



FCH JU GRANT AGREEMENT

COORDINATORS' DAY
Brussels, September 23rd 2016

Georgiana Buznosu



www.fch-ju.eu

Legal framework of a H2020 project

1.
 - EU Financial Regulation
 - H2020 Rules for Participation
 - Applicable Work Plan

2. Grant Agreement (GA)

Governs the relation between the funding body and the beneficiaries

3. Consortium Agreement (CA)

Governs the relation between beneficiaries

STRUCTURE OF THE GA

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, 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

FCH JU GRANT AGREEMENT ANNEXES

Annex 1: Description of the Action

Annex 2: Estimated Budget

**Annex 3: Accession Forms, 3a, 3b (*)
& 3b**

Annex 4: Financial Statements

Annex 5: Certificate on the Financial Statements

Annex 6: Certificate on the Methodology

Annex 3a - Joint and several liability
Annex 3b –Administrative Arrangement

NOT LEGALLY BINDING

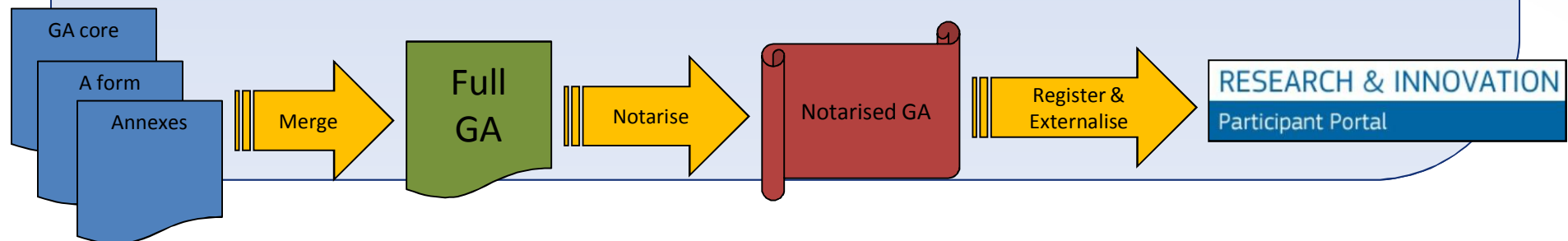
GRANT AGREEMENT SIGNATURE

Electronic signature (no more paper)

- Of the Grant Agreement, Accession Forms
- Of the Amendments
- Financial Statements and Technical reports

Communication between the FCH 2 JU and the Beneficiaries

- Through the Participant Portal and via Compass
- Electronic-only submission of Reports



NOT LEGALLY BINDING

OVERVIEW



HORIZON 2020

GRANT AGREEMENT yyyyyyy



Grant Agreement
DATA SHEET

1. List of beneficiaries and third parties
2. Duration and start date
3. Reporting periods
4. Reimbursement rates
5. Estimated eligible costs
6. Receipts
7. Reporting: periodic and final
8. Payments: pre-financing, interim and final
9. IPRs

