

Basic H2020 Legal Aspects for Applicants

Horizon 2020 Energy
Virtual Info Day

#H2020Energy

Alexandros Iatrou, Deputy HoU,
Unit G.6 – Administration and Finance,
DG RTD



- **Navigating the Work Programme**
 - **Types of action, partner eligibility, funding rates**
- **Basic Legal/Financial Aspects of the H2020 Model Grant Agreement**
 - **Cost eligibility and forms of costs**
 - **Budget transfers**
 - **Beneficiaries, third parties, (sub)contracts**

The legal framework of a H2020 action

H2020 Rules for Participation (RfP)

+

Work Programme (WP): General Annexes

+

Work Programme Possible *Specific* Conditions of Call or Topic

+

H2020 Model Grant Agreement =>

Signed Grant Agreement (only text binding for the parties)

Supported by exhaustive guidance in the H2020 Annotated Model Grant Agreement



According to the RfP, Work Programme may:

- Restrict eligibility of participants from third countries (e.g. security concerns, reciprocity)
- Introduce additional eligibility criteria
 - Number of participants, type of participant and place of establishment
- Lay down further details for the application of the award criteria, and specify weighting and thresholds
- Specify third countries that are eligible for funding
- Specify the funding rate for an action
- Specify that lump sums or unit costs (other than average personnel costs) can be used for an action, subject to prior separate Commission Decision
- Identify beneficiaries for grants without a call for proposals



WP General Annexes:

- A. List of countries eligible for funding**
- B. Standard admissibility conditions and related requirements**
- C. Standard eligibility conditions**
- D. Types of action: specific provisions and funding rates**
- E. Specific requirements for innovation procurement (PCP/PPI) supported by Horizon 2020 grants
- F. Model Rules of Contest (RoC) for prizes => reference to Participant Portal
- G. Technology Readiness Levels (TRL)**
- H. Evaluation rules**
- I. Budget flexibility
- J. Actions involving classified information
- K. Actions involving financial support to third parties
- L. Conditions related to open access to research data**



Research and Innovation Actions v. Innovation Actions (through collaborative projects)

Coordination and Support Actions (through calls for proposals or to identified beneficiaries)

Programme Co-fund Actions

- ERA-NET
- PCP-PPI
- Marie Skłodowska-Curie (separate Work Programme)
- European Joint Programme (not in current Energy WPs)

Other Types of Actions

- SME Instrument
- Financial Instruments
- Prizes
- Procurement (studies, conferences, specific services)



Types of Action: Research and Innovation/Innovation

Research and Innovation Actions – NO RfP definition but description in the WP annexes

They are actions with Research and Development activities as the core of the project intending to establish new scientific and technical knowledge and/or explore the feasibility of a new or improved technology, product, process, service or solution

- 100% funding rate

"Pure" Innovation Actions – RfP definition

*"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"*

- 70% funding rate (100% for non-profit legal entities)

At least three legal entities each established in a different Member State or an Associated Country

Types of Action: Coordination and Support Action

Actions 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 strategic planning, networking and coordination between programmes in different countries.

100% funding rate

At least one legal entity established in a Member State or in an Associated Country

Examples of specific eligibility criteria (all Energy 2017 WP)

EE-19-2017	PPI at 35% funding rate (instead of 20%)
EE-02-2017, EE-06-2016-2017, EE-09-2016-2017, EE-11-2016-2017, EE-13-2016, EE-15-2017, EE-18-2017, EE-23-2017, EE-24-2016-2017, EE-25-2016	CSA but three minimum participants
EE-16-2016-2017	CSA but three minimum participants Market surveillance authorities included
LCE-20-2016-2017	Off-take agreement requirement
SCC-1-2016-2017 SCC-02-2016-2017	Minimum "front-runner"/"follower" and "lighthouse"/"follower" cities

International Cooperation: Open to the World

Participation

- ✓ **Open for all legal entities established in third countries and for international organisations**

Restrictions only possible if introduced in the work programme.

