Amendments to Grant Agreements

NCP Academy Training on legal & financial aspects in ERC projects
29/30 March 2017, Bonn (Germany)
Liane Lewerentz
AGENDA

• Amendment to the Grant Agreements
  ➢ Definition, Conditions, Timeframe, Types
  ➢ Amendments steps
  ➢ Decision, Effect date

• Exercise
What is an amendment?

Amendment = Legal act modifying the commitments initially accepted by the parties

It may:
- modify provisions of the GA,
- create new rights and obligations on the contracting parties or third parties.

Consequences:
- The amended provisions become an integral part of the GA
- All other provisions remain unchanged and continue to have full effect
Amendments may not result in changes that — if known before awarding the grant — would have impact on the award decision.

- eligibility and selection criteria (e.g. ethical aspects)
- principle of equal treatment of applicants (e.g. PI not employed by HI)
- modifications in the action and/or budget which may have affected the assessment
- compliance with the framework regulations, and the GA itself
Timeframe to introduce an amendment

Requests will be introduced **before the end of the action** (i.e. date set out in Article 3)

**Exception:** After the end of the action in exceptional cases (e.g. change of HI/bank account to make the payment of the balance)

Requests will be submitted **sufficiently in advance** (to allow preparation and proper analysis before the changes are due to take effect)
Reasons for having an amendment

- Changes for the HI
- Changes other beneficiaries
- Changes of financial issues
- Changes of project implementation

Source: ERCEA/COM
<table>
<thead>
<tr>
<th>Types of amendments</th>
<th>Art. 55 GA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removal of beneficiaries due to their non-accession to the GA</td>
<td>Change of bank account for payments</td>
</tr>
<tr>
<td>Removal of a beneficiary whose participation was terminated</td>
<td>Change of the option for ‘dispute settlement’</td>
</tr>
<tr>
<td>Addition of a new beneficiary (FP7 SC30)</td>
<td><strong>Transfer of the Grant Agreement (portability)</strong></td>
</tr>
<tr>
<td>Change of beneficiary due to partial takeover</td>
<td>Change of PI data</td>
</tr>
<tr>
<td>Removal of a linked third party</td>
<td></td>
</tr>
<tr>
<td>Addition of a linked third party (FP7 SC10)</td>
<td>Changes of Annex 1 (description of the action)</td>
</tr>
<tr>
<td>Change concerning a beneficiary/linked third party ‘not receiving EU funding’</td>
<td>Resuming the action after suspension</td>
</tr>
<tr>
<td>Change of the option for ‘authorisation to administer’ (FP7 SC38)</td>
<td>Changes of Annex 2 (estimated budget of the action)</td>
</tr>
<tr>
<td>Change of the action’s title and/or acronym</td>
<td>Change to the maximum grant amount</td>
</tr>
<tr>
<td>Change of the action’s duration</td>
<td>Change to the action’s estimated eligible costs</td>
</tr>
<tr>
<td>Change of the action’s starting date</td>
<td></td>
</tr>
<tr>
<td>Change of reporting periods</td>
<td>Change of Beneficiary Details (legal name, legal address, VAT, ...)</td>
</tr>
<tr>
<td>Change of the participation in the Research Data Pilot</td>
<td>Change of legal status</td>
</tr>
<tr>
<td>Change to the Commission/Agency right to object to transfers or licensing</td>
<td>Universal Transfer of Rights and Obligations</td>
</tr>
<tr>
<td>Change concerning the security context</td>
<td></td>
</tr>
<tr>
<td>Change of the pre-financing</td>
<td>Termination of the GA</td>
</tr>
<tr>
<td>Change of the amount of the contribution to the Guarantee Fund</td>
<td>Suspension</td>
</tr>
</tbody>
</table>
Amendments in the case of budget transfers?