NOT LEGALLY BINDING

1. List of beneficiaries and linked third parties

↳ List of beneficiaries

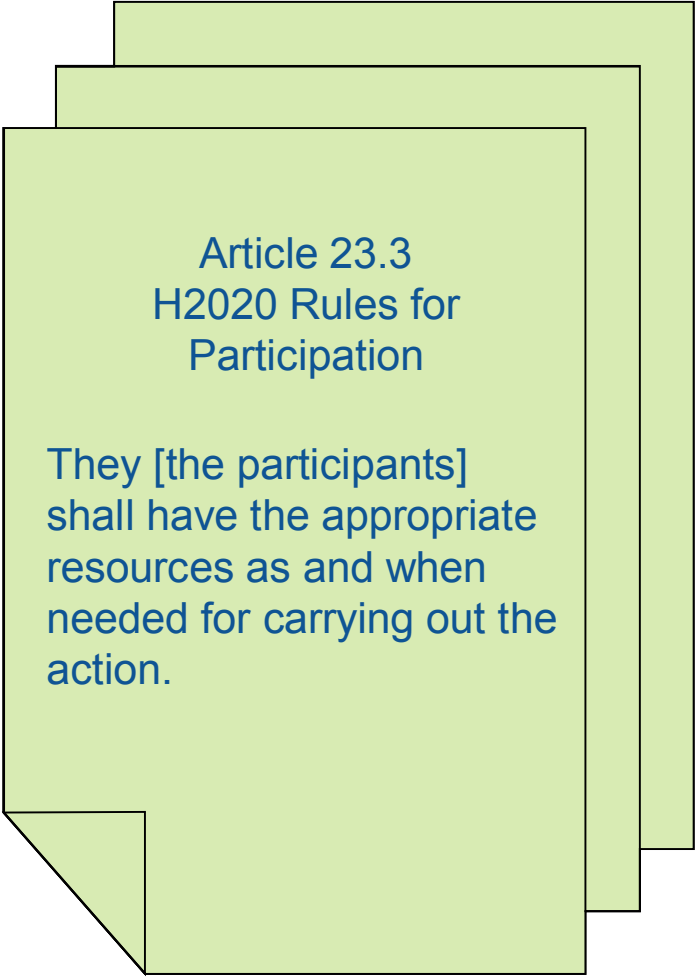
- Coordinator + beneficiaries
- Appears in the preamble of the GA (before the articles)
- Options: beneficiaries not receiving EU funding

↳ Third parties

- Will appear in Articles 10 -14

Who are the third parties?

1.Third parties



Article 23.3 H2020 Rules for Participation

They [the participants]
shall have the appropriate
resources as and when
needed for carrying out the
action.

However, as an exception, where it is necessary for the action, the participants may:

- award subcontracts for carrying out certain elements of the action
- call upon linked third parties to carry out work under the action
- use resources made available by third parties

... according to the conditions set out in the grant agreement.

1. Third parties: basics

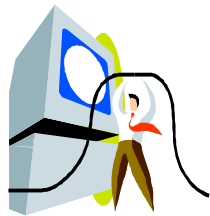
⇒ What is a third party?

↳ A legal entity which carries out work of the action, supplies goods or provide services for the action, but which did not sign the grant agreement

⇒ What types of third parties?