- ✓ **For reciprocity reasons**
- ✓ **For security reasons/sanctions**

Research and Innovation

Funding

- ✓ **Third country identified in the Work Programme**
or
- ✓ **participation deemed by the Commission essential in the action**
- ✓ **or**
- ✓ ***when provided under a bilateral scientific and technological agreement***

WP General Annex A: funding/open to all except high-income countries + BRIC

The H2020 Model Grant Agreement



H2020 Grant Agreement

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, sanctions, termination, etc

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

Chapter 7: Final provisions

- Accession, entry into force, amendments, applicable law

The H2020 Model Grant Agreement



Annex 1: **Description of the action**

Annex 2 (+2a): **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**

FP7

Maximum reimbursement rates	Research and technological development activities (*)	Demonstration activities	Other activities
Network of excellence	50% 75% (**)		100%
Collaborative project(***)	50% 75% (**)	50%	100%
Coordination and support action			100% (***)

(*) Research and technological development includes scientific coordination.
 (**) For *beneficiaries* that are *non-profit public bodies, secondary and higher education establishments, research organisations and SMEs*.
 (***) The reimbursement of indirect eligible costs, in the case of coordination and support actions, may reach a maximum 7% of the direct eligible costs, excluding the direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the *beneficiary*.
 (****) Including research for the benefit of specific groups (in particular SMEs)

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One project = One rate

✓ For all beneficiaries and all activities in the grant.



✓ Defined in the Work Programme:

- Up to 100 % of the eligible costs;
- but limited to a maximum of 70 % for innovation projects (exception for non-profit organisations - maximum of 100%)
- Specific reimbursement rates for programme co-fund actions

Building the budget

ELIGIBLE COSTS		FORMS OF COST
D I R E C T C O S T S	Direct personnel costs	<ul style="list-style-type: none"> • Actually incurred costs ('actual costs') - Costs actually incurred, identifiable and verifiable, recorded in the accounts or • Unit costs – <ul style="list-style-type: none"> • on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices (average personnel costs_ • a fixed amount per unit determined by the Commission (SME owners)
	Direct costs of subcontracting	Actual costs
	<i>Direct costs of providing financial support to third parties (IF APPLICABLE)</i>	<i>Actual costs</i>
	Other direct costs	Actual costs
Indirect costs		Flat Rate - A percentage to be calculated on the eligible costs
<i>OPTIONAL specific unit/lump sum costs</i>		<i>Unit costs in Annex 2a/Lump sums</i>

Personnel costs

Costs for employees (or equivalent)

- personnel working for the beneficiary under an employment contract (or equivalent appointing act) and assigned to the action
- They must be limited to salaries (including during parental leave), social security contributions, taxes and other costs included in the **remuneration**, if they arise from national law or the employment contract (or equivalent appointing act).
- Possible eligibility of "**additional remuneration**" for non-profit entities

Costs for natural persons working under a direct contract:

- the person works under the beneficiary's instructions and, unless otherwise agreed with the beneficiary, on the beneficiary's premises;
- the result of the work carried out belongs to the beneficiary, **and**
- the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

Costs of personnel seconded by a third party against payment

Costs of SME owners of beneficiaries + Costs of 'beneficiaries that are natural persons' not receiving a salary

Unit costs based on Marie Skłodowska Curie scales – Annex 2a
Research and Innovation

Actual personnel costs: structure



TOTAL REMUNERATION

Standard remuneration

**Basic
Salary**



"Mandatory extras"

- Fixed by law or by contract to remunerate the main activity of the employee
- Payment not subject to discretion by the employer
- Not linked to a specific project

Examples: 13th month, hazardous work allowance, etc.

Additional remuneration

Other bonuses

- **Only eligible for non-profit legal entities**
- Subject to specific eligibility criteria
- Maybe triggered by the participation in a specific project



Hourly rate

Research and Innovation

Research
and
Innovation



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**Actual Personnel Cost =
Hours worked for the project x Hourly rate**

where

Hourly rate =

Annual personnel costs

Annual productive hours

- The hourly rate is to be calculated **per financial year OR monthly (NEW)**
- If the financial year is not closed at the time of reporting, the beneficiary must use the last closed financial year available.

