

LEGAL ASPECTS

Webinar on grant agreement
preparation – CBE JU Call 2023

Marta CAMPOS ITURRALDE
LEGAL MANAGER

6/02/2024



Core
Part

Datasheet

a summary of the specific data of the grant agreement

NEW!

1. General Data
2. Participant
3. Grant
4. Reporting, payment and recoveries
5. Consequences of non-compliance, applicable law and dispute settlement forum
6. Specific rules Annex 5 & Standard time-limits after project end

Articles

grouped in six chapters

- Chapter 1** – General (Articles 1-2)
- Chapter 2** – Action (Articles 3-4)
- Chapter 3** – Grant (Articles 5-6)
- Chapter 4** – Grant Implementation (Articles 7-26)
- Chapter 5** – Consequences of non-compliance (Articles 27-35)
- Chapter 6** – Final provisions (Articles 36-44)

Annexes

Annex 1 Description of the action

Annex 2 Estimated budget

Annex 3 Accession forms for beneficiaries

Annex 4 Model for the financial statement

Annex 5 - Specific rules (for Horizon Europe)

Annex 2a – Additional information on unit costs and contributions

Annex 3a – Declaration on joint and several liability of Affiliated Entities

Security (Article 13)

Ethics (i.e. research integrity) (Article 14)

Values (i.e. gender mainstreaming) (Article 14)

IPR (Article 16)

Communication, Dissemination, Open Science and Visibility (Article 17)

Specific rules for carrying out the action (Article 18)

recruitment and working conditions,

specific rules for access to research infrastructure actions,

specific rules for PCP and PPI procurements,

specific rules for co-funded partnerships,

specific rules for ERC actions,

specific rules for EIT-KIC actions,

specific rules for MSCA actions

specific rules for EIC actions

Three main obligations under Annex 5 concern CBE JU:

1. Private members obligation regarding IKAA and IKOP in the Grant Agreements (pag.131):

- When implementing JU actions, **the members and contributing partners of the Joint Undertaking must fulfil their obligations regarding contributions to the Joint Undertaking.** The description of the action in Annex 1 must include, for beneficiaries, affiliated entities, associated partners or other participants or third parties which are members or contributing partners, the estimated contributions to the action, i.e.:
 - in-kind contributions to operational activities ('IKOP'; if applicable)
 - in-kind contributions to additional activities linked to the action ('IKAA'; if applicable)
 - the contributions must be reported during the implementation of the action in the Portal Continuous Reporting tool

2. Contributions must comply with the following conditions (pag.132) :

- For Clean Aviation JU, SNS JU, Europe's Rail JU, **CBE JU grants**: if provided in the call conditions, **a certain percentage of the total costs of the action must be covered by contributions (IKOP, IKAA or FC)**

3. Communication and dissemination (pag.132): sentence + logo

- The project is supported by the [insert JU name] and its members [OPTION for actions with national contribution top-ups: (including top-up funding by [name of the national funding authority])].”

What types of costs?

[D.3 Transnational access to research infrastructure unit costs]
[D.4 Virtual access to research infrastructure unit costs]
[D.5 PCP/PPI procurement cost]
...



PERSONNEL COSTS

- ❖ Cost of **the time worked for the project** by:
 - **A.1** Employees
 - **A.2** Natural person under direct contract
 - **A.3** Seconded person
 - **A.4** SME owners and natural person beneficiaries



SUBCONTRACTING COSTS

- ❖ You **contract another entity to do part of the work allocated to you** in the description of the action



PURCHASE COSTS

- ❖ **Travel and subsistence costs** for trips necessary for the project
- ❖ **Equipment** used for the project. In most cases, only depreciation costs are eligible (but exceptions exist)
- ❖ **Other goods, works and services**



OTHER COST CATEGORIES e.g.