<table>
<thead>
<tr>
<th>Budget transfer</th>
<th>Amendment?</th>
</tr>
</thead>
<tbody>
<tr>
<td>From one partner to the other</td>
<td>No</td>
</tr>
<tr>
<td>From one cost categorie to another existing cost categorie</td>
<td>No</td>
</tr>
<tr>
<td>From one cost categorie into a new cost categorie</td>
<td>Yes, yes, if this was not foreseen (Exception: Personal costs between unit/actual)</td>
</tr>
<tr>
<td>Move, add or delete work packages</td>
<td>Yes</td>
</tr>
<tr>
<td>New subcontracts</td>
<td>Yes (highly recommended)</td>
</tr>
</tbody>
</table>
Timeframe for an amendment

A. Preliminary
   Contact the ERCEA if necessary (e.g.: change of HI…)

B. Launch Amendment (Participant Portal) – PCoCo
   CoCo

C. Prepare the amendment
   Amending data
   Annexes
   Request generated automatically

D. Consult the Amendment Officer

E. (e)Sign & (e)Submit the request for amendment
   PLSign - CoCo

F. Assessment & decision by the Agency
   (counter signature)

G. Financial follow up
   if needed:
   (Change of Host Institution, Termination, …)

Source: ERCEA/COM
Steps in the Participant Portal

1. **Select project in the Participant Portal**

2. **Launch amendment**
   - Cancel amendment (optional)

3. **Prepare amendment** (similar to grant preparation)
   - Consult project officer (optional)

4. **Sign & submit to EU**
   - Provide additional information (optional)
1. Select project

This page enables you to access all your EU projects managed via the Participant Portal that have been selected and approved for funding.

Depending on your roles, you can view or manage the following project-related tasks:

- Prepare and sign your grant agreement
- Submit amendments to your grant agreement
- Manage your scientific and financial reports
- View or manage roles and access rights in your projects consortia

If you are LEAR and want to see the full list of your organisation projects, please go to **My Organisations** and click on the action button **VP**. LEAR can only view the list of projects in which their organisation is involved. If you want to see project details, your organisation main contact for this project or the project Coordinator has to give you access rights. For more details see the **H2020 online manual**.

### My projects

<table>
<thead>
<tr>
<th>ACRONYM</th>
<th>CALL</th>
<th>PROGRAM</th>
<th>PROJECT</th>
<th>PHASE</th>
<th>ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>NCP-PLAYGRO</td>
<td>H2020-Adhoc-14-20</td>
<td>H2020</td>
<td>688926</td>
<td>Grant Preparation</td>
<td>PC VP MP</td>
</tr>
<tr>
<td>UND-COMST</td>
<td>H2020-SPIRE-2014</td>
<td>H2020</td>
<td></td>
<td>Active</td>
<td>PC VP MP</td>
</tr>
</tbody>
</table>
2. Launch amendment
Choose one of the options below

Request for Amendment
Including notification on termination of the participation of one or more beneficiaries. Choose the data set based on which you would like launching a new amendment request:

- latest legal data

Formal Notification
Attention! The use of the formal notification channel is reserved for specific purposes e.g. for communication as set out in the model grant agreement (MGA) e.g. obligation to provide information upon request or obligation to inform.
If you wish to interact with officers, please use the messaging facility (see below).

Communication to the Project Officer
At any time, you may wish to informally exchange messages or ask questions to the Service via the electronic system. If your query is related to an ongoing process, you're encouraged to use the messages section of that process.
3. Prepare amendment

➢ You will need to
  • modify the grant agreement using the same screens as during grant preparation
  • justify the changes

➢ The IT system will automatically
  • select the relevant amendment type(s) corresponding to the changes you introduced
  • compose the amendment letters
  • prompt for compulsory documents (and block submission until the set is complete)
  • provide an overview of and track all changes
Justify the amendment
### Amendment Information