Denominator: annual productive hours

1720 hours

Individual annual productive hours

- Formula: annual workable hours + overtime - absences

Standard annual productive hours

- According to the beneficiary's usual accounting practices;
Minimum threshold: annual productive hours \geq 90 % of the standard workable hours

Indirect costs: flat rate

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

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**Single model:
25 % Flat Rate**

THE FINE PRINT: 25% of eligible direct costs, from which are excluded: direct costs of subcontracting, costs of in-kind contributions not used on premises, direct costs of financial support, and (specific) unit costs if they include indirect costs

Other direct costs

Travel costs and related subsistence allowances

Depreciation costs of equipment, infrastructure or other assets (new or second-hand)

- Depreciated in accordance with international accounting standards and the beneficiary's usual accounting practices.
- Corresponding to the duration of the action and rate of actual use for the purposes of the action
- Costs of **renting or leasing** equipment, infrastructure or other assets if they do not exceed the depreciation costs – and no financing fees.
- Costs of equipment, infrastructure or other assets **contributed in-kind against payment** are eligible, if they do not exceed the depreciation costs and no financing fees

Costs of other goods and services

For instance, consumables and supplies, dissemination (including open access), protection of results, certificates on the financial statements (if they are required by the GA), certificates on the methodology, translations and publications.

 Not subcontracting

Capitalised and operating costs of 'large research infrastructure'

Ineligible costs

NEVER forget the general eligibility criteria
e.g. costs must be incurred by the
beneficiary/be related to the action/must
be reasonable, justified and must comply
with the principle of sound financial
management etc – Article 6.1 MGA

In particular, the following are not eligible:

(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**

(viii) excessive or reckless expenditure;

(ix) deductible VAT;

**(x) costs incurred during suspension of
the implementation of the action (see
Article 49);**

**+ Costs declared under another EU
or Euratom grant (including
grants awarded by a Member
State and financed by the EU or
Euratom budget and grants
awarded by bodies other than the
Commission/Agency
implementing EU budget)**

Budget transfers

Budget transfers and re-allocation	Y/N - Amendment needed?
From one beneficiary to another	Possible, no amendment needed
From one budget category to another	Possible, no amendment needed
Re-allocation of Annex 1 tasks	NOT possible, amendment needed
Transfers between forms of costs (actual costs, unit costs, etc.)	Possible (NEW), no amendment if within personnel costs NOT possible, amendment needed if between other cost categories
New subcontracts	Possible BUT amendment strongly advised

Budget transfers

Estimated eligible* costs (per budget category)							
A. Direct personnel costs				B. Direct costs of subcontracting	[C. Direct costs of fin. support]	D. Other direct costs	
A.1 Personnel		A.4 SME owners without salary				D.1 Travel	
A.2 Natural persons under direct contract		A.5 Beneficiaries that are natural persons without salary				D.2 Equipment	
A.3 Seconded persons						D.3 Other goods and services	
[A.6 Personnel for providing access to research infrastructure]						D.4 Costs of large research infrastructure	
Form of costs****	Actual	Unit ①	Unit ②		Actual	Actual	Actual
			XX EUR/hour				
	(a)	Total (b)	No hours	Total (c)	(d)	(e)	(f)
Beneficiary 1	500.000	0	100	3.213	150.000	0	325.000
Beneficiary 2	0	300.000	0	0	0	0	125.000

