

Learning about HORIZON 2020: The Opportunities and Hands-On Knowledge


- Common Issues in the Grant Agreement and
How to Resolve Them

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- **Legal framework and Grant Agreement**
- **Legal and financial issues**
- **Specific Legal issues relevant to U.S. participants**



EU Financial Regulation
H2020 Rules for Participation
Work Programme

Grant Agreement (GA)

provides the rights and obligations
between the EC and the beneficiaries

Consortium Agreement (CA)

provides the rights and obligations
between the beneficiaries

Chapter 1: General

- Single article: subject of the agreement

Chapter 2: Action

- Action, duration and budget

Chapter 3: Grant

- Amount, reimbursement rates, eligible costs

Chapter 4: Rights and obligations

- To implement the action: resources, in-kind contributions, subcontracts
- Grant administration: reporting, payments, audits
- Background and results: access rights, protection of results, exploitation, dissemination
- Others: gender equality, ethics, confidentiality

Chapter 5: Division of roles

- Roles and responsibilities, internal arrangements

Chapter 6: Rejection, reduction, penalties, termination, etc

- Rejection, reduction, recovery and penalties
- Suspension and termination of the action

Chapter 7: Final provisions

- Accession, entry into force, amendments, applicable law

Annex 1: Description of the action

Annex 2: Estimated budget

Annex 3: Accession Forms, 3a & 3b

Annex 4: Financial statements

Annex 5: Certificate on the financial statements

Annex 6: Certificate on the methodology

Grant Agreement

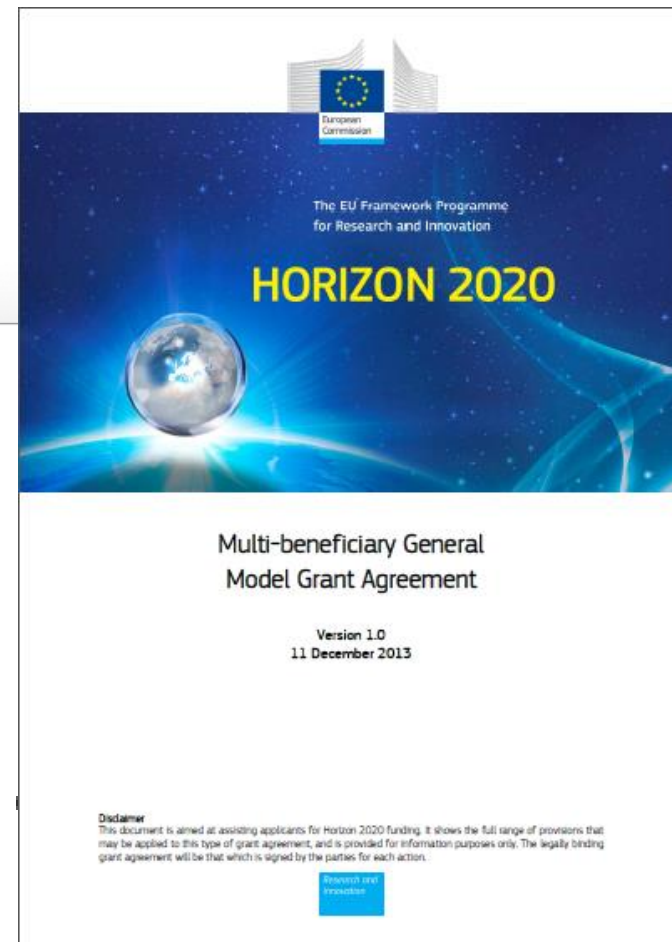
Model grant agreement

General Grant Agreement:

- European Research Council (ERC)
- Marie-Sklodowska-Curie (MSC)
- SME Instrument
- ERANET Cofund
- Pre-Commercial Procurement (PCP)/Public Procurement
- European Joint Programme Cofund
- Framework Partnerships

Annotated Model Grant Agreement:

http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf



Rules for Participation provides that:

„...**members of a consortium** participating in an action shall **conclude an internal agreement** (“consortium agreement“)...”

