary may lead to GA termination *(see Article 50.3.1(c))* and/or to a grant reduction at the payment of the balance *(see Articles 5.3 and 43)*.

Termination extends to **linked third parties**. Terminating a beneficiary's participation implies that its linked third parties' may NOT continue participating in the action.

⚠ **Linked third parties —** Linked third parties are allowed to *fully* participate in actions, like beneficiaries. Linked third parties can NOT however do more than the beneficiary they are linked to: If their beneficiary is terminated, they must also leave the action.

2. Procedure

The coordinator must **formally notify** the JU of the termination (via the Funding & Tenders Portal). At the same time, the coordinator must inform the beneficiary concerned (through the usual communication channels — in writing and offline).

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**.

Since for beneficiary termination the notification is combined with an amendment request, they must be submitted and signed by the PLSIGN of the coordinator (on behalf of the other beneficiaries*; see Annex 3)*.

NO amendment is needed, if the termination takes effect after the end of the action — unless it concerns the coordinator (since the 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 JU. 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.*

The notification must specify the date on which termination will take effect (**termination date**).

This date must be a date after the notification: Terminations can**not** be **retroactive** (notably tobe able to comply with the obligations and deadlines after termination; *see point 3*).

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 funding to do so) — unless the JU expressly agrees otherwise.

The 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).

In case of coordinator termination, the reports must be submitted by the new coordinator (to avoid problems with the payment). If the nomination of the new coordinator takes more time, the 30 days deadline may be extended.

The information contained in the beneficiary's termination report must also be included in the **periodic report** for the next reporting period.

The JU will **calculate** the **amount due** to the terminated beneficiary:

- if the JU owes amounts to the beneficiary, those amounts will be paid with the following payment to the consortium (interim or final)
- if the beneficiary owes, those amounts must be paid back to the consortium.

Only **costs** incurred before termination (i.e. generating event before the termination date *see Article 6.1(a)*) are eligible — except for the:

- costs for the termination report *(see Article 6.1)*
- costs for (the part of) contracts or subcontracts delivered before termination *(see Article 6.1)*.

If the coordinator fails to submit the *termination report* (within the 30 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.

If the coordinator fails to submit the *report on the distribution of payments*, the terminated beneficiary whose participation was terminated will NOT have to repay any amounts.

The detailed calculations are described in *Article 21*.

Termination has no effect on the **provisions** that normally **continue to apply** after the end of the action *(see Article 50.1)*.

Specific cases (beneficiary termination):

Termination of the coordinator without its agreement — The decision to terminate the coordinator must be made by the rest of the consortium (according to its internal decision-making procedures). The notification and amendment request must be made by one of the beneficiaries (acting on behalf of the other beneficiaries; *see Article 55*) and the reports must be submitted by the new coordinator (to avoid problems with the payment). If needed, the 30 days deadline for submission of the reports can be extended *(see above)*.

Coordinator in bankruptcy / liquidation / administration (or similar) — In principle the coordinator must be changed. If the coordinator can no longer submit the request, the same procedure as for coordinator termination without its agreement should be used *(see above and Article 55)*.

Exceptionally, at the end of the action it may not be necessary to change the coordinator, but only its bank account if the administrator/liquidator accepts to do the final transfers of amounts.

50.3 Termination of the Agreement or the participation of one or more beneficiaries, by the JU

50.3.1 Conditions

The JU 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 1 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 2:*** *not applicable****]***;

(j) ***[OPTION 1 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 2:*** *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;

(l) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:

(i) substantial errors, irregularities or fraud or

(ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles);

(m) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other JU, 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);

(n) ***[OPTION 1:*** despite a specific request by the JU, a beneficiary does not request — through the coordinator — an amendment to the Agreement to end the participation of one of its linked third parties or international partners that is in one of the situations under points (e), (f), (g), (k), (l) or (m) and to reallocate its tasks***] [OPTION 2:*** *not applicable****]***.

50.3.2 Procedure

Before terminating the Agreement or participation of one or more beneficiaries, the JU will formally notify the coordinator or beneficiary concerned:

- 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 JU of the measures to ensure compliance with the obligations under the Agreement.

If the JU does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify to the coordinator or beneficiary concerned **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), (l.ii) and (n) above: on the day specified in the notification of the confirmation (see above);

- for terminations under Points (a), (d), (f), (i), (k), (l.i) and (m) above: on the day after the notification of the confirmation is received.

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 reports (see Articles 20.8 and 50.3.1(1)), the coordinator may not submit any reports after termination.

If the JU 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 JU 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 JU's right to reduce the grant (see Article 43) or to impose administrative sanctions (Article 45).

The beneficiaries may not claim damages due to termination by the JU (see Article 46).

After termination, the beneficiaries' obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38, 40, 42, 43 and 44) 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 JU (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 JU, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The JU will — on the basis of the periodic reports, the termination report and the report on the distribution of payments — **calculate** the amount which is due to the beneficiary and if the (pre-financing and interim) payments received by the beneficiary exceed this amount.

The **amount which is due** is calculated in the following steps:

Step 1 — Application of the reimbursement rate to the eligible costs

The grant amount for the beneficiary is calculated by applying the reimbursement rate(s) to the total eligible costs declared by the beneficiary *[and its linked third parties]* in the termination report and approved by the JU.

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.

Step 2 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations

In case of a reduction (see Article 43), the JU will calculate the reduced grant amount for the beneficiary by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations, in accordance with Article 43.2) from the grant amount for the beneficiary.

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 JU 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 JU 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 JU 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 JU the amount due and the JU 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 JU 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 JU the amount due. The JU 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 JU 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 JU 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, 40, 42, 43 and 44) continue to apply.

1. GA or beneficiary termination (JU)

The JU may terminate the GA or the participation of one (or more) of the beneficiaries, on the **grounds** listed in this Article.

⚠ Beneficiary termination may lead to **GA termination**, if the JU considers that the GA can NOT be continued *(see Article 50.3.1(c))*.

⚠ The GA may be **directly terminated** if beneficiary termination would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

Grounds for termination (JU):

- **Non-accession to the GA**

  The JU 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 or did not provide the requested declaration on joint and several liability).

  Non-accession of a beneficiary does NOT automatically lead to the GA termination; the consortium can find an alternative solution that ensures the proper implementation of the action without the beneficiary (and request an amendment; *see Article 55)*.

  In this case, the JU will terminate the GA only if it considers the solution inappropriate or if the consortium no longer complies with the eligibility conditions set out in the IMI 2 JU relevant Annual Work Plan *(e.g. the rules regarding the minimum number of beneficiaries, their legal situation, or their place of establishment)*. [93]

  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. The JU terminates the GA because the conditions set out in the work plan/call 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 JU may terminate the participation of a beneficiary, if there has been 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.

  Such changes can be of any kind and can be triggered by the beneficiary itself or outside circumstances.

  Examples:

  1. *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 JU decides to terminate the beneficiary's participation in the GA (or the GA if the other beneficiaries fail to find a solution to replace it).*

  2. *The country in which one of the beneficiaries is established ceases to be an EU Member State. This means that the beneficiary is no longer eligible for funding and that the decision to award the grant is called into question. The JU may decide to terminate the beneficiary's participation in the GA (or the GA if the other beneficiaries fail to find a solution to replace it).).*

  ⚠ Costs become automatically ineligible as from the date of loss of eligibility *(see Article 6)*.