The beneficiaries must have the appropriate resources to implement the action

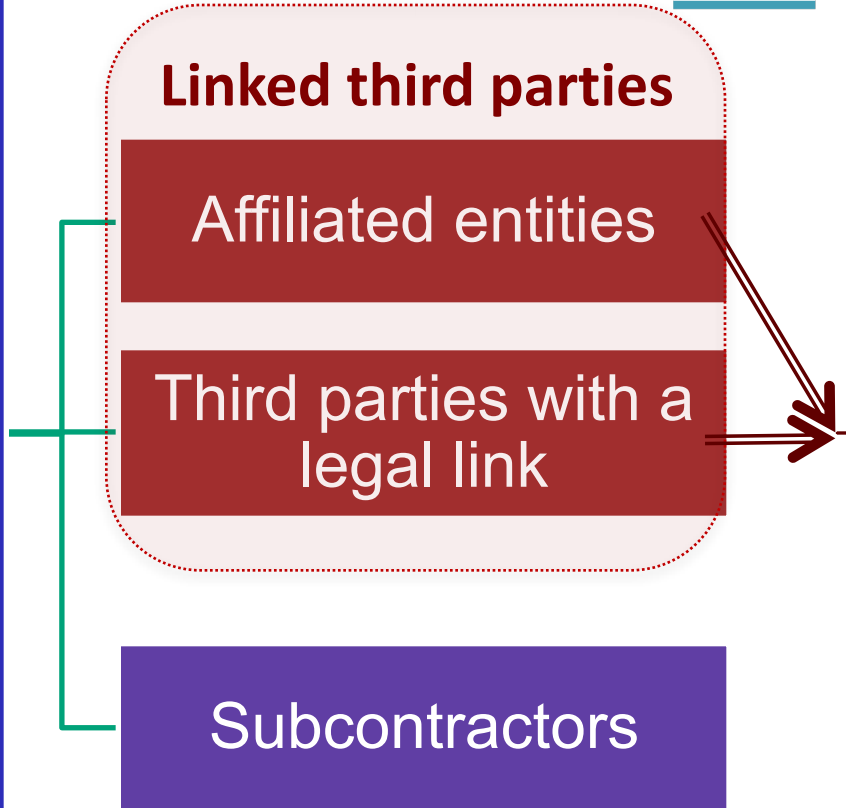
If it is necessary to implement the action, they may however:


- call upon "**Linked Third Parties**" to implement action tasks
- use **subcontracting** to implement action tasks – best value for money basis
 - Public authorities subject to procurement rules
- **purchase** goods, works and services – best value for money basis
 - Public authorities subject to procurement rules
- use **in-kind contributions** (resources) provided by third parties against payment or free of charge

In principle, all major costs, third party involvement and subcontracting to be indicated in the Description of the Action



Beneficiary

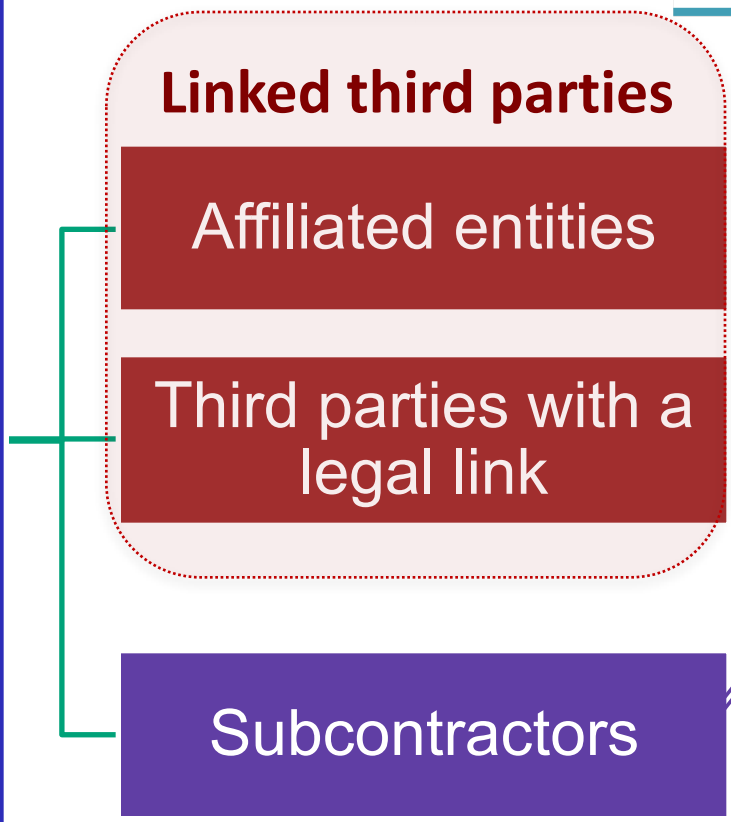


- Equivalent to FP7 Special Clause 10
- Must be identified in the GA
- Same cost eligibility criteria as beneficiaries
-  **NEW:** COM or Agency may request them to accept joint and several liability for their EU contribution
- **Article 14** MGA