- ❖ **Financial support to third parties**
- ❖ **Internal invoices**
Cost charged internally from one department to another of the same beneficiary; but only if you have a defined cost accounting method



INDIRECT COSTS

- ❖ **25% flat rate** applied on most of the other budget categories. When reporting, the IT system will calculate this automatically!

Beneficiary

- Signs the grant agreement
- Has all rights and obligations

Associated partner

- Does work but can NOT declare costs

Subcontractor

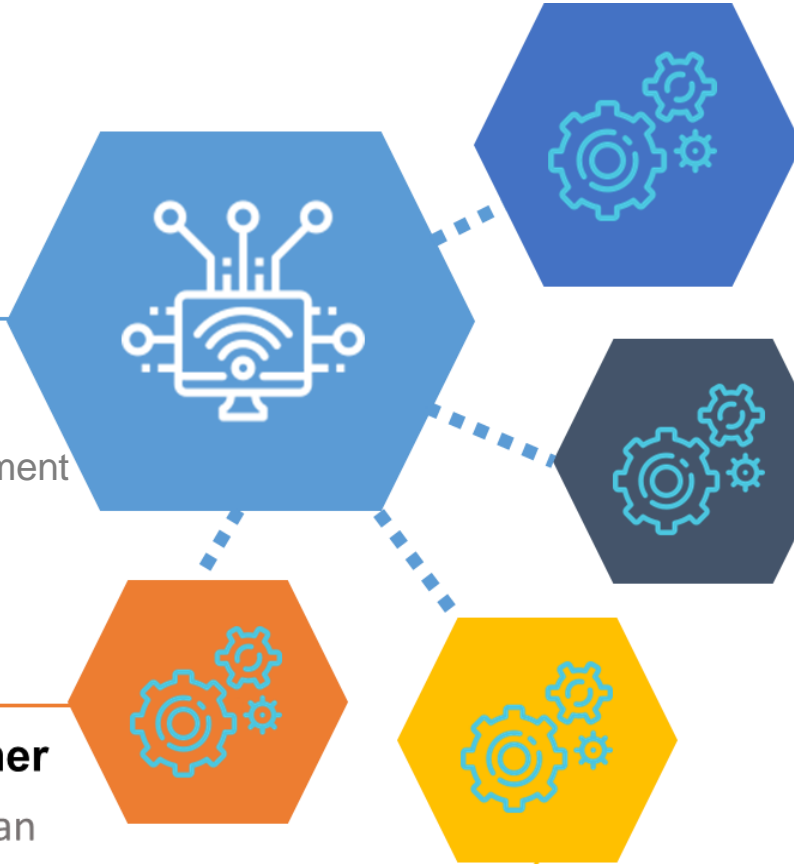
- Does work and invoices the beneficiary
- The beneficiary may declare the invoice

Affiliated entity

- With a legal or capital link with the beneficiary
- Does work and may declare costs

Third party providing contributions

- Does NOT do work just give in-kind contributions
- The beneficiary may declare the costs of the contributions



Beneficiaries & Coordinators

BENEFICIARIES

- **Signatories** → Accession form
- **Fully responsible** towards the granting authority for implementing the action and complying with all its obligation
- Jointly responsible for the **technical implementation**
- Must have the **appropriate resources**
- Must remain **eligible** under HE for the entire duration
- **Obligations:**
 - ❖ submit to the coordinator in good time: financial statements, technical reports, deliverables
 - ❖ inform the granting authority (and beneficiaries) of any events likely to affect or delay the action
 - ❖ submit via the Portal data and information related to the participation of their affiliated entities

COORDINATORS

- **Directly sign** the Grant Agreement
- Central **contact point** for the granting authority
- **Represents** the consortium (towards the granting authority)
- **Obligations**
 - ❖ monitor that the action is implemented properly
 - ❖ act as **intermediary** for all communications:
 - submit the prefinancing guarantees
 - request and review any documents before passing them to the granting authority
 - submit the deliverables and reports to the granting authority
 - inform the granting authority about the payments made to the other beneficiaries
 - ❖ distribute the payments received from the GA to the other beneficiaries without unjustified delay