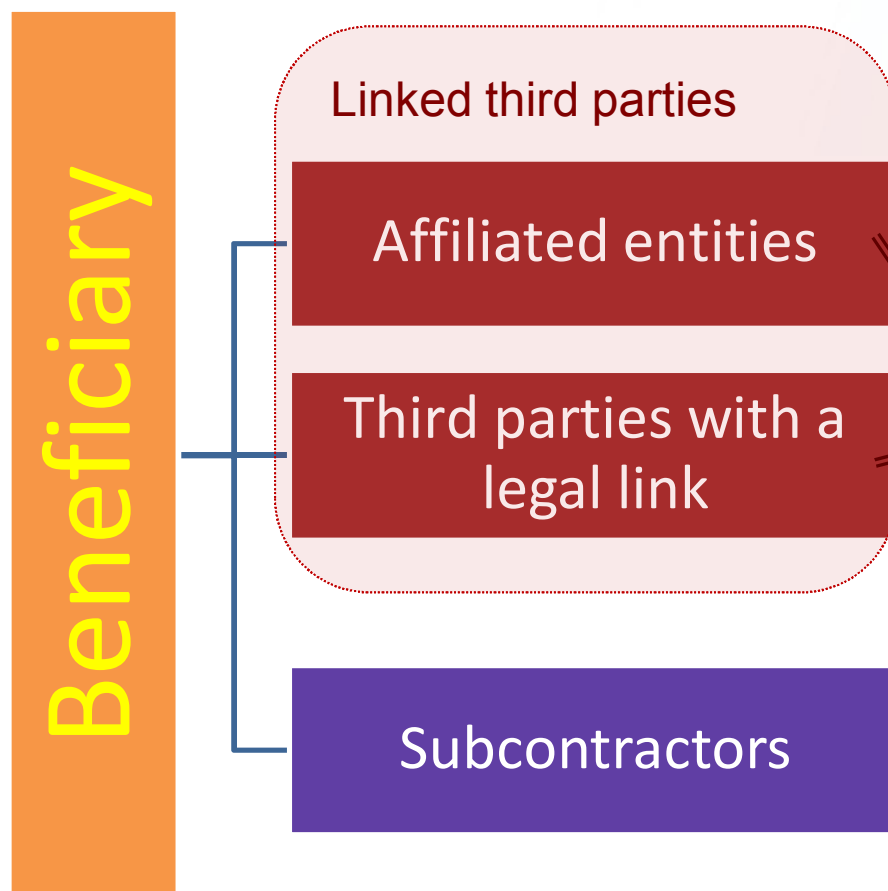


1. Third parties directly carrying out part of the work described in Annex 1



2. Third parties providing resources: goods, works or services necessary for beneficiaries to carry out the work described in Annex 1; or contributing in-kind

1 Third Parties carrying out work in the action: Linked third parties



- Must be identified in the GA
- Same cost eligibility criteria as beneficiaries
- FCHJU may request them to accept joint and several liability for their EU contribution

Where?

- **Article 14** MGA
- **Section 4.2** of DoA
- **Annex 2**

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

'control' = >50 % shares or majority voting rights or
decision-making powers

A legally established relationship **not** specifically
created for the Grant Agreement.

It may be in the framework of a legal structure (e.g.
the relationship between an association and its
members) or through an agreement or contract (not
limited to the action).

1. Linked third parties in practice

➡ In **section 4.2** of the Annex 1 - DoA:

In the GAP phase, you must identify for each beneficiary:

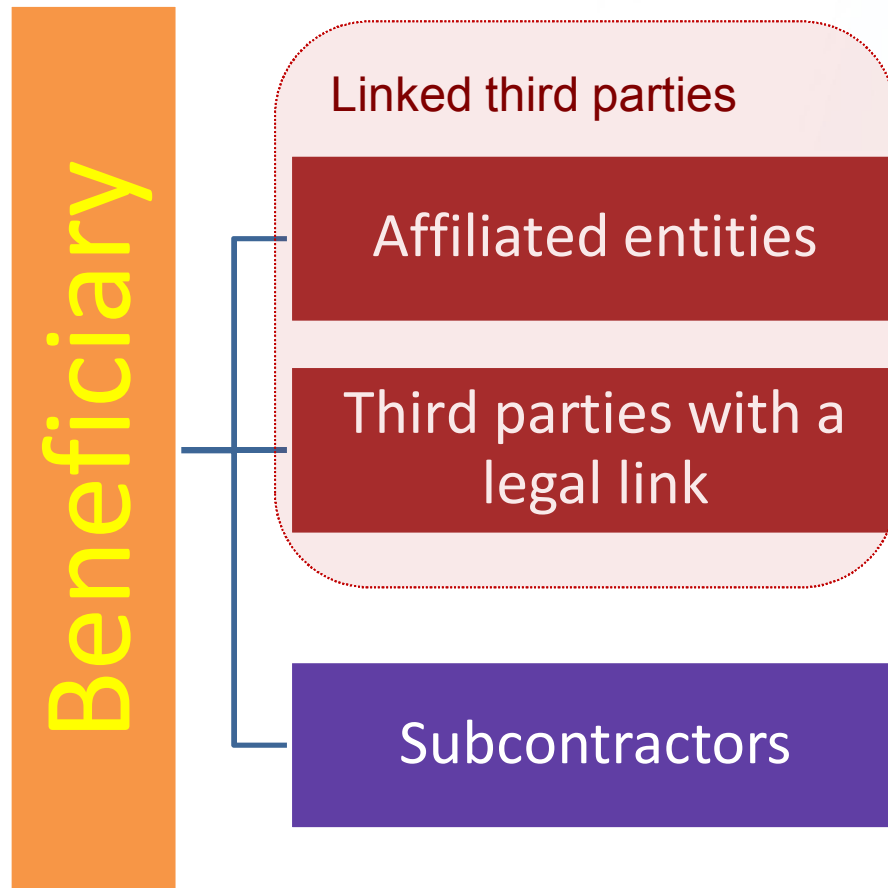
- **the linked third party** / affiliate
- all **tasks** to be undertaken by it
- its estimated **budget – separate from beneficiary**
- in the same manner as for a beneficiary.