“...CA may stipulate inter alia the following:

- ✓ the internal organization of the consortium;
- ✓ the distribution of the Union funding;
- ✓ rules on dissemination, use and access rights (additional to RfP and GA);
- ✓ arrangements for settling internal disputes;
- ✓ liability, indemnification and“

Model: www.desca-2020.eu

‘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.*

Some examples:

- Public universities, colleges and research institutes
- Public bodies (ministries etc.)
- Non-profit associations (NGOs)
- Non-profit private companies

Advantages of NPOs in Horizon 2020:

- 100 % funding rate in innovation actions
- ‘additional remuneration’ eligible
- Non-refundable VAT eligible for all legal entities

- **Legal framework and Grant Agreement**
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Costs Reimbursement



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direct eligible costs (actual/unit)

personnel costs

material costs

travel costs

subcontracts

project specific costs

New VAT

open access costs

indirect costs (flat rate 25%)

ineligible costs

customs duty

exchange rate loss

debts

costs in other projects

inappropriate costs

Eligible Costs – general conditions (Art. 6 GA)



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- ✓ Incurred by the **beneficiary** (or involved Third Parties)
- ✓ Incurred **during the action** (except costs for last reporting)
- ✓ Entered as eligible costs in the **estimated budget** of the action
- ✓ **Identifiable and verifiable**
- ✓ Must be **necessary** for the action as described in the GA
- ✓ Conform to corresponding national laws
- ✓ Conform to **beneficiary's usual accounting practice**
- ✓ Good housekeeping practice (**efficiency**)



CALCULATING PERSONNEL COSTS

ACTUAL PERSONNEL COSTS

Calculation method defined in the model grant agreement

UNIT COSTS

Calculated by the beneficiary according to its usual accounting practices

(Average personnel cost)

Fixed by Commission for SME owners and natural persons without a salary

CALCULATION OF PERSONNEL COSTS AS ACTUAL COSTS



Personnel costs

=

hourly rate x hours worked for the project



Hourly rate („basic remuneration“):

annual gross salary (as stated on the payroll, incl. social security, taxes and ‚mandatory extras‘ -> no bonuses etc.!)

annual productive hours (three options)

It's not possible to charge more hours than the annual productive hours used to calculate the hourly rate.

OPTIONS FOR THE CALCULATION OF ANNUAL PRODUCTIVE HOURS



Option 1: „1720 fixed hours“:

- standard number, may be used by any beneficiary (pro-rata for part-time employees)
- advantage: simple method, no mistakes

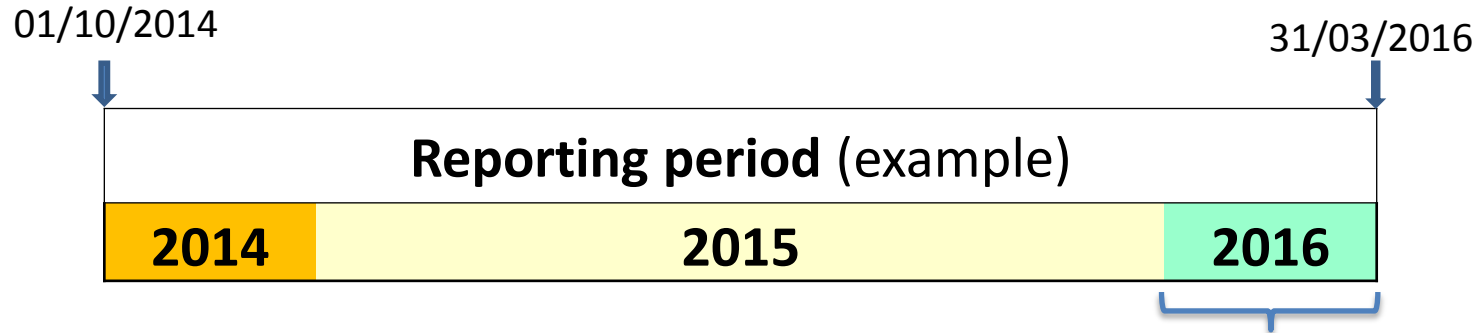
Option 2. „Individual annual productive hours“:

- calculation: **‘Annual workable hours’** of the individual employee (including annual leave and bank holidays)
+ overhours – absences (sick leave etc.)