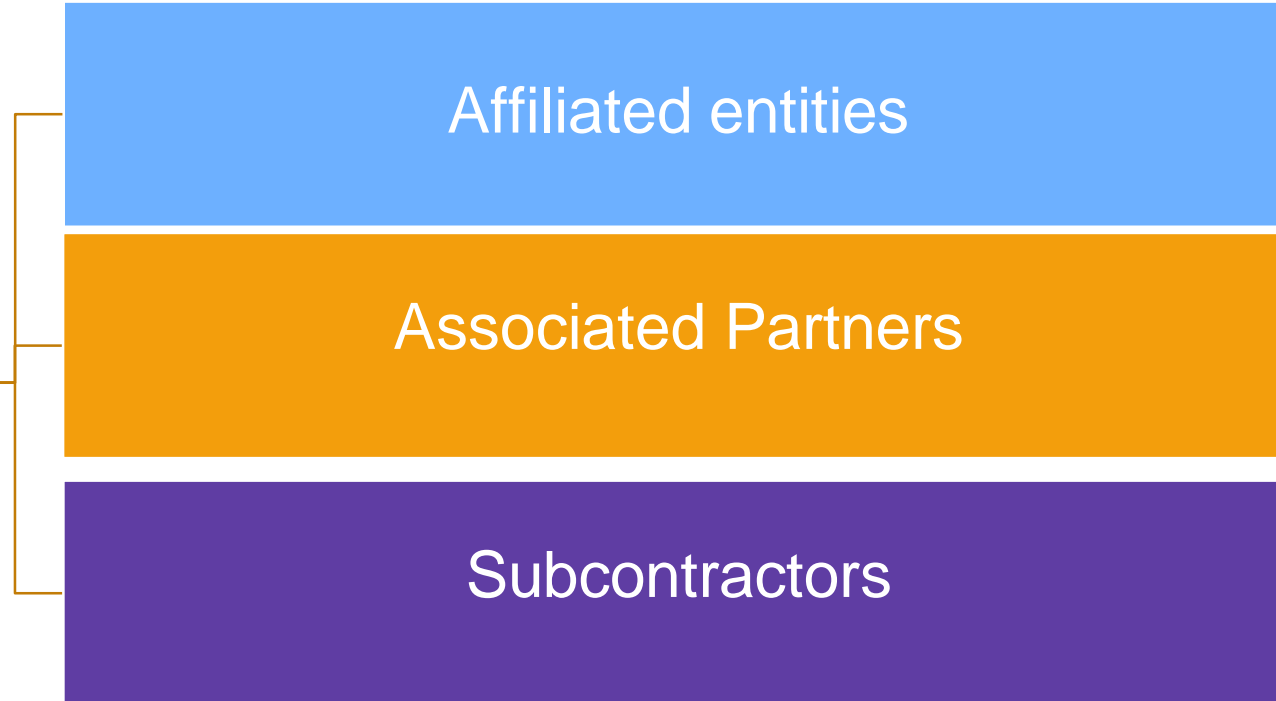
MAY NOT **delegate or subcontract** key tasks
EXCEPT > COO who are public bodies entities with **authorisation to administer**

Third parties carrying out work in the action

Participants in the project



Beneficiary



Affiliated entities




Article 187 (1)(b) of the EU Financial Regulation:

Entities *‘that have a link with the beneficiary, in particular **a legal or capital link**, which is neither limited to the action nor established for the sole purpose of its implementation’.*

Affiliated entities in Horizon Europe = Linked third parties in Horizon 2020:

(alignment of labelling/definition in the corporate context)

- Must be identified in GA in Article 8, their tasks must be mentioned in Annex 1 and their budget in Annex 2
- Same cost eligibility criteria than for beneficiaries

 They are therefore *de facto* treated like beneficiaries (*have their own financial statement, must provide their own CFS, must contribute to the technical report, must submit deliverables, etc*).