➡ The estimated costs must be identified **in Annex 2** (Budget Overview) to the GA as well.

➡ Separate ***Instructions*** will be provided

1. Third Parties: carrying out work in the action

Subcontractors



- Ensure best value for money and avoid any conflict of interests
- Subcontracting between beneficiaries is **not allowed**. Subcontracting to affiliates is generally not allowed either
- Estimated costs and tasks must be identified in the budget and Annex 1
- if not identified in Annex 1, FCH JU may still approve them (NB: beneficiary bears the risk of rejection)

Where?

- Article 13 MGA
- Section 4.2 of DoA (Annex 2)
- Annex 2

Subcontracting: characteristics

- Based on **business conditions** (includes profit)
- No hierarchical subordination, no direct supervision
- Responsibilities **lie with the beneficiary**
- No rights and obligations vs. the FCH 2 JU or the other beneficiaries
- BUT the beneficiary must ensure that its subcontractors **can be audited** by the Commission/Agency, OLAF and the ECA
- Beneficiaries that are 'contracting authorities' must comply with applicable national law on **public procurement**

Subcontracts in practice

➡ In **section 4.2** of the Annex 1 - DoA:

In the GAP phase, you must identify for each beneficiary subcontracting:

- **Tasks** to be carried out by subcontractor
- Estimation of **cost** for each subcontract;
- Explain the **need** for subcontracting
- How will the subcontractor be **selected** ('best value-for-money' principle, and absence of conflict of interest)
- In case of **existing framework contract** or subcontracts, please indicate name of sub-contractor and be ready to show the contract if requested.

Eligibility conditions!

➡ The estimated costs must be identified **in Annex 2** (Budget Overview) to the GA.

➡ Separate ***Instructions*** will be provided

1. Third Parties: Contracts

Beneficiary

Contracts
necessary for the
implementation

Contributions in kind

- For the purchase of goods, works or services (limited in costs and scope)
 - Ensure **best value for money** and avoid any conflict of interests
 - Depreciation and percentage of use
 - Framework contracts insufficient as basis
 - Contracts between beneficiaries: not allowed as against RfP – the beneficiary who provides the goods/ services should charge the costs of providing, not the price
 - Contracts with affiliates: only if it complies with BVFM!
 - Generate 25% indirect costs
- => A contractor **does not carry out a task**, but provides what is necessary for it
- Article 10 MGA
 - Section 3.4 of Annex I

1. Contracting: Characteristics

Contracts do not cover the implementation of action tasks, but they are necessary to implement action tasks by beneficiaries.

Examples of contracts:

- Contract for purchasing a computer (purchase of goods)
- Contract for an audit certificate on the financial statements (purchase of service)
- Contract for translation of documents (purchase of service)
- Contract for an IPR consultant (purchase of service)
- Contracts for dissemination – costs of open access (purchase of service)
- Contracts for purchasing consumable/ supplies (purchase of goods)
- Contracts for logistic support (organisation of the rooms; catering) - (purchase of service)
- **Setting up a website, if not specifically identified in Annex 1 as a task in the project**

=> to be reported as “other direct costs”

1. Contracting - in practice

➡ In **section 3.4** of the Annex I - DoA:

Specify for each beneficiary planning to do so the following:

- **Object** of the purchase
- Estimation of **cost**
- How the supplier will be **selected** ('best value-for-money' principle; absence of conflict of interest; extra conditions for contracts higher than 125.000 euros)
- If asset in your accounts: how you will **depreciate** it (the depreciation will be considered as your costs for the project).