Beneficiary



- Ensure best value for money and avoid any conflict of interests
- Estimated costs and tasks must be identified in the budget and Annex 1
- ⚠ but if not identified in Annex 1, Commission may still approve them (beneficiary bears the risk of rejection)
- **Article 13** MGA



Extension of GA obligations to linked third parties and subcontractors

- Record-keeping and supporting documentation (linked third parties only)
- Reporting (linked third parties only)
- Avoiding conflicts of interest
- Maintaining confidentiality
- Promoting the action and give visibility to the EU funding
- Liability for damages (subcontractors only)

Beneficiaries are advised to impose these obligations contractually to their linked third parties/subcontractors

Other Third Parties

NOT carrying out work




Beneficiary

Contracts
necessary for the
implementation

Contributions in kind

- For the purchase of goods, works or services
- Ensure best value for money and avoid any conflict of interests
- **Article 10** MGA

- Free of charge or against payment are eligible costs if they meet the eligibility conditions
- Must be set out in Annex 1
-  But if not identified in Annex 1, Commission may still approve them (beneficiary bears the risk of rejection)
- **Articles 11 & 12** MGA

Differences

Articles 10 & 13 - Contracts and subcontracts

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 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 beneficiary must award the contracts and subcontracts on the basis of best value for money (or lowest price) and absence of conflict of interests.

Article 14 - Implementation by linked third parties

The beneficiaries have a legal link with the linked third parties not limited to the action and not based on a contract for the purchase goods, works or services or the implementation of specific action tasks.

The eligible costs are only the costs of the linked third party, no profit is allowed (neither for the linked third party nor for the beneficiary).

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.

Differences (2)

Articles 10 - Contracts

Contractors act as economic operators selling to the beneficiary goods, works or services that are necessary for the action.

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).

Article 11 - In-kind contributions against payment

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 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).



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Income generated by the
action
(except for action's results)

Income generated from the
sale of assets purchased in the
GA

Receipts

In-kind contributions:
-specifically for the action
-received free of charge

Financial contributions
specifically assigned by
the donors to finance
the eligible costs

 **No-profit rule applied at project level, not per beneficiary!**

Intellectual Property Rights

- ✓ **Ownership for the participant**
- ✓ **Protection**
where appropriate
- ✓ **Exploitation**
- ✓ **Dissemination**
- ✓ **Transfer and exclusive licences outside the EU/Euratom/Associated Countries**
 - the grant agreement may foresee right to object **if a participant has received Union funding**
- ✓ **Access rights**
 - for implementation and for exploitation purposes (also for affiliated entities established in MS/AC)
- ✓ **Tailor-made provisions in the MGA for EURATOM**

Intellectual Property Rights

✓ **Additional exploitation/dissemination obligations**

(in the work programme)

✓ **Open access:**

- **obligatory for scientific publications and,**
- **to research data (NEW)**

✓ **Access rights:**

- **for the Union/Euratom under all parts of the programme** and,
- for MS under 'Secure societies',

✓ **Specific provisions:**

- for pre-commercial public procurement and
- for procurement of innovative solutions

Coherence and further simplification in H2020

Financial viability → Restricted to coordinators for projects \geq €500 k€

Audit certificates [→ Only for final payments/per beneficiary /for actual costs \geq €325 000 €
→ Optional Certificates on average personnel costs

Ex-post audits [→ Provisions in **Horizon 2020 Regulations!**
→ Commission's audits up to two years after payment of the balance
→ Audit strategy focused on risk and fraud prevention

Guarantee Fund → Continuity with FP7 – 5% withheld from pre-financing



Further Information

Participant Portal -

<http://ec.europa.eu/research/participants/portal/desktop/en/home.html>

Horizon 2020 Documents

http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

Horizon 2020 On-line Manual

<http://ec.europa.eu/research/participants/portal/desktop/en/funding/guide.html#>

Questions? *Research Enquiry Service* <http://ec.europa.eu/research/enquiries>



Thank you very much for your attention!

Find out more:
www.ec.europa/research/horizon2020