- Granting authority may request them to accept joint and several liability for their EU contribution

Affiliated entities



- Article 8 HE MGA
- Correspond to **'Linked third parties'** in Horizon 2020 MGA
- Features:
 - ❖ Must have a **legal or capital link** with the beneficiary, which is **neither limited to the action nor established for the sole purpose of its implementation**
 - ❖ Does work
 - ❖ Can declare costs for implementing the action tasks
- Must be identified in Article 8, their tasks must be mentioned in Annex 1 and their budget in Annex 2
 - *But do not sign the Grant Agreement!*
- Same conditions for participation and funding as beneficiaries
- They are therefore de facto treated like beneficiaries (*have their own financial statement, must provide their own CFS, must contribute to the technical report, must submit deliverables, etc.*)

- permanent legal structures
- contractual cooperation not limited to the action
- capital link:
 - direct or indirect control of the beneficiary
 - under the same control as the beneficiary
 - controlling the beneficiary



Other participants → Associated partners

- Article 9.1 HE MGA
 - Inherited from the '**International partner**' status in Horizon 2020 MGA
 - Must be identified in Article 9.1, their tasks must be mentioned in Annex 1 BUT → do not sign the grant agreement
 - Features:
 - ❖ Does work but **cannot** declare costs
 - ❖ Participate at its own costs
 - ❖ It can be linked:
 - either to one beneficiary
 - or with the whole consortium
- ➔ *Beneficiaries are responsible for the proper implementation of the tasks implemented by associated partners*
- Do NOT have to comply with eligibility conditions for funding
 - The **beneficiaries must ensure that some of MGA obligations also apply to AP** (i.e. Articles 11 (proper implementation), 12 (conflict of interests), 13 (confidentiality and security), 14 (ethics), 17.2 (visibility), 18 (specific rules for carrying out action), 19 (information) and 20 (record-keeping))
 - *Including the relevant conditions in the call or Annex 5*

!

**Consortium
agreement**



Other participants → Subcontractors

- **Do work** > Participate in the action, if necessary for the implementation Articles 6.2.C and 9.3 HE MGA
- Ensure best value for money (or lowest price) and avoid conflict of interests →
- Subcontracts concern the implementation of **action tasks** - parts of the project/project tasks that have been outsourced
 - ❖ Estimated costs and tasks must be identified in the budget and in **Annex 1** - *E.g.: Testing described in Annex 1 as an action task*
- **Simplified approval procedure allowed if:** (i.e. beneficiary flags the subcontracting at reporting stage)
 - if the use of subcontracting 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
 - Beneficiary bears the risk of rejection of costs
 - The eligible cost is the price charged to the beneficiary - invoice from the subcontractor that may be charged by the beneficiaries, under the conditions set out in Article 6 HE MGA
 - The costs will be included in Annex 2 as part of the beneficiaries' costs
 - Usually containing a profit margin for the supplier or subcontractors, but not for the beneficiary
- The beneficiaries are responsible for the proper implementation of the subcontracted action tasks by the subcontractors (proper quality, timely delivery, etc.)
- Subcontracting between beneficiaries is not allowed.
Subcontracting to affiliates is generally not allowed either

COSTS



Other third parties

Participants in
the project

“

Beneficiary

Purchase costs

In-kind contributions
(free of charge)

- May cover:
 - Travel, accommodation and subsistence (Article 6.2.C.1)
 - Equipment (Article 6.2.C.2)
 - Other goods, works or services, if necessary to implement the action (Article 6.2.C.3).