➡ The estimated costs must be included in **Annex 2** (Budget Overview) to the GA.

➡ Separate ***Instructions*** will be provided

Contractors and Subcontractors: how to differentiate?

Article 10 <u><i>Contracts to purchase goods, works or services</i></u>	Article 13 <u><i>Subcontracts</i></u>
These contracts <u>do not cover the implementation of action tasks</u> , but they are necessary to implement action tasks by beneficiaries.	Subcontracts <u>cover the implementation of action tasks</u> ; they imply the implementation of specific tasks which are part of the action and are described 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.

1. Third Parties: Contributions in kind

Beneficiary

Contracts
necessary for the
implementation

Contributions in kind

- Free of charge or against payment - eligible costs if they meet the eligibility conditions (art. 6)
- Must be set out in Annex 1
- if not identified in Annex 1, FCH 2 JU may still approve them (NB: beneficiary bears the risk of rejection)
- **Articles 11 & 12 MGA**
- **Section 4.2 of DoA**

Third parties contributing in kind in practice

➡ In **section 4.2** of the Annex I - DoA:

Specify for each beneficiary planning to do so the following:

- **Subject** of the in-kind contribution
- **Identity of the third party** that will contribute in-kind
- **Estimation of the costs** budgeted for the in-kind contribution and type of contribution (personnel, use of lab etc).
- Whether the beneficiary will reimburse (partially or completely) the third party

➡ The estimated costs must be identified in **Annex II** (Budget Overview) to the GA.

➡ Separate ***Instructions*** will be provided

2. DURATION AND START DATE

Duration:

in months, established in Article 3 GA

Start Date:

established in Article 3 GA, always the first day of a month

⇒ By default: the month following the entry into force

⇒ Only if justified: fixed date

↳ General rule: later than the date of entry into force (signature)

↳ Exceptionally: between the date of the submission of grant application and the entry into force

3. REPORTING PERIODS

- ↳ Reporting periods are set out in Article 20.2
- ↳ As a general rule, a reporting periods should last max.18 months.
- ↳ The number of reporting periods is normally 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



If max. amount of the grant > 5 M€ and duration of reporting periods >18 months, a specific annual financial report would be required (see Article 20.5(Option that will be added): coordinator must inform the JU by year end of the cumulative expenditure)

4. REIMBURSEMENT RATES



**One project = One
rate
for research actions**

- ✓ The same for all beneficiaries and activities in the grant.
- ✓ Defined in the Work Programme:
 - Up to 100 % of the eligible costs for **research actions**;
 - Up to 70 % for **innovation actions** (exception for non-profit organisations – up to 100%).

Indirect costs



**Single model:
25 % Flat Rate**

5. Eligible costs: Forms of costs

Actual costs

- Costs actually incurred, identifiable and verifiable, recorded in the accounts, etc.(article 6.1 MGA)

NEW: non-deductible VAT paid is also eligible

Unit costs

- A fixed amount per unit determined by the Commission.
Example: SME owners' unit cost
- For average personnel cost (based on the usual accounting practices)
- Article 6.1 b)

Flat rate

- A percentage to be calculated on the eligible costs
Indirect costs = 25 % Direct costs