- **GA cannot be amended after termination** of a beneficiary's participation

  The JU may terminate the GA, if it cannot be amended after 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)*.

  The GA may be **directly terminated** if beneficiary termination would call into question the the decision awarding the grant or breach the principle of equal treatment of applicants.

- **Action can no longer be implemented**

  The JU 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)*.

  Examples:

  1. *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*

[93] *See also Article 8 of the Rules for Participation Regulation No 1290/2013.*

the laboratory. The JU 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.

2. *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 JU decides to terminate the GA because continuing implementing the action without this beneficiary calls into question the decision awarding the grant.*

- **Bankruptcy, winding-up, administration, arrangement with creditors, suspension of business activities or other similar proceedings**

The JU 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 JU that a beneficiary participating in a GA is insolvent. It does not notify beneficiary termination because it thinks that the beneficiary may continue implementing the action. The JU considers that the beneficiary has not sufficient means to pursue implementation and terminates the beneficiary's participation.*

⚠ **Information obligation** — In case of **bankruptcy** (or similar), the beneficiary or the coordinator must immediately inform the JU. Late information will be considered as a breach of the information obligation under the GA *(see Article 17.2).*

- **Professional misconduct**

The JU 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 a national investigation uncovers that it falsified the results of its clinical studies.*

- **Non-compliance with tax or social security obligations**

The JU 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 implemented; *see Article 7*).

Example: *A national administration notifies to the JU 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 JU may terminate its participation in the GA.*

- **Loss of scientific or technological relevance**

The JU 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 JU decides to terminate the GA.*

- **Specific grounds for joint actions**

For joint actions (i.e. actions funded following a joint or coordinated call with a third country or international organisation (IO); *see Article 2*), the JU may terminate the GA, if:

– the third country/IO 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 JU in full.

– the third country/IO action is terminated

– the third country/IO 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 JU 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.

Example: *A legal entity's participation in several JU/EU projects is terminated when its owner is convicted by national courts to have participated in large-scale drug trafficking.*

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in this grant)**

The JU may terminate the GA or the participation of a beneficiary, if a beneficiary (or one of its representatives) has committed substantial errors, irregularities or fraud or serious breach of obligations — either during the award procedure or under the GA.

Example: *false declarations in the proposal form, in order to obtain JU funding; coordinator does not transfer payments to the other beneficiaries, but uses them for itself; coordinator does not submit the reports (despite a reminder); consortium does not inform the JU about the receipt of a second grant for the same/similar proposal; review shows that action does not achieve its critical objectives and is way behind schedule and consortium submits a short-term implementation plan that is not acceptable; audit shows that beneficiary declared costs based on fake invoices; consortium does not provide requested information (despite a reminder); a check shows that scientific reports submitted by the consortium were almost entirely copied from the web (plagiarism); consortium does not submit an amendment request after beneficiary termination.*

- **Substantial errors, irregularities or fraud OR serious breach of obligations (in other grants)**

The JU may also terminate the GA or the participation of a beneficiary, if such substantial errors, irregularities- or, fraud or serious breach of obligations were found in *other* grants, if

  - the other grants were awarded under similar conditions and
  - the substantial errors, irregularities or 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 JU detected systematic irregularities in the calculation of personnel costs that appear intentional and also affect all other GAs signed by the audited beneficiary. The JU may terminate the participation of the audited beneficiary in the GA.*

- **Non-removal of a linked third party/international partner**

The JU may terminate the participation of a beneficiary if it refuses to remove one of its linked third parties or an international partner which is in one of the following situations:

- bankruptcy, winding-up, administration, arrangement with creditors, suspension of business activities or other similar proceedings;
- professional misconduct
- non-compliance with tax or social security obligations
- fraud, corruption or other criminal activities
- substantial errors, irregularities or fraud or serious breach of obligations (in this grant or other grants).

3.0

This termination ground was introduced as explicit contractual ground with GA version 3.0. For older grant agreements, beneficiary termination/linked third party removal was however already implicitly included in the different grounds of Article 50.3.3 (given that linked third parties have to fulfil the same conditions as the beneficiaries for participating in the action).

Before terminating (GA or beneficiary), the JU may first suspend the GA *(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 GA or beneficiary termination, the JU will follow a **contradictory procedure.**

Contradictory procedure:

Step 1 — The JU informs the coordinator/beneficiary concerned of its intention (and the reasons why), in a **pre-information letter**.

Step 2 — The coordinator/beneficiary concerned has **30 days** to submit observations. An extension may be granted on justified request — if submitted within the 30 days.

Step 3 — The JU analyses the observations and either stops the procedure or **confirms** it.

Depending on the situation and type of termination, this procedure will be directed either at the coordinator or the beneficiary concerned:

- terminations linked to the consortium *(e.g. GA termination after a negative project review)*: normally the coordinator
- terminations linked to a beneficiary *(e.g. beneficiary termination or simultaneous termination of GAs after a beneficiary audit)*: normally the beneficiary concerned.

If it is directed at the coordinator, the coordinator must inform the other beneficiaries offline, via its usual communication channels *(e.g. e-mail, registered letters with proof of delivery, etc.)* and ask for their comments.

If it is directed at the beneficiary concerned, the JU will inform the coordinator later on (in a way that preserves confidentiality).

⚠ **Information obligation** — Beneficiaries normally do not have to inform their coordinators or ask them to submit comments. However, they should inform them, if there is the risk of a significant impact on the action *(see Article 17.2)*.

If a beneficiary is terminated on the basis of Article 50.3.1(e) (i.e. bankruptcy or similar), the JU will also contact the liquidator/administrator (— as soon as possible after the termination is confirmed).

If it confirms termination, the JU will specify the date on which termination will take effect **(termination date)**.

This date will be a date after the notification: Terminations can**not** be **retroactive** (notably to ensure the fulfilment of obligations and deadlines after termination; *see point 3*).

For some cases, the JU may choose a **future** date (in order to give the beneficiaries the possibility to close the action). For the other cases *(e.g. termination under points (a), (d), (f), (i), (k), (l.i) and (m))*, the termination will take effect immediately, i.e. on the day after the coordinator receives the notification of the confirmation *(see Article 50.3.2)*.

3. Effects

The effects of GA termination are the same as when the beneficiaries terminate the GA *(see Article 50.1.2)*.

Only **costs** incurred before termination (i.e. generating event before the termination date; *see Article 6.1(a)*) are eligible. Costs relating to contracts due for execution only after termination are not eligible.

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 JU may also impose **administrative sanctions** (i.e. exclusion and/or financial penalties*; see Article 45)*.

The effects of beneficiary termination are the same as when the beneficiaries terminate one of their partners *(see Article 50.2.2)*.

The detailed calculations are described in Article 21.

Termination has no effect on the **provisions** that normally **continue to apply** after the end of the action *(see Article 50.1)*.

Specific case:

Termination of the coordinator: The amendment request must be made by one of the beneficiaries (acting on behalf of the other beneficiaries; see *Article 55*) and the reports must be submitted by the new coordinator. If needed, the 60 days deadline for submission of the reports can be extended.

SECTION 4 FORCE MAJEURE

ARTICLE 51 — FORCE MAJEURE

SECTION 4 FORCE MAJEURE

ARTICLE 51 — 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

What? In case of force majeure, a party will be excused from not fulfilling its obligations (i.e. there will be 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.