Option 3. „Standard annual productive hours“

- calculated according to the usual accounting practises of the beneficiary
- the standard annual productive hours‘ must correspond to at least **90 % of the ,standard annual workable hours‘**

Use of the last closed financial year



Hourly rates of 2015 will also be used for these months

ADVANTAGES FOR THE BENEFICIARIES

- ➔ NO ADJUSTMENTS TO BE DECLARED IN THE NEXT PERIOD
- ➔ LEGAL CERTAINTY: NO DOUBTS ABOUT WHAT PERIOD AND WHAT DATA MUST BE USED FOR THE CALCULATION
- ➔ REMOVES ERRORS DUE TO INCORRECT CALCULATIONS FOR FRACTIONS OF A YEAR

3. Persons without a work contract:

- Costs are eligible under certain circumstances

4. Personnel seconded by a Third Party

- temporary transfer to a beneficiary as foreseen in Annex 1
- not necessarily working on the premises of the beneficiary
- person remains on Third Party payroll
- beneficiary reimburses the costs to the Third Party
- in-kind contribution against payment

Time-keeping records

For employees who spend **100 %** of their working time on the project, written confirmation is sufficient to confirm that they have worked exclusively on the project.

Travel costs and related subsistence allowances

of **employees and experts** participating in the project

- must be **necessary** for the action and
- in line with the beneficiary's **usual practises** on travel

Depreciation of equipment and infrastructure

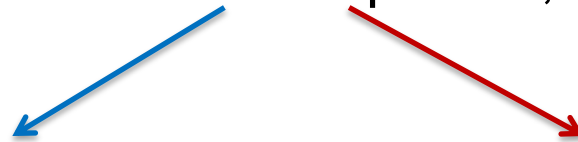
- the **pro-rata share** used by the project is eligible (even if bought before the beginning of the action)
- purchased in accordance with the rules for the purchase of goods
- **depreciation** according to usual standards and practises
- rent/lease possible (if not exceeding depreciation costs)

The VAT is **eligible** provided that it will not be deductible.

Purchase of goods, works and services (e.g. CFS, translations, catering, printing costs)

- need not be indicated in the GA
- best value for money or lowest price
- contracting authorities must comply with public procurement law
- indirect costs are eligible for the purchase of services (contrary to subcontracting)

Participation of experts in review panels, advisory boards etc.:



1. Travel and related subsistence costs:

- Considered as **other direct costs** (*D.1/Travel and related subsistence allowance*)
- Experts' participation must be **envisaged in Annex 1** of the GA
- The beneficiary may reimburse the experts or handle the travel arrangements itself (and be invoiced directly)

2. Fees

- Considered as **other direct costs** (*D.3/Costs of other goods and services*)
- Rules for 'costs of services' apply ('in principle')

IPR-Rules overview

CHAPTER 4, SECTION 3: Rights and Obligations related to **Background and Results**

| Title | Article GA |
|--|------------|
| Management of Intellectual Property <i>(only applicable for universities and public research org.)</i> | 23a |
| Agreement on Background | 24 |
| Access Rights on Background | 25 |
| Ownership of Results | 26 |
| Protection of Results Visibility of EU Funding | 27 |
| Exploitation of Results | 28 |
| Dissemination of Results Open Access Visibility of EU Funding | 29 |
| Transfer and Licensing of Results | 30 |
| Access Rights to Results | 31 |

Rules concerning background

Rules concerning project results

INTELLECTUAL PROPERTY: BACKGROUND - RESULTS

art. 24 + 26
GA

start of the
project

Background

any data, knowhow or information
(whatever its form or nature), including
any rights

- a) **held by the beneficiaries before** they signed the **GA and**
- b) is **needed** to implement the action or exploit the results

→ Grant Agreement governs access rights

e.g.
✓ prototypes
✓ publications
✓ data bases
✓ patents

Results

(FP7: „Foreground“)

any data, knowhow or information
(whatever its form or nature), including
any rights **that is generated in the
action**

→ Grant Agreement governs access rights, protection, exploitation, dissemination

General rule: each participant owns the results it generates

Joint ownership:

- **only** if participants have **jointly generated** results **and** it is impossible to determine the respective share of the work or to separate them for protection
- unless otherwise agreed, **each joint owner may grant non-exclusive licences** to third parties, without the right to sub-license, if the other joints owners are given:
 - prior notice, and
 - fair and reasonable compensation



ACCESS RIGHTS TO BACKGROUND AND RESULTS

art. 25 + 31
GA

Access right: **right to use background or results** of another beneficiary under the terms and conditions of the GA.

| | Access rights to background | Access rights to results |
|--|---|--------------------------|
| <i>If needed by another participant to implement project</i> | Royalty-free (unless otherwise agreed <u>before</u> accession to the grant agreement) | Royalty-free |
| <i>If needed by another participant to exploit own results</i> | Fair and reasonable conditions (to be agreed - may be royalty-free) | |

GENERAL OBLIGATIONS RELATED TO RESULTS



Obligation to disseminate results

- e.g. by scientific publications
- rules regarding Open Access/Open Data must be observed

See GA for details!