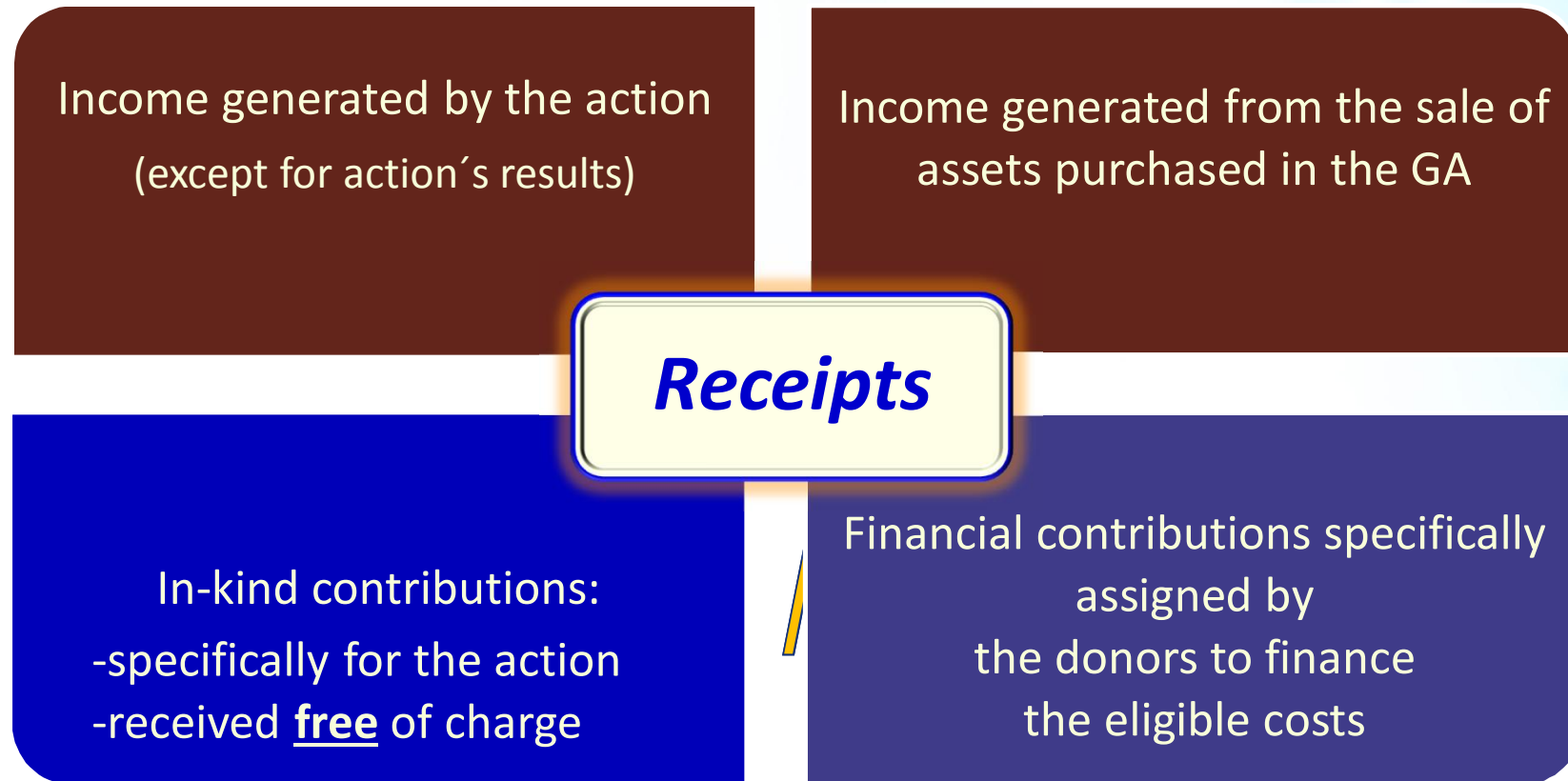
NOT LEGALLY BINDING

5. Forms of Costs vs Budget Categories

FORMS OF COSTS	BUDGET CATEGORIES				
	DIRECT COSTS			INDIRECT COSTS	SPECIFIC CATEGORIES OF COSTS
	Personnel	Subcontracting	Other		
Actual costs	✓	✓	✓	✗	✗
Unit costs	Yes for - Average personnel costs - SME owners & natural persons without a salary	✗	✗	✗	Yes if foreseen by Comm. Decision
Flat-rate costs	✗	✗	✗	✓	✗