Examples (force majeure): *An earthquake, terrorist attack or volcanic eruption; delay in delivering equipment due to floods in the region/country.*

Examples (not force majeure): *machine malfunctions, robberies; a subcontractor building a test site went bankrupt.*

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 can NOT be used to justify situations caused by a beneficiary's negligence or by events that could reasonably have been anticipated.

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.

Personal reasons *(e.g. sickness)* or internal instructions are in general NOT considered as cases of force majeure.

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 5.1 cannot be increased).

⚠ New in Horizon 2020: If a task could not be executed due to a situation of force majeure but certain costs were incurred for that task and could not have been avoided, those costs may still be eligible. 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.

> ***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.*

Force majeure may lead to GA suspension *(see Article 49)* or GA termination *(see Article 50)*.

How? The coordinator must immediately **formally notify** the JU (via the Funding & Tenders Portal).

The beneficiary concerned must quickly put in place all possible **measures to limit** the **damage** caused by the force majeure, including measures to limit related costs.

CHAPTER 7 FINAL PROVISIONS

ARTICLE 52 — COMMUNICATION BETWEEN THE PARTIES

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.

All communication must be made through the Participant Portal **electronic** exchange system and using the forms and templates provided there.

If — after the payment of the balance — the JU finds that a formal notification was not accessed, a second formal notification will be made by registered post with proof of delivery ('formal notification on **paper**'). Deadlines will be calculated from the moment of the second notification.

Communications in the electronic exchange system must be made by persons authorised according to the Participant Portal Terms & Conditions. For naming the authorised persons, each beneficiary must have designated — 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 Participant Portal Terms & Conditions).

If the electronic exchange system is temporarily unavailable, instructions will be given on the JU and Commission 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 JU 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 JU** must be sent to the official mailing address indicated on the JU's website.

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 Participant Portal Beneficiary Register.

1. Communication between the parties — Funding & Tenders Portal electronic exchange system

All communication between the consortium and the JU before and after the payment of the balance - must be in electronic form **via** the **Funding & Tenders Portal**.

Beneficiaries will receive Funding & Tenders Portal notifications even after the end of the action (and the LEARs are obliged to keep beneficiary contact data up to date, in order to ensure that the communication channels remain active).

The responsibility for opening notifications in time is with the beneficiaries.

⚠ Formal notifications are normally considered to have been **accessed 10 days after** they have been **sent** (— even not actually opened by recipient, *e.g. refusal of reception or omission*). Deadlines that are counted from the date of receipt are counted as of day eleven.

The same is in principle valid for formal notifications **after the payment of the balance** — except that the JU will check that the notification has *actually* been accessed by the beneficiary (at any time, before or after the 10 days deadline). If it was not accessed, the JU will send a second notification, this time on paper by registered post with proof of delivery. In that case, the deadlines will start to run from the date of receipt of the second notification.

4.0 The communication via the Funding & Tenders Portal was extended to after the payment of the balance with GA version 4.0. For older grant agreements, it is in principle on paper, unless the beneficiary agrees to accept communication via the Funding and Tenders Portal.

The Funding & Tenders Portal offers different **functions**:

- viewing and changing the legal entity data in the Participant Register.
- direct access to the necessary forms and electronic submission for reporting, deliverables and amendments
- contacting the JU, via messages function
- formal notifications
- where necessary, secured **electronic signatures** (*for instance, for signing the GA, accession to the GA, amendments and financial statements).*

It keeps **logs** of **all communication** and allows for **delivery** of formal notifications **with proof of receipt**.

All messages are recorded in the Funding & Tenders Portal project file (with date and time).

Formal notifications are also recorded (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).

Access is limited to persons with a **user account** and **authorisation** to act for the beneficiary.

Authorisation and access are linked to the user role *(e.g. LEAR, PLSIGN or PFSIGN*).

Examples:

1. *Only Legal Signatories (PLSIGNs) may sign the GA and amendments.*

2. *Only Financial Statement Signatories (PFSIGNs) may sign the financial statements.*

3. *Only Primary Coordinator Contacts (PCoCos) and Coordinator Contacts (CoCo) may submit information to the JU. The Primary Coordinator Contact can be changed only by the responsible (project) officer in the back-office, while the other roles can be managed by the participants themselves via the Portal. (In case of MSCA-IF the Supervisor identified in the proposal becomes the PCoCo, in ERC grants the PI identified in the proposal becomes the PCoCo.).*

4. *Only Participant Contacts (PaCos) may submit information to the coordinator. They cannot submit information directly to the JU.*

5. *Only the Participant Contact(s) (PaCo, or PCoCo and CoCo(s) 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).*

6. *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 JU.*

7. *Team Members (TeMe) have read-only access to project information. They cannot complete or save forms, nor submit information to the coordinator or the JU.*

For more guidance on access and roles in the Funding and Tenders Portal*, see the Portal Online Manual.*

In principle, all communications from/to the JU must normally 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 No 883/2013 and No 2185/1996)*.

Specific cases (PP access rights):

Beneficiaries in bankruptcy — If during a beneficiary goes bankrupt during the action, the liquidator may be granted the necessary access rights in the Funding & Tenders Portal, in order to complete the beneficiaries' obligations. If exceptionally necessary, the JU can also agree to communication outside the Funding & Tenders Portal electronic exchange system (i.e. via registered post or e-mails).

ARTICLE 53 — INTERPRETATION OF THE AGREEMENT

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.

Annex 2 takes precedence over Annex 1.

53.2 Privileges and immunities

[OPTION 1 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.**]***

[OPTION 2: *Not applicable**]***

1. Privileges and immunities

The JU will not take measures against international organisations which would be contrary to the privileges and immunities accorded by their constituent documents or international law.

> '**International organisation**' means intergovernmental organisations (other than the EU) with legal personality under international public law (including specialised agencies set up by international organisations).
>
> > ***Examples:*** *International Committee of the Red Cross (ICRC); International Federation of National Red Cross and Red Crescent Societies*

Thus in most cases (that is to say, unless the applicable legal texts provide otherwise), public law decisions cannot be applied to international organisations; only contractual measures will be taken.

> Therefore, the JU will not apply decisions on administrative sanctions (i.e. exclusion or financial penalties; *see* Article 45).
>
> Similarly, offsetting will be applied only as a contractual measure on the basis of Article 44 GA (— never as a public law measure directly on the basis of Article 80(1) of the Financial Regulation No 966/2012).

By consequence, dispute settlement is normally limited to arbitration (*see Article 57.2*). The public law remedies (i.e. Article 263 action) do not apply.

ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES

ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES

In accordance with Regulation No 1182/71[51], **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.

[51] 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 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 20.3, 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 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 JU may suspend the payment deadline if a request for payment cannot be approved. The suspension takes effect on the day the JU sends the notification. When the suspension exceeds two months, the coordinator may ask the JU if it will continue. The JU 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 1 March 2018.*

ARTICLE 55 — AMENDMENTS TO THE AGREEMENT

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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 request for amendment 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 JU 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 JU 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 of 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.

1. Amendments

When & What? An amendment is necessary whenever there is a need to **change** the GA (i.e. the core agreement and/or the Annexes).

⚠ The cases where an amendment is necessary are called 'amendment types' (AT); the amendment clauses are called 'AT clauses'.

⚠ The general terms and conditions of the GA can NOT be changed via an amendment. Only GA-specific data *(e.g. duration of the reporting periods, starting date, etc.)* and the options in the GA can be added, removed or updated via an amendment.