Obligation to protect results

- e.g. by patents

Obligation to exploit results (not applicable for partners that are not receiving EU funding)

- either **directly** (i.e. by the beneficiary) or
- **indirectly**: by licensing or transfer of ownership

N.B.: The EC may object to transfers or exclusive licenses to third parties (i.e. not beneficiaries) established **outside the EU/Associated Countries** if the transfer/licensing is not in line with EU interests.

Peer-reviewed scientific publications must be published Open Access either by:

- **Green OA/Self-archiving:** deposit of manuscripts & immediate/delayed OA provided by author (possible embargo period: 6/12 months) or by
- **Gold OA/OA publishing:** immediate OA provided by publisher, e.g. 'Author-pays' model; costs eligible for reimbursement (while project runs)

In addition, the programme areas participating in the **Open Research Data Pilot** must **also publish research data** (as specified by the Consortium in the Data Management Plan)

OPEN RESEARCH DATA PILOT: SELECTED PROGRAMME AREAS



Excellent Science

1. European Research Council
2. Future and Emerging Technologies (FET)
3. Marie Curie actions
4. Research infrastructures

**only e-
infrastructures**

Industrial Leadership

1. Key Enabling Technologies
2. Access to risk finance
3. Innovation in SMEs

**only
ICT**

Societal Challenges

1. Health
2. Bio-economy
3. Energy
4. Transport
5. Climate action
6. Integrative, innovative & reflective societies
7. Secure societies

Horizontal Areas

Spreading Excellence and Widening Participation
Science With and for Society

EIT
JRC

opt in – opt out
(e.g. to allow for
protection of results)

DISSEMINATION OF RESULTS: OPEN RESEARCH DATA PILOT

**New in H2020 –
pilot for selected
programme areas**

29.3 Open access to research data

[OPTION for actions participating in the open Research Data Pilot: Regarding the digital research data generated in the action ('data'), the beneficiaries must:

(a) deposit in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate — free of charge for any user — the following:

- access
- mine
- exploit
- reproduce
- disseminate

free of charge

'underlying data' (data needed to validate the results presented in the publication)

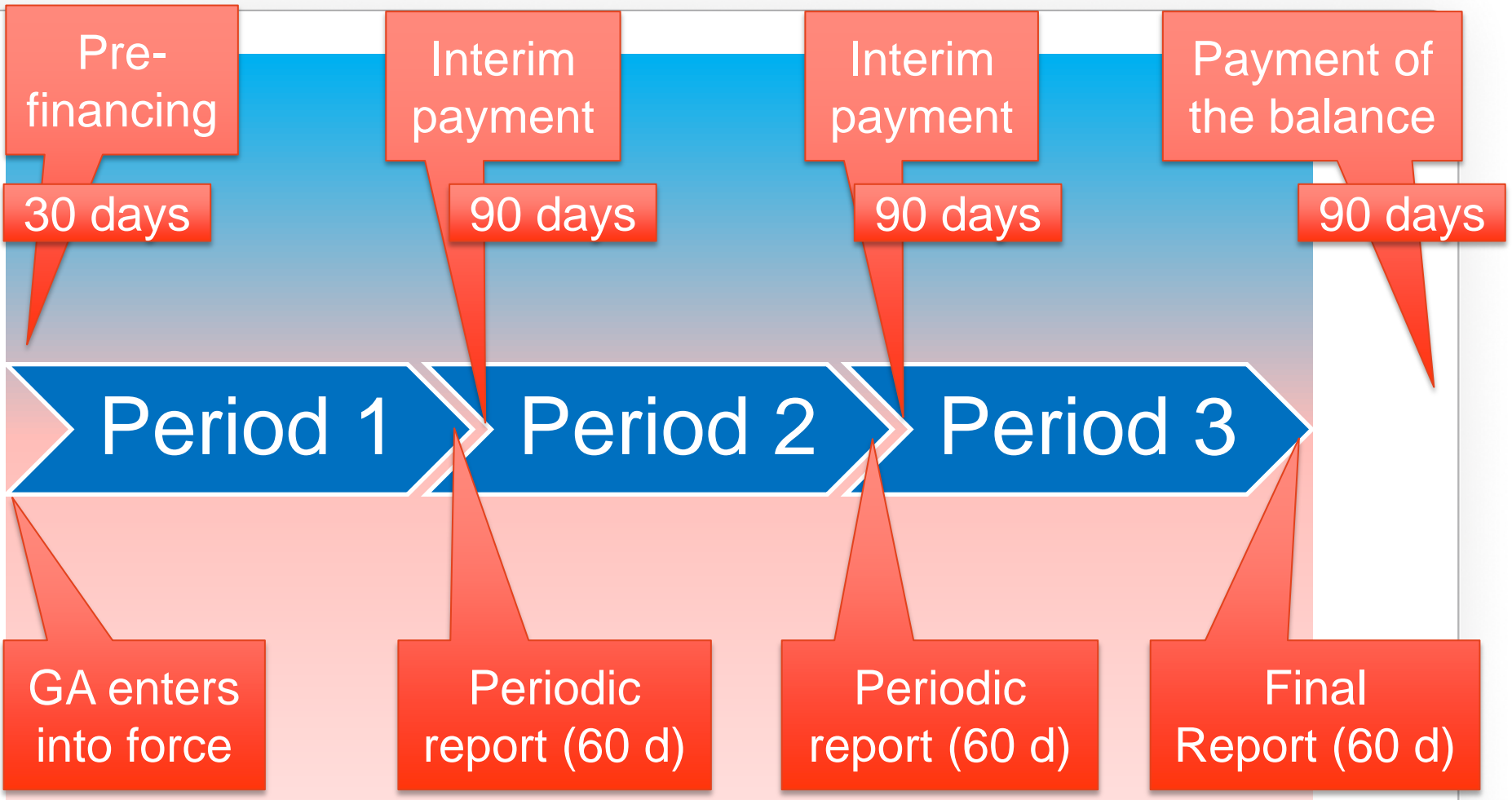
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other data as specified in the **Data Management Plan** (i.e. decided by the projects)