E.g.: CFS, consumables and supplies, promotion, dissemination, protection of results, translations, publications, etc

- must be declared as actual costs
- Ensure best value for money (or lowest price) and avoid any conflict of interests

”



Other participants → Third parties giving in-kind contributions



- ✓ In-kind contributions against payment and in-kind contributions free of charge are **both still eligible** under Horizon Europe
- ✓ However, under HE, **in-kind contributions** refers only to in-kind contributions free of charge

IN-KIND CONTRIBUTIONS AGAINST PAYMENT

- **No** more **specific** Article
- Instead, they can **still be declared** as:
 - Personnel costs for seconded persons (Art. 6.2.A.3)
 - Costs of renting equipment (Art. 6.2.C.2)
 - Purchase costs for other goods, works or services (Art. 6.2.C.3)
- Indirect costs calculated on top via the 25% flat-rate

IN-KIND CONTRIBUTIONS FREE OF CHARGE

- **Specific provisions (Article 6.1 and 9.2 HE MGA)** (stemming from Horizon Europe specific legal base)
- They must be declared by the beneficiary which use them under the relevant cost category (i.e. as if they were costs incurred by the beneficiary).
- Only **direct costs** must be reported
- **No more reference** to in-kind contributions not used in the beneficiary's premises
- Indirect costs calculated on top via the 25% flat-rate (with exceptions, like for internal invoicing)

In-kind contributions – both still eligible under HE !



FORMER H2020 CONCEPT 'IN-KIND CONTRIBUTIONS AGAINST PAYMENT'

- **No more special Article** (corporate approach)
- But **they can still be declared** as:
 - **Secoded persons** under **Personnel costs provisions**
 - **Or as renting costs for equipment** (if the in-kind contribution relates to an equipment provided by a third party against payment)
 - **Other types** as purchase of goods, works or services
- Indirect costs calculated on top via the 25% flat-rate



IN-KIND CONTRIBUTIONS FREE OF CHARGE

- **Specific provisions (Art 6(1) & Art 9(2)) HE MGA** (stemming from Horizon Europe specific legal base)
- They must be declared under the relevant cost category (i.e. as if they were costs incurred by the beneficiary).
- Only **direct costs** must be reported
- Indirect costs calculated on top via the 25% flat-rate (with exceptions, like for internal invoicing)



Overview of participants roles - AGA

TYPE	Works on 'action tasks'?	What is eligible for the beneficiary/ affiliated entity?	Must be indicated in Annex 1 GA?	Conditions for participation	GA article
Beneficiaries	YES	Costs	YES	Must be eligible	art 7
Affiliated entities	YES	Costs	YES	Must have a capital or legal link with a beneficiary and fulfil the same eligibility conditions	art 8
Associated partners	YES	n/a	YES	No specific conditions (APs do not receive funding).	art 9.1
Third parties contributing to the project	Participate in the action as contributors	n/a <i>(except HE: Costs)</i>	YES		art 9.2
Subcontractors	YES	Invoiced price	NO (only subcontracted tasks must be indicated)	Must be best value for money or lowest price and no conflict of interest	art 9.3
Third parties receiving financial support ²	Participate in the action as recipients.	Amount of support given	YES	According to the conditions in Annex 1 GA	art 9.4

In-kind contribution free of charge



Looking for more information?

Programming period

2021-2027



Horizon Europe (HORIZON)



Clear filter

Reference Documents

Grants

This page includes reference documents of the programmes managed on the EU Funding & Tenders portal starting with legal documents and the Commission work programmes up to model grant agreements and guides for specific actions.

Please select the programme to see the reference documents.

Procurement

Reference Documents related to tendering opportunities are published on [TED eTendering](#) in the calls for tenders.

Filter

Expand all

- + Legislation
- + Work programme & call documents
- + Grant agreements and contracts
- + Guidance
- + Templates & forms
- + Funding & Tenders Portal



**Circular
Bio-based
Europe**
Joint Undertaking

Contact us

info@cbe.europa.eu
www.cbe.europa.eu

Follow us



Subscribe



 Bio-based Industries
Consortium

 Co-funded by
the European Union