Example:

If a linked third party ends its participation, the option in Article 14.1 will be updated to set its 'end date of participation'.

⚠ Amendments may NOT result in changes that — if known before awarding the grant — would have had an impact on the award decision. Those are mostly changes that:

- involve the consortium composition and have an impact on the eligibility criteria set out in the IMI2 JU relvant Annual Work Plan *(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)*
- involve changes to the action and/or its budget and affect the award criteria announced in the work plan/call *(e.g. the tasks in Annex 1 are changed so substantially that the action no longer corresponds to the scope of the call)*
- breach the principle of equal treatment of applicants
- do not comply with the rules applicable to the GA (i.e. Financial Regulation No 966/2012, Rules for Participation Regulation No 1290/2013, etc.) or with provisions of the GA itself *(e.g. amendment to subcontract tasks of the coordinator).*

⚠ **Information obligation — Changes** in the **name, address, legal form** and **organisation type** AND changes in the **legal, financial, technical, organisational** or **ownership situation** may or may not require an amendment *(see below)* — but they ALL trigger the information obligation under Article 17.2.

If such changes affect the implementation of the action and require an amendment, the JU will examine the situation and inform the coordinator.

Examples (change that requires an amendment):

1. *Beneficiary A becomes bankrupt. It will be necessary terminate its participation and to amend the GA.*

2. *Beneficiary B moves from Europe to Australia during the action. The change of address implies that the beneficiary becomes not eligible for JU funding, so the GA will have to be amended to make it a 'beneficiary not receiving JU funding'.*

3. *Beneficiary C participates in an innovation action (IA) and loses its non-profit status during grant implementation. It will be necessary to amend the GA to change the reimbursement rate.*

Examples (change that does NOT require an amendment):

1. *Beneficiary D changes its name. The update in the Beneficiary Register is sufficient; no amendment is needed.*

2. *Beneficiary E participates in an SME instrument action and loses its SME-status during grant implementation. No amendment is needed because there is an explicit exception in Article 53(2) of the Rules for Participation Regulation No 1290/2013.*

Characteristics of amendments:

- Can only be done in writing — an oral agreement is not binding on the parties.
- Enters into force after the signature by the coordinator and the Commission/Agency through an exchange of letters.
- Takes effect on the date agreed by the parties (retroactive or in the future); if no date specified, on the date of the second party approves (not retroactive).
- Can only be implemented after the entry into force of the GA and before the final payment is made.
- Must normally be requested before the end of the project; in exceptional cases amendment clauses are also open after the end of the project *(e.g. change of coordinator or change of coordinator's bank account, in order to be able to make the final payment)*.
- Has to be signed by persons having the same capacity to represent the legal entity as those who signed the initial GA.
- Leaves all the other provisions of the GA which are not affected unchanged and to continue to have full effect.

- Forms an integral part of the GA.
- Has to be in line with the rules applicable to the GA (applicable law and EU law), with the other provisions of the GA and with the applicable model grant agreement.
- Cannot have the purpose or effect of making changes to the GA which might call into question the decision awarding the grant or result in unequal treatment of beneficiaries or applicants.

Normally amendments are done at the initiative of the consortium, but they may also be proposed by the JU *(e.g. where errors need to be corrected; to change Annex 1 after a review of the action, etc.).*

Sample list of cases where an amendment is necessary:

- **Removal of a beneficiary whose participation was terminated due to non-accession** to the GA or non-provision of the requested declaration on **joint and several liability** (**AT1**; *see Article 50.2 and 50.3*)

  What? Removal of a beneficiary that never became part of the GA.

  How? The amendment is normally triggered by the beneficiaries.

  In case of beneficiary termination (by the consortium), the notification of termination and amendment must be combined.

  If the coordinator is removed, the amendment has to propose a new coordinator (AT8).

  The changes will be made ex tunc (i.e. since the beginning) since the beneficiary never participated in the grant.

  If the beneficiary was participating with linked third parties/international partners, they will automatically be removed.

  GA options for the beneficiary (and its linked third parties/international partners) are automatically removed/changed/become not applicable *(e.g. linked third party options, non-EU beneficiary, IO, beneficiary receiving/not receiving JU funding)*.

  Annexes 1 and 2 will have to be changed (AT21 and AT31).

- **Removal of a beneficiary whose participation was terminated** for **other reasons** (**AT2**; *see Article 50.2 and 50.3*)

  What? Removal of a beneficiary during the action.

  What not? There is 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.

  How? The amendment is normally triggered by the beneficiaries.

  In case of beneficiary termination (by the consortium), the notification of termination and amendment must be combined.

  If the coordinator is removed, the amendment has to propose a new coordinator (AT8).

  Termination of the coordinator without its agreement **—** If the consortium terminates the coordinator without its agreement, it must provide proof of its decision to change the coordinator and nominate one of the beneficiaries to act on its behalf to request the amendment *(see Article 50.2 and below point 2).*

  Coordinator in bankruptcy/liquidation/administration (or similar) **—** If the coordinator must be changed but can no longer submit the request for amendment, the same procedure as for coordinator change without its agreement should be used.

  Changes will be made ex nunc (because the beneficiary participated in the grant up until termination and, moreover, many obligations are applicable after termination).

  The termination date will be added to the Preamble and the beneficiary will be entitled to submit costs until that date.

  If the beneficiary was participating with linked third parties/international partners, they will also have to be removed (with effect from the same date) and the end date of participation will be added to Article 14/Article 14a (AT5a/5b).

By contrast, the GA options for the beneficiary (and its linked third parties/international partners) will NOT be removed/changed/become not applicable *(e.g. linked third party options, non-EU beneficiary, IO, beneficiary receiving/not receiving JU funding)*.

Annexes 1 and 2 will normally have to be changed (AT21 and AT31).

- **Adding a new beneficiary** (**AT3**; *see Article 56.2*)

What? Addition of a new beneficiary during the action.

How? The amendment is normally triggered by the beneficiaries.

The new beneficiary must first register (and get validated) in the Participant Register — unless it already has a validated participant identification code (PIC).

The accession date will be added to the Preamble of the GA and the beneficiary will be entitled to submit costs as from that date.

The date must be selected in the Accession Form (attached to the amendment request). It is possible to choose between:

- the date of signature of the Accession Form
- the date of entry into force of the amendment

OR

- a fixed date:
  - retroactive (before signature of the Accession Form)

  OR
  - future (after signature of the Accession Form — this should be an exceptional case with a justification).

Handover period — If a new beneficiary joins to replace a beneficiary that leaves, the accession date may be set before the termination date (of the beneficiary that is replaced) — so that *both* can incur costs for a certain period.

Example: *The former beneficiary ends its participation on 1.6.2015, and the new beneficiary accedes to the GA on 1.5.2015.*

If the new beneficiary is participating with linked third parties/international partners, they will also have to be added (with effect from the same date) and the starting date of participation will be added to Article 14/Article 14a (AT6a/6b).

The GA options for the beneficiary (and its linked third parties/international partners) will be added/changed/become applicable *(e.g. linked third party options, non-EU beneficiary, IO, beneficiary receiving/not receiving JU funding)*.

Annexes 1 and 2 will also have to be changed (AT21 and AT31).

- **Change of beneficiary due to partial takeover** (**AT4**; called 'partial transfer of rights and obligations' in FP7)

Transfer — The rights and obligations under the GA are transferred from the beneficiary to a new beneficiary — without passing via termination *(see Article 50)* or addition of a new beneficiary *(see Article 56)*.