- The Consortium is jointly and severally liable for the **technical implementation** – also non EU-funded partners.
- **NO financial joint and several liability.**
(Guarantee fund).



Reporting requirements





Payment modalities and financial reporting (Art. 20, 21 GA)

- 1 pre-financing payment within 30 days
after start of action or entry into force of GA whichever is latest
 - ✓ includes 5% of maximum grant amount to the **guarantee fund**
- 1 or several interim payments within 90 days
of report reception and no time suspension
 - ✓ reimbursement of eligible costs for reporting period
 - ✓ subject to approval of report
- 1 payment of the balance within 90 days
of final report reception and no time suspension (Art. 47, 48 GA)

Pre- and interim payments (including the 5% for the guarantee fund) cannot exceed 90% of the maximum grant amount.



Payment modalities and financial reporting (Art. 20, 21 GA)

- Financial statements must be drafted in € (Art. 20.6 GA)
- **Beneficiaries with non-€ accounting:** currency conversion based on the **average** of the **daily exchange rates of the reporting period** as published in the C series of the Official journal of the European Union
<http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html>
- The final report contains a "**Certificate on the financial statement**" for each beneficiary that requests a total EU contribution **>= €325.000.-**
 - ✓ are to be submitted **only once at the end of the project.**



Audit, Checks, Reviews (Art. 22 GA)

- **Audits** = New balance between trust and control
=> **audit strategy** focused on **risk and fraud prevention**
- Possible within two years after „Balance Payment“;
Consequences: Rejection, reduction, recovery or other.
- **Checks** during the action on **proper implementation**.
- Reviews during and within 2 years after the payment of the balance
- Evaluation of the impact of the action (Art. 23 GA)
- **Financial viability check** only for **coordinators** (except for public bodies) with **EC contribution** to projects **\geq €500k**

- Only for funding **≥ 325.000 EUR**
Calculation of the quantitative threshold values incl. unit costs of personnel costs;
lump sums, flat rates and other unit costs are not taken into consideration.
- Are to be submitted **only once at the end of the project**

- **Legal framework and Grant Agreement**
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Legal rights and obligations depend on whether the U.S. organisation receives EU funding.

- ❖ **U.S. beneficiaries who will be granted EU-funding:**
all rights and obligations of the Grant Agreement apply

Please check if your organisation is legally entitled to sign the GA.

❖ **U.S. beneficiaries who will not be granted EU- funding:**

some obligations especially those related to cost reporting **will not apply** (Article 9 GA).

Other obligations will still remain:

IPR rules, transfer and licensing of results
access rights, dissemination of results incl. Open Access, ethics, administrative and financial penalties, liability for damages.

If US-project partner is **not** receiving EU funding...