#### Valid Request Date:
- Commission Signature Date:
- Date of entry into force:

#### Amendment clauses

<table>
<thead>
<tr>
<th>Description</th>
<th>hasVars</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Removal of beneficiaries due to their non-accession to the GA</td>
<td></td>
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<tr>
<td>□ Removal of a beneficiary whose participation was terminated</td>
<td></td>
</tr>
<tr>
<td>✓ Addition of a new beneficiary</td>
<td></td>
</tr>
<tr>
<td>□ Change of the status as ‘receiving EU funding’ or ‘not receiving EU funding’</td>
<td></td>
</tr>
<tr>
<td>□ Removal of a linked third party</td>
<td></td>
</tr>
<tr>
<td>□ Addition of a linked third party</td>
<td></td>
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<tr>
<td>□ Change of the coordinator’s bank account for payments</td>
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<td>□ Change of the option for ‘authorisation to administer’</td>
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<td>✓ Change of the action’s starting date</td>
<td></td>
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<tr>
<td>□ Change of the action’s duration</td>
<td></td>
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</tbody>
</table>
Change of the starting date

Start date: 28 Oct 2015
Consortium encodes changes

Examples:
- **ADD NEW BENEFICIARY**
- (SAVE)
You are prompted for a new Annex 1, Part B

The new beneficiary is prompted for
- cost breakdown
- PLSIGN appointment
- DoH
- accession form
- etc., if and as needed
Amendment becomes read-only for consortium. It is reviewed (and edited) by project officer.
4. Sign and submit

- **Who:**
  - Coordinator PLSIGN (on behalf of the consortium)

- **How:**
  - Prompted for e-signature

- **What:**
  - Amendment request letter and core amendment letter signed and sealed

Formal submission triggers the 45-days clock
Assessment & decision by the Agency

After submission of request the receiving party has 45 days for ‘evaluation and validation’

- Agreement
- Rejection
- Request for additional information
- Extension of the deadline for assessment
- If no reaction within deadline, tacit rejection
Entering into Force and Taking Effect

- An amendment **enters into force and is binding** from the moment the receiving party signs it (in the electronic exchange system)

- An amendment **takes effect** (the changes will start to apply):
  - when the amendment enters into force, or
  - on the date agreed by the parties
  - This date should normally be after the entry into force
  - If an amendment request involves several changes, they could take effect on **different dates** *(e.g. addition of beneficiary and change of bank account)*

- Depending on the type of change, the date of taking effect may have an **impact on the eligibility of costs**
Special Case: Transfer of HI; Art 56 a

- at any time during the action
- based on any ground that is beneficial for the PI and supports achieving the action’s objectives
- former HI may
  - oppose transfer only if it is not allowed under national law
  - negotiate transfer conditions (including transfer of team members, intellectual property rights and equipment) with the new host institution, taking into account the view of the PI

Best practice:
Beneficiaries and PIs should keep records of the consultation and decision-making process for each amendment, in particular the portability case.
Special Case: Transfer of HI; Art 56 a

- general rules of Art. 55 apply
- former HI submits request for amendment to the EACEA
  - transfer date will be added to the Preamble of the GA
  - date must be selected in the amendment request
  - the transfer date must be the same date as the accession date
  - retroactive dates (only in exceptional cases)
- financial reporting periods will be automatically adapted to match the transfer date
- scientific reporting periods usually remain unchanged
(Former) HI must — **within 60 days** from date of transfer/signature of the amendment, whichever is the latest submit:

- a financial report (for the open period until transfer)
- a report on the distribution of payments (only in case of multi-beneficiary GA)
- a CFS, if threshold is reached even if this is not the last reporting period
Special Case: Transfer of HI; Art 56 a

ERCEA will:

• Calculate the interim payment, transfer of the remaining pre-financing

• **transfer of equipment**, if PI requests it and if it that was purchased and used exclusively for the action

• former HI may oppose this only if it is not possible under national law. Former HI may however negotiate transfer conditions with new HI

• costs of this reimbursement related costs are eligible, i.e. dismantling, transfer and installation, if general eligibility conditions are fulfilled
Useful Links

Annotated Model Grant Agreement (Article 55)
• http://ec.europa.eu/research/participants/docs/h2020-funding-guide/grants/grant-management/amendments_en.htm

Centralised mailbox:
• ERC-C2@ec.europa.eu

Centralised Amendment mailbox:
• ERC-C2-amendments@ec.europa.eu

PI helpdesk mailbox:
• ERC-C2-PI-HELPDESK@ec.europa.eu
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Source: ERCEA/COM
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