This amendment type should, however, NOT be used if the former beneficiary does NOT leave the consortium (but stays on as part of the consortium). In this case, simply use the amendment clause for addition of a new beneficiary (AT3).

What? Transfer due to partial takeover.

'Partial takeover' means that a part of the business of the beneficiary - including the GA - is taken over by (one or more) other entity(ies) (transfer of a business unit as a going concern, *e.g. partial acquisition, distribution of a business unit after dissolution/liquidation, division/demerger, etc.).*

'Partial acquisition' means that the original entity continues to exist, but that a new entity purchases a department, business unit, or similar (and absorbs or takes over

part of the rights and obligations of the original entity). Thus, *some* of the rights and obligations (and contracts) of the original entity are transferred to the new entity. Since the beneficiary continues to exist as a legal entity and only some of its rights and obligations are affected, a case-by-case analysis is needed (and an amendment therefore necessary).

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

'Distribution of a business unit on dissolution/liquidation' means that the original entity disappears (due to dissolution or liquidation), but that (one or more) new entities purchase a department, business unit or similar (and absorb or take over part of the rights and obligations of the original entity). Since only *some* of the beneficiary's rights and obligations are transferred, a case-by-case analysis is needed (and an amendment therefore necessary).

'Division/demerger' means that the original entity disappears and several entities replace it; different parts of the original entity are transferred to the new entities (i.e. several partial transfers to different entities).

Examples:

1. *Company X has several ongoing grants. Company X is bought by two other companies (Y & Z), one of which will absorb the mobile phone division and the other the remaining divisions. For some GAs there will be a transfer of rights and obligations from X to Y, for other GAs it will be from X to Z.*

2. *Company Ω has an ongoing grant (covering some action tasks to be implemented by its engineering division and some action tasks to be implemented by other divisions). Company Ω is bought by two other companies (E and O), one of which absorbs the engineering division and the other the remaining divisions. There are two partial takeovers: one to company E and one to company O.*

What not? Simple sale of (one or more) assets of the beneficiary is NOT a 'partial takeover'; it does not involve the transfer of the GA, but — at most — a transfer of (some) action tasks if the beneficiary can no longer fulfil its action tasks. In this latter case, also the sale of assets will require an amendment, in order to terminate participation of the beneficiary and/or add a new beneficiary.

Example: *Company Ω implementing two different tasks in an action (engineering and testing) sells the engineering department to company E with the understanding that E will implement the engineering tasks of Ω in the action. The GA will have to be amended to add company E as a new beneficiary; company Ω remains beneficiary in the GA for the other action tasks (e.g. testing). (If company E is already a beneficiary in the GA, the GA must be amended only to modify Annexes 1 and 2 to adjust the action tasks and the budget; it is not be necessary to add E as new beneficiary).*

Best practice: In case of doubt, the beneficiaries should contact the JU (via the Funding & Tenders Portal messaging function).

NO amendment is necessary for universal takeovers *(see below).*

How? The amendment is normally triggered by the beneficiaries; if the JU agrees, the new entity will replace the original entity as party to the GA (as new beneficiary).

'New beneficiary' is used here only for the purpose of the amendment; it can be either a new beneficiary joining the consortium or an already existing beneficiary who took over a part of the business of another beneficiary.

⚠ The new beneficiary(ies) will (each) be fully **jointly and severally liable** with the former beneficiary for recoveries under Article 44. (By contrast: NO joint and several liability for debts linked to financial penalties and damages under Articles 45 and Article 46.)

If the new beneficiary joins the GA, it must first register (and get validated) in the Participant Register — unless it already has a validated participant identification code (PIC).

If the partial takeover is governed by national law, the amendment request must clearly set out the legal situation and the consequences for the GA (both towards the JU and towards the other beneficiaries).

It must, in particular:

- explain the financial liability of the former beneficiary
- cite the applicable rules (with hyperlinks to the texts, if possible), and
- provide a copy of the takeover contract.

Best practice: In order to avoid multiple submission of documents, beneficiaries are recommended to upload the takeover contract in the Participant Register (via My Organisation page) and specify in the amendment request that the legal documents are available in the Funding and Tenders Portal. This is particularly useful if several JU/EU grant agreements or contracts are affected by a partial takeover.

The transfer date will be added to the Preamble of the GA.

The date must be selected in the amendment request. If the new beneficiary joins the action, the transfer date must be the same date as the accession date. Retroactive dates are only allowed in exceptional cases and with specific justification.

If the former beneficiary was participating with linked third parties/international partners, the new beneficiary will have to determine which of the former beneficiary's linked third parties/international partners stay on as linked third parties/international partners of the new beneficiary (AT6a/6b) — all other linked third parties/international partners will be automatically removed.

The GA options for the beneficiary (and its linked third parties/international partners) will be added/changed/become applicable *(e.g. linked third party options, non-EU beneficiary, beneficiary receiving/not receiving JU funding)*.

Annexes 1 and 2 will also have to be changed (AT21 and AT31).

The former beneficiary does NOT need to submit any reports to the JU. The financial statement for the open reporting period until transfer must be uploaded with the next periodic report either by the former beneficiary (for the time it was a beneficiary) or by the new one together with its own financial statement.

- **Removing a linked third party/international partner (AT5a/5b;** *see Articles 14 and 14a*)

What? Removal of a linked third party/international partner during the action.

How? The amendment is normally triggered by the beneficiaries.

If requested by the JU *(e.g. because of audit results or an OLAF investigation)*, the consortium MUST submit an amendment to remove a linked third party/international partner.

⚠ If the consortium does not follow-up this request, the JU may **terminate** the participation of the *beneficiary* (and thereby also remove the linked third party/international partner).

NO termination notification — Linked third parties/international partners can be removed by the consortium by simple amendment; no formal termination notification is required (termination notification applies only to beneficiaries; *see Article 50.2*)

Changes will be made ex nunc (because the linked third party/international partner participated in the grant up until removal and, moreover, many obligations are moreover applicable after termination).

The end date of participation will be added to Article 14/14a.

The date must be selected in the amendment request. It must be either a fixed date or 'the day after the submission of the amendment request'. The fixed date must be in the future (i.e. after the request: end of participation can NOT be retroactive).

The GA options for the linked third party/international partner will normally NOT be removed/changed/become not applicable.

Annexes 1 and 2 will have to be changed (AT21 and AT31).

- **Adding a linked third party / international partner** (**AT6a / 6b**; *see Articles 14 and 14a*).

  What? Addition of a new linked third party/international partner during the action.

  How? The amendment is normally triggered by the beneficiaries.

  The new linked third party/international partner must first register (and get validated) in the Participant Register — unless it already has a validated participant identification code (PIC).

  The name of the linked third party/international partner and the starting date of participation will be added to Article 14/14a.

  > The date must be selected in the amendment request. It is possible to choose between a fixed date or the 'date of entry into force of the amendment'. If the linked third party/international partner joins the action at the same time as the beneficiary, the starting date of participation must be the same date as the accession date of the beneficiary.

  The GA options for the linked third party/international partner will be added/changed/become applicable.

  Annexes 1 and 2 will also have to be changed (AT21 and AT31).