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- ✓ ...must submit reports (but no financial reports)
- ✓ ...must keep records/other supporting documentation up to 5 years after final payment in order to prove:
 - the proper implementation of the action
 - scientific and technical implementation of the action in line with the accepted standards in the respective field.

BUT

- ✓ ...will not have a general obligation to exploit the results
- ✓ ...will not be subject to financial checks, reviews and audits.



Applicable law = EU law, supplemented by Belgian law.

Responsible Courts = EU General Court/Court of Justice for any dispute arising out of the GA.

Many U.S. Federal agencies/public research institutions are not allowed to accept EU/Belgium law and the jurisdiction of EU Courts.

- **Exception for non-EU beneficiaries:** if dispute between EC and non-EU beneficiary => the competent Belgian courts have sole jurisdiction.
- **Exception for non-EU beneficiaries without funding** => possibility of arbitration.

Administrative and financial penalties, liability for damages (Art 45 GA)



Beneficiaries found to have committed substantial errors, irregularities, fraud, serious breach of the GA or has made false declarations

=> liable to pay penalties

Beneficiaries must compensate (except force majeure) the EC for damage resulting from the implementation.

U.S. Federal agencies are not allowed to participate because U.S. law does not permit them to agree to penalty provisions.



EC right to object to transfers or licensing (Art 30.3 GA)

EC may object to the transfer of ownership/exclusive licensing of results, if:

- ✓ it is to a third party (in non-EU country) and
- ✓ it is not in line with EU interests regarding competitiveness, inconsistent with ethical principles or security considerations.

Could be problematic for U.S. affiliates established in the EU because of the possibility of hindering the transfer of project results.

„Affiliated entities” (Art. 14 GA)

...means any legal entity that is:

- under the direct or indirect control of a project partner, or
- under the same direct or indirect control as the project partner or
- directly or indirectly controlling a project partner

=> must be **an associated enterprise** (parent company / subsidiary company / affiliated company) of the project partner

- can only report their own actual costs
- **Name/assignment** of the „Third Party“ must be agreed in the GA

„Third party with a legal link to a beneficiary“

... any legal entity with a legal link to the beneficiary implying collaboration that is not limited to the action.

=> Ad hoc' collaboration agreements/contracts to carry out action work are therefore NOT covered by this case.

„Legal linked third Parties“

- can only report their own actual costs
- **Name/assignment** of the „Third Party“ must be agreed in the GA

! Linked third parties must fulfil the general conditions for participation and funding under Horizon 2020 (check WP) !

Subcontracting Costs (Art. 13 GA)

- Implementation of “certain” action tasks => as opposed to “Costs of other goods and services” (6.2 D3 GA)
- Best value for money or, if appropriate, the lowest price
- Mentioned in Grant Agreement (project description + estimated budget)
- Subcontracts not mentioned in Annex I are possible if they are approved by the Commission

Bilateral agreement (Please check subcontracting Art.13 GA)

- Legal relationship between only the U.S. organisation and one partner of the consortium (contribution to a work package or task).
- Project partner remains fully responsible to the EU for the work; consortium agreement acknowledges the U.S.-organisation's contribution.

NASA http://ec.europa.eu/enterprise/policies/space/files/research/principles_nasa_eu_en.pdf

In-kind contributions provided by third parties

- free of charge or against payment
- => eligible direct costs for the beneficiary if the costs incurred by the third party fulfil general and specific conditions for eligibility.

HOW TO BE PREPARED



- ✓ **Please check the (annotated) grant agreement**
regarding your rights and obligations
- ✓ **Please involve your relevant internal departments**
(cost accounting, legal, human resources, audit...)
- ✓ **Please adapt your internal procedure if necessary**
e.g. time recording procedures, personnel cost calculation,...
- ✓ **Please clarify in your organisation who should have which role in the Participant Portal**
(LEAR, FSIGN, LSIGN...)
- ✓ **Stick to the rules you set up for the consortium**
- ✓ **Clarify open questions at an early stage**

Further information

- **Participant Portal**
<http://ec.europa.eu/research/participants/portal/desktop/en/home.html>
- **Reference Documents (RfP, Annotated Grant Agreement, manuals)**
http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.htm
- **Horizon 2020 Webpage**
<http://ec.europa.eu/programmes/horizon2020>
- **Funding of applicants from non-EU countries**
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-3cpart_en.pdf
- **BILAT USA 2.0**
<http://www.euussciencetechnology.eu>



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