NOT LEGALLY BINDING

6. Receipts (Article 5.3.3)



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



Need to be mentioned:

- ✓ in the DoA – section 3.5
- ✓ in the periodic/final reporting

7. Reporting: periodic report (Art 20)

Periodic report

⇒ To be submitted by coordinator **60 days after end of the reporting period**

Periodic Technical Report

- ✓ Explanation of the work and overview of progress
- ✓ Detail the exploitation and dissemination of results
- ✓ summary for publication
- ✓ questionnaire

Periodic Financial Report

- ✓ Explanation of use of the resources + subcontracting + in-kind contributions for each beneficiary
- ✓ Individual Financial Statement per beneficiary– NB: receipts must be included
- ✓ Periodic Summary Financial Statement

7. Reporting: final report

Final report

⇒ To be submitted by coordinator 60 days after end of last reporting period

Final Technical Report

- ✓ overview of results and their exploitation & dissemination
 - ❖ To include: updated plan of additional activities performed
- ✓ summary for publication
- ✓ conclusions and socioeconomic impact

Final Financial Report

- ✓ Summary Financial Statement
- ✓ Certificate on Financial Statement (if needed)

6. Payments

	Time-to-Pay	From
One Pre-financing	30 days	The latest between starting date and entry into force
→ Retention 5 % of maximum grant for the Guarantee Fund		
Interim Payments	90 days	From reception of periodic report
→ Based on financial statements (EU contribution= eligible costs approved * reimbursement rate)		
→ Limit = 90 % of the maximum grant (Retention 10%)		
REMARK : also 5% kept in Guarantee fund => De facto: in total 15% retention.		
Payment of the Balance	90 days	From reception of final reports

8. IPRs, exploitation and dissemination

2. OWNERSHIP

- ❖ **General rule:** each participant owns the results it generates.
- ❖ **Joint ownership:** only if results are jointly generated results and it is impossible to determine the respective share of the work or to separate them for protection:
 - Joint owners must reach an agreement,
 - Each joint owner may grant non-exclusive licences to third parties, without the right to sub-license, if other joint owners are given prior notice & fair and reasonable compensation.
- ❖ **Rights of employees & third parties.**

8. IPRs: Terminology

Results: any tangible or intangible output of the project, including any attached rights.

Exploitation: use of results

- i. in further research;
- ii. in developing, creating, or marketing products, services or processes, or
- iii. in standardization activities

Dissemination: - public disclosure of results by any means, including by scientific publications (open access is mandatory)

- FCH 2 JU support: any dissemination (also patent applications) must indicate EU funding (for visibility and traceability reasons).

Access rights: rights to use results or background

9. IPRs: Open Access

Open access to publications: (art 29.2 MGA)

- Obligation to provide open access to scientific **publication** through the deposit in a repository;
- Open Access Infrastructure for Research in Europe: www.openaire.eu
- The obligation extends to the **bibliographic metadata**.

Bibliographic metadata must include:

- The terms “**Fuel Cells and Hydrogen 2 Joint Undertaking**”, “**European Union**” and “**Horizon 2020**”
- The **name of the action**, acronym and grant number
- The **publication date**, and **length of embargo period** if applicable
- A **persistent identifier**

9. IPRs: Access Rights

	<i>a participant must grant access to its <u>background</u></i>	<i>a participant must grant access to its <u>results</u></i>
<i>if needed by another participant to implement project</i>	<i>Royalty-free unless otherwise agreed before accession to the grant agreement</i>	<i>Royalty-free</i>
<i>if needed by another participant to exploit own results [*]</i>	<i>Fair and reasonable conditions (to be agreed and may be royalty-free)</i>	

ADDITIONAL INFO:

Participant Portal

At: <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
FOR YOUR ATTENTION !