- **Change concerning a beneficiary / linked third party** '**not receiving JU funding**' (**AT7a**; *see Article 9*)

  What? If a beneficiary/linked third party — exceptionally — becomes eligible/not eligible for receiving JU funding during the action *(e.g. due to a change of establishment or a country changing eligibility status)* OR if it suddenly requests funding/zero funding, this change will normally require an amendment (to change Annex 1, Annex 2 and the options in Articles 9 and 57).

  > ***Examples:***
  >
  > ***1.*** *Beneficiary R moves from Europe to Australia and thus is no longer eligible for receiving JU funding. The GA must be amended. If R is participating with a linked third party M established in France, M will continue being eligible for funding.*
  >
  > ***2.*** *The country in which beneficiary X is established leaves the EU (without an agreement ensuring continued eligibility). The beneficiary is therefore no longer eligible for funding and the GA may have to be amended (or terminated; see Article 50).*
  >
  > ***3.*** *Beneficiary Y is eligible but signed the grant with zero funding. During the action the responsibilities within the consortium are shifted and beneficiary Y takes on a bigger role involving more costs. The other consortium members agree to adapt the budget and renounce to some funding in order to allow beneficiary Y to claim funding.*

  ⚠ Costs become automatically ineligible as from the date of loss of eligibility (*see Article 6*).

  How? This amendment can normally be triggered only by the JU.

- **Change of coordinator (AT8)**

  What? Replacement of the coordinator during the action *(e.g. because of financial difficulties)*.

  Exceptionally, an amendment remains possible and necessary *after* the end of the action *(see Article 3)* —until the payment of the balance is paid out and distributed.

  Coordinator in bankruptcy/liquidation/administration (or similar) — After the end of the action, if the coordinator can continue its participation with the bank account of the administrator/liquidator (i.e. termination and coordinator change not really needed), it is therefore exceptionally sufficient to change the bank account (AT40) without changing the coordinator.

  What not? There is NO need to request an amendment for a change of the *person* in charge of the coordination of the project (since the person's name is not mentioned in the GA).

  > ⚠ **Information obligation** — In case of a **change of person in charge of coordination**, the coordinator must — in addition to updating the data in the Funding and Tenders Portal inform the JU under Article 17.2).

  How? The amendment is normally triggered by the beneficiaries.

If the new coordinator is not already a beneficiary of the GA, it must first accede to the GA as a new beneficiary (AT3).

The former coordinator may continue to participate in the action as a normal beneficiary or may terminate its participation (AT2).

Termination of the coordinator without its agreement — If the consortium terminates the coordinator without its agreement, it must provide proof of its decision to change the coordinator and nominate one of the beneficiaries to act on its behalf to request the amendment *(see Article 50.2 and below point 2).*

Coordinator in bankruptcy/liquidation/administration (or similar) — If the coordinator must be changed but can no longer submit the amendment request, the same procedure as for coordinator change without its agreement should be used.

The handover date will be added to the Preamble of the GA.

The date must be selected in the amendment request (fixed date or date of entry into force of the amendment).

The date the former coordinator stops acting as coordinator should normally be the date the new coordinator takes over the coordination tasks (handover date). If there was a gap (former coordinator leaves before new coordinator starts; *e.g. coordinator is in bankrupcy*) there will be two different dates: the one for the former coordinator (when it stopped doing coordinator tasks — must be at the latest its termination date) and the one for the new coordinator (when it took over the coordinator tasks — must be after its accession date).

- **Change of the coordinator's bank account for payments (AT40)**

What? An amendment is necessary for all changes that imply a change to the account number/IBAN code.

Example: *The coordinator changes bank account.*

What not? NO amendment is necessary for a change of the name of the bank or name of the account holder; a change of the bank account data (and validation) in the Funding & Tenders Portal Participant Register is sufficient.

How? The bank account data must first be updated in the Participant Register (and be validated).

- **Change of the starting date, action duration or reporting periods (AT23, AT24, AT25)**

What? Change of the action's schedule (starting date, action duration 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 JU to change it.*

⚠ Even if the action is prolonged, the maximum grant amount *(see Article 5.1)* will NOT be increased.

How? An extension of the action must be requested *before* the action ends and will only be accepted in exceptional cases.

- **Changes to Annex 1 (description of the action) (AT21)**

What? Changes to the description of the action, in particular:

- 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 via simplified approval procedure *(see Articles 11, 12 and 13*); however, if the beneficiary requests an amendment, it will immediately know if the JU agrees (or not). Without amendment, this decision is left for later and the JU may reject the costs as ineligible later on (at the moment of the payment).

- changes concerning the tasks to be carried out by linked third parties and related costs (including if a linked third party is removed)
- significant changes to the plan for exploitation and dissemination (unless Annex 1 already foresees an update to be submitted with the periodic report)
- changes concerning GA options (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.)*
- significant changes concerning deliverables *(e.g. changes of ethics requirements to align to ethical principles and legislation; adding/removing deliverables; changes in substance of a project output which is reflected in a deliverable, etc.)*.

What not? Changes to the due date of a deliverable normally do not require an amendment (except for certain deliverables, where timeliness is key)

- **Changes to Annex 2 and Annex 2a (estimated budget) or specific unit costs (AT31 and AT36)**

What? Changes to the estimated budget, in particular:

- a budget transfer of amounts between beneficiaries or between budget categories (or both) which are linked to a significant change in the action's work (i.e. Annex 1)
- a budget transfer to a form of costs that is not used by the beneficiary (i.e. with 0 EUR costs in Annex 2) — except for transfer of amounts within the budget category A 'personnel costs' and for transfers to the budget category 'costs of internally invoiced goods and services'.

Example:

During the action implementation, the beneficiary decides to use the access costs for transnational access to research infrastructure unit cost. This requires an amendment to fix the unit cost and to move budget to budget category F.2.

What not? There is NO need to request an amendment for changes covered by the budget transfers rule in Article 4.2 *(e.g. budget transfers within the personnel cost; see also below)*.

How? The amendment is normally triggered by the beneficiaries.

Best practice: If Annex 2a or specific unit costs need to be changed, the beneficiaries should contact the JU (via the Funding and Tenders Portal messaging function).

Sample 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)*.

Budget transfers within the personnel cost category and budget transfers to costs of internally invoiced goods and services are possible without having to amend the GA.

Examples:

1. During the action implementation, a beneficiary that declared its direct personnel costs as actual costs decides to change this and instead to declare them as unit costs in accordance with its usual accounting practices (average personnel costs).

2. An SME joins an on-going GA. The SME owner does not have a salary but incorrectly budgets its costs as actual personnel costs (category A.1). He realises the mistake and then switches to the unit costs for SME owners (category A.4).

- **Change of name, address or other legal entity data (of beneficiaries/linked third parties)**

Simple changes of name, legal form *(e.g. Ltd., S.A.)*, official registration number, address, VAT number do NOT require an amendment; an update of the beneficiary data by the LEAR (and validation) in the Participant Register is normally sufficient.

Linked third parties/international partners — Since they normally do not have direct access to the Participant Register, linked third parties/international partners must inform their beneficiary who must inform the JU. The data will then be updated by the JU (and validated).

If — exceptionally — the JU considers that the registered change affects the implementation of the action, it will inform the coordinator (and instruct it to request an amendment or trigger itself an amendment, if needed).

Example: *Company R moves from Europe to Australia and this implies that the beneficiary is no longer eligible for JU funding. In such a case, the JU will make an amendment to the GA to change the beneficiary status into 'beneficiary not receiving JU funding'.*

Short names have no legal value and only serve as easy identifiers in the GA. If needed, they can be changed in the context of an amendment initiated on other grounds.

A change of the person that represent the coordinator for the purposes of signing the GA requires, NO follow-up at all (not even a change in the Participant Register — since this name is only relevant at the moment of GA signature (not afterwards).

- **Change of beneficiary due to universal takeover** (called 'universal transfer of rights and obligations' in FP7).

Transfers of the GA linked to a universal takeover (i.e. where the original entity is replaced by one new entity and all the rights and obligations — including the GA — are transferred to this new entity, *e.g. merger or full acquisition*) do NOT require an amendment; an update of the beneficiary data by the LEAR (and validation) in the Participant Register is normally sufficient.

Example: *Beneficiary X merges with another existing entity Y by:*

- *becoming part of it (thus X and Y are together known as 'Y', and entity X ceases to exist) or*
- *establishing a new separate legal entity (X and Y are together known as 'Z').*

If (exceptionally) the JU considers that the registered transfer affects the action implementation, it will inform the coordinator (and instruct it to request an amendment , if needed).

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 (AT40).*

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 actions (IAs). 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 only to a reimbursement rate of 70%). The GA must be amended to change the reimbursement rate (AT33) and the estimated budget (AT31).*

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%).

⚠ **Information obligation** — In case of a **universal takeover**, the beneficiary must — in addition to updating the data in the Participant Register— inform the coordinator (offline) under Article 17.2, if the universal takeover could:

- significantly affect or delay the implementation of the action or the JU financial interests or
- affect the decision to award the grant or the compliance with requirements under the GA.

The coordinator must then inform the JU (via the Funding and Tenders Portal) and, if necessary, request an amendment.

The same applies if the universal takeover concerns a linked third party.

ℹ For more guidance on amendments, *see the Guide on amendment types & supporting documents and the Funding and Tenders Portal Online Manual.*

2. Procedure

How? Amendment requests must be **prepared** by the requesting party (i.e. the coordinator or the JU) directly in the Funding & Tenders Portal.

Best practice: If none of the available amendment clauses fit, beneficiaries should contact the JU (via the Funding & Tenders Portal messaging function), to discuss the amendment.

⚠ Before the amendment request, new beneficiaries, new linked third parties or other new beneficiary data must have been registered and validated in the Participant Register.

Examples:

1. *A new beneficiary must be validated (legal entity validation). 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 Funding and Tenders Portal.*

2. *Validation of the new bank account, to change the bank account.*

⚠ The amendment request must include the necessary information and supporting documents. A signed and submitted amendment request can NOT be changed — only accepted, rejected or withdrawn. It is however possible to provide clarifications or additional information/documents.

ℹ For more guidance on amendments, *see the Guide on amendment types & supporting documents and the Portal Online Manual.*

The **request** must be unambiguous and complete and submitted **in time** (i.e. sufficiently in advance to allow proper analysis and preparation before they are due to take effect and — generally — before the end of the action; *see 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*).

The coordinator must ensure that it has the agreement of the consortium (in accordance with the internal decision-making processes, *e.g. unanimity, simple or qualified majority, etc. set out in the consortium agreement*).

Once completed, the request (with all its uploaded supporting documents) must be **submitted** and **signed** by the PLSIGN of the coordinator (on behalf of the other beneficiaries; *see Annex 3*).

Termination of the coordinator without its agreement — For change of coordinator without its agreement a special procedure applies: The other beneficiaries must nominate one of them to act on their behalf to notify termination and request the amendment. The nominated beneficiary must name a contact person responsible for the amendment.

Before it has been accepted or rejected, an amendment request may at any moment be **withdrawn**.

In order to **change** the amendment request, it must be withdrawn and re-submitted (changes to submitted requests are NOT possible).

Example: *The coordinator requests an amendment to change its bank account number and the reallocation of tasks in Annex 1 and of budget in Annex 2. Since the change of bank account is urgent because the JU has to make the interim payment and the revision of the Annexes may require more time, the coordinator withdraws the request and makes a new request to change only the bank account and a second one to change the Annexes.*

A request containing several changes to the GA will be considered as one (and must either 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 receiving the additional information/documents.

Example: *The coordinator submits a request to add a new beneficiary with several linked third parties (see Article 14). The JU 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 JU receives the declaration.*

The other party must — within **45 days** — **agree or disagree**.

The deadline may exceptionally be **extended** by the receiving party — 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)*.

If **accepted** it will be **counter-signed** by the receiving party directly in the Funding & Tenders Portal (for the consortium: by the PLSIGN of the coordinator).

If there is **no reaction** within the 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 however be submitted — even if it fully or partly repeats the initial request.

The amendment **enters into force** and is binding from the moment the receiving party has agreed to it (i.e. signed in the Funding & Tenders Portal).

The amendment will **take effect** (i.e. the changes to the GA will start to apply) either:

- on the day of its entry into force (i.e. day of the last signature of the amendment) or
- on the specific date(s) indicated (and agreed) in the amendment.

The date should normally be *after* the entry into force of the amendment.

In justified cases it may — exceptionally — be *before* (retroactivity of the amendment). (In some cases, the GA itself provides for retroactivity.)

Examples (retroactivity allowed/foreseen in the GA):

1. *Where a new beneficiary is added to the GA (AT3), it must assume the rights and obligations from the accession date specified in the Accession Form. If this date is before the entry into force of the amendment, this retroactivity implies that its costs will be considered eligible as from the accession date (and not as from the entry into force of the amendment).*
2. *Following a suspension of the implementation of the action by the beneficiary or by the JU, the suspension will be lifted with effect from the resumption date set out in the amendment (AT26). This date may be before the date on which the amendment enters into force (see Article 49.2.2).*
3. *If the amendment intends to correct an error (AT60), the change will be made with effect from entry into force of the GA (i.e. from the beginning).*

Depending on the amendment type, the date of taking effect may have an impact on the eligibility of costs.

An amendment request involving several changes, may 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

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:*** *and for beneficiaries for which the JU has requested joint and several liability of a linked third party, by also submitting — 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 JU's right to terminate the Agreement (see Article 50).

1. Accession to the GA (beneficiaries mentioned in the Preamble)

All beneficiaries (except the coordinator) must accede to the GA by **signing** the **Accession Form** *(see Annex 3)* directly in the Funding & Tenders Portal. They must do this **within 30 days** after the GA enters into force *(see Article 58)*.

Only the beneficiaries' legal signatories (PLSIGNs) may sign the Accession Forms.

Declarations on **joint and several liability** *(see Annex 3a)* must be signed by the linked third party *on paper* and send it to its beneficiary. The beneficiary must scan it and upload it in PDF format, before signing the Accession Form.

Without the declaration, it will NOT be able to accede to the GA (and thus NOT be considered a party to the GA).

⚠ **Record-keeping —** The beneficiary must keep the original of the linked third party in its files *(see Article 18.1.2)*.

Linked third parties do not become parties to the GA and therefore do NOT need to sign an Accession Form.

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 Funding & Tenders Portal project file.

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 (amendment)

In justified cases, the beneficiaries may request adding a new beneficiary.

The new beneficiary must comply with the eligibility criteria of the work plan/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.

Article 56 does not apply to mono-beneficiary actions. Mono-beneficiary actions can therefore NOT become multi-beneficiary actions.

How?The new beneficiary must:

- register in the Participant Register and be validated — unless it already has a validated participant identification code (PIC)
- sign the Accession Form (directly in Funding & Tenders Portal)
- provide a declaration on joint and several liability of its linked third party (if required by the JU).

The coordinator must request an **amendment** for adding a new beneficiary (*see Article 55*).

The Accession Form (attached to the amendment request) must specify the **accession date**. It must be either:

- the date of signature of the Accession Form
- the date of entry into force of the Amendment

OR

- a fixed date:
  - either retroactive (i.e. before signature of the Accession Form)

  OR
  - future (i.e. after signature of the Accession Form — this should be an exceptional case with a justification).

Handover period — If a new beneficiary joins to replace a beneficiary that leaves, the accession date may be set before the termination date (of the beneficiary that is replaced) — so that *both* can incur costs for a certain period.

ARTICLE 57 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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.

[additional OPTION for international organisations that do not accept any applicable law clause:** As an exception, there is no applicable law for [insert name(s) of the international organisations concerned]**].

***[additional OPTION for international organisations that would accept an applicable law clause, but not the standard clause (EU + Belgian law):** As an exception, the Agreement is governed by a different applicable law for the following beneficiaries:*

- *[insert name(s) of the international organisations concerned]: [by the applicable EU law][, supplemented if necessary][by the law of [Belgium][insert name of another Member State or EFTA country]][and, where appropriate,][by the general principles governing the law of international organisations and the rules of general international law]*
- *insert name(s) of the international organisations concerned]: [by the applicable EU law][, supplemented if necessary][by the law of [Belgium][insert name of another Member State or EFTA country]][and, where appropriate,][by the general principles governing the law of international organisations and the rules of general international law]*

[same for other international organisations].]

1. Applicable law

As a general rule, JU GAs are subject to EU law (supplemented — where necessary — by Belgian law), for questions on their interpretation, application and validity.

Specific cases (applicable law):

International organisations (IOs) — If requested by the international organisation, the GA may provide for derogations:

Situation	Applicable law
For international organisations that do NOT accept any applicable law clause	No reference to any applicable law[94]. 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.

[94] *See Article 180(1) of the Rules of Application Regulation No 1268/2012.*

For international organisations that would accept an applicable law clause, but not the standard clause (EU + Belgian law)	The international organisation can choose any of the following combinations of applicable laws: – only EU law – only Belgian law – only other MS or EFTA country law – only general principles governing law of IOs + rules of general international law – EU law + MS or EFTA country law (except Belgium) – EU law + general principles governing law of IOs + rules of general international law – EU law + Belgian law + general principles governing law of IOs + rules of general international law – EU law + other MS or EFTA country law + general principles governing law of IOs + rules of general international law – Belgian law + general principles governing law of IOs + rules of general international law – other MS or EFTA country law + general principles governing law of IOs + rules of general international law

new in Horizon 2020: 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 family. It makes it easier for international organisations to participate in Horizon 2020.

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).

[additional 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 JU and [insert non-EU beneficiary(ies) name(s)], the competent Belgian courts have sole jurisdiction.**]

***[additional OPTION for international organisations and for beneficiaries not receiving JU funding because not eligible for JU funding (see Article 9) which according to their national law cannot be subject to the jurisdiction of the Belgian courts:** As an exception, for the following beneficiaries:*

- *[insert name of international organisation or beneficiary not eligible for JU funding]*
- *[insert name of international organisation or beneficiary not eligible for JU funding]*

[same for other beneficiaries that are international organisations or beneficiaries not eligible for JU funding]

*such disputes must — if they cannot be settled amicably — be referred to arbitration. Each party must formally notify to the other party its intention of resorting to arbitration and the identity of the arbitrator. 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.**]***

If a dispute concerns administrative sanctions or offsetting, the beneficiaries must bring action before the General Court — or, on appeal, the Court of Justice of the European Union — under Article 263 TFEU.

1. Dispute settlement

As a general rule, JU GAs contain an Article 272 TFEU arbitration clause - referring **contractual disputes** (i.e. disputes on the interpretation, application or validity of the GA) to the European Court of Justice.

An Article 272 action is ONLY possible once the JU position is *final* (i.e. against confirmation letters, debit notes, etc.; NOT against audit reports, audit letters, pre-information letters, etc.).

For JU grants, actions must be brought against the JU (information is available in SyGMa).

For disputes of public law nature (i.e. which concern **administrative sanctions** or **offsetting**; *see Articles 44, 45 and 46*), actions must be brought before the European Court of Justice under Article 263 TFEU (NOT before any other court and NOT under Article 272).

⚠ **Public law measures** must ALWAYS be brought to the European Court of Justice under Article 263 TFEU (including actions brought by non-EU beneficiaries or beneficiaries not receiving JU funding).

⚠ All procedures are organised in a way that the beneficiaries will always be **informed** about what they can do if they disagree (**means of redress** information in the letters).

Specific cases (dispute settlement):

Non-EU beneficiaries — For non-EU beneficiaries, contractual disputes are normally referred to the competent courts of Brussels, Belgium. They can NOT choose another forum (So far NONE of the H2020 association agreements provides for the sole jurisdiction of the European Court of Justice.)

Disputes of public law nature remain before the European Court of Justice.

Beneficiaries **not receiving JU funding** (see Article 9) — Non-EU beneficiaries not receiving JU funding which are not eligible for funding are treated like non-EU beneficiaries eligible for JU funding (i.e. courts of Brussels), unless their national law explicitly provides that they cannot be subject to the jurisdiction of the Belgian courts. In this latter case (very exceptional), contractual disputes are referred to the Permanent Court of Arbitration.

Disputes of public law nature remain before the European Court of Justice.

International organisations — For international organisations, contractual disputes are referred to the Permanent Court of Arbitration (in line, for instance, with their PAGODA agreement, e.g. for the United Nations, the Financial and Administrative Framework Agreement (FAFA) with the United Nations[95]).

Disputes of public law will normally not arise, since international organisations are normally accorded immunity from public law decisions (under their constituent documents or international law). Such international organisations can therefore be subject only to contractual measures and to contractual dispute settlement (i.e. arbitration).

> For this reason, the JU will normally NOT adopt decisions on administrative sanctions *(see* Article 45*).*
>
> Similarly, offsetting will always be applied only as a contractual measure on the basis of Article 44 GA (NOT as a public law measure directly on the basis of Article 80(1) of the Financial Regulation No 966/2012).

For international organisations that have NO immunity, disputes of public law remain before the European Court of Justice.

[95] 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). Available at https://ec.europa.eu/europeaid/node/45445.

ARTICLE 58 — ENTRY INTO FORCE OF THE AGREEMENT

ARTICLE 58 — ENTRY INTO FORCE OF THE AGREEMENT

The Agreement will **enter into force** on the day of signature by the JU or the coordinator, depending on which is later.

SIGNATURES

For the coordinator	For the JU
[function/forename/surname] [electronic signature]	[forename/surname] [electronic signature]
Done in [English] on [electronic time stamp]	Done in [English] on [electronic time stamp]

1. Entry into force

The GA enters into force when the last of the following two signs:

- the coordinator
- the JU.

It is usually the JU who signs last.

I.3 Issues applicable to particular countries

For countries for which it has carried out a formal assessment of specific situations or their legal framework, the Commission will keep record of its official position.

See the *List of issues applicable to particular countries*