

## **Examples of legal situations - international cooperation under Horizon 2020**

### **International partners Art 14 a MGA) / other options for participation for entities from non-associated third countries**

- Japan is a non-associated third country not eligible for funding and not listed in Annex A of the work Programme. Will a Japanese beneficiary be automatically categorized as "international partner" at the grant agreement stage unless in proposal they had requested exceptional funding ? Are there other options for participation?

Japan is indeed not listed in Annex A of the Work Programme and legal entities established in Japan are not (automatically) eligible for Union funding.

However, this does not mean that such entities would automatically be categorized as "international partners" at the grant agreement level.

Several options are available and depending on the one retained, the entity established in Japan will have or not to sign the grant agreement.

For example:

- The entity established in Japan could participate as a beneficiary not receiving Union funding in accordance with Article 9 of the model grant agreement (MGA), or, depending on the specificities of the action, it could exceptionally participate as a beneficiary receiving Union funding if its participation is deemed essential by the Commission/relevant funding body for carrying out the action (see Article 10.2(a) of Horizon 2020 Rules for Participation). This will be based on the assessment that the participation of the entity in the project offers unique benefits to the consortium. These benefits may include, for example, outstanding/unique competence and expertise, access to unique research infrastructures, access to geographical environments etc. In all these cases, being a beneficiary (with or without funding), it will have to sign the grant agreement.

- If it participates as an international partner (Article 14a MGA) under the responsibility of a beneficiary, or as a linked third party to a beneficiary, it will not have to sign the grant agreement.

### **International partners (Art 14 a MGA) and the consortium agreement (Art 41.3 MGA)**

- Should international partners sign the consortium agreements as a third party or should there be any additional agreement (e.g. partnership agreement)?

Unless exceptionally provided otherwise in the work programme/call, the beneficiaries must conclude a consortium agreement which sets out internal arrangements regarding their operation and coordination to ensure that the action is properly implemented. The conclusion

of the consortium agreement is a requirement stemming from Article 24.2 of the Horizon 2020 Regulation on Rules for participation ([http://ec.europa.eu/research/participants/data/ref/h2020/legal\\_basis/rules\\_participation/h2020-rules-participation\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/legal_basis/rules_participation/h2020-rules-participation_en.pdf)).

As indicated in the annotations to Article 41.3 of the model grant agreement (MGA), the 'consortium agreement' is a purely internal arrangement between the members of the consortium. The EU is not a party (and has no responsibility for it nor for any adverse consequences). The consortium agreement should complement the grant agreement and must not contain any provision contrary to it (or to the Horizon 2020 Rules for Participation or the Financial Regulation).

[http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/amga/h2020-amga\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf)

The international partners (Art 14a of the MGA) are third parties which work under the responsibility of a beneficiary and do not sign the grant agreement. They are usually legal entities established in non-associated third countries which are not eligible for funding under Horizon 2020 and which are not willing or able to sign the grant agreement. Regarding the consortium agreement, international partners are not obliged to sign it but they may e.g. if considered necessary depending on the internal arrangements among the members of the consortium.

#### **Affiliated entities /linked third parties (Art 14 MGA)**

- Is an affiliated entity established in an AC (Switzerland) owned 100% by a company established in a non-associated third country (Brasil) eligible for funding?

Any legal entity, regardless of its place of establishment, is eligible to *participate* in indirect actions under Horizon 2020 provided that the conditions for participation laid down in the Rules for Participation have been met, together with any conditions laid down in the relevant work programme / call (see Article 7(1) RfP). Regarding eligibility for *funding*, legal entities established in a country associated to Horizon 2020 (like Switzerland) are eligible, in accordance with Article 10.1(a) RfP.

On this basis, an entity established in Switzerland as a *legal entity* - with own legal personality distinct from the holding company established in the third country, is eligible to participate and receive funding under a Horizon 2020 action if the above conditions, including any specific requirements set out in the relevant work programme/call, are met. Conversely, if the entity established in Switzerland does not have its own legal personality distinct from the holding company established in Brasil, it will be treated as a legal entity from a third country for the purpose of minimum conditions for participation and funding in action under H2020 (Art 9.1 and 10.2 of the H2020 RfP).

**Linked third party (Art 14 MGA) – other categories of third parties (Art 11-13 MGA, Art 14 a MGA)**

- Is there is any country/nationality limitation in the definition of linked third parties allowed to participate in H2020 projects? The beneficiary (legal entity established in a MS/AC) wishes to involve an organisation based in the US, as it to carry out some technical developments. The beneficiary has a long-term agreement (Memorandum of Understanding) running with this organisation, to develop collaborative research on several topics of common interest.

In principle, under the H2020 Model Grant Agreement (MGA) the beneficiaries must have the resources to implement the action (art. 8 MGA), but if it is necessary to implement the action, the beneficiaries may purchase goods, works and services from a third entity (art. 10 MGA), use in-kind contributions provided by third parties (art. 11 and 12 MGA), call upon subcontractors to implement action tasks (art.13 MGA), call upon linked third parties to implement action tasks (art. 14 MGA) or call upon international partners to implement tasks under the action (Art 14 a MGA). The differences between these options are explained in the Annotated Grant Agreement –AGA (page 121 and following), available at:

[http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/amga/h2020-amga\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf) ).

If an entity is identified as linked third party to the beneficiary, the fact that this entity is located in United States is important because article 23(5) of the H2020 Regulation on Rules for Participation and dissemination of results (H2020 RfP) provides that the costs of a linked third party can be eligible only if the third party would have been eligible for funding if it were a participant

([http://ec.europa.eu/research/participants/data/ref/h2020/legal\\_basis/rules\\_participation/h2020-rules-participation\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/legal_basis/rules_participation/h2020-rules-participation_en.pdf)). Legal entities from the United States (a non-associated third country) are eligible for funding only on an exceptional basis, under the conditions of Art 10.2 of the H2020 RfP (e.g. participation is deemed essential by the Commission/relevant funding body ) or in specific cases, when the work programme/call specifically explicitly provides for it (Art 10.1 c of the H2020 RfP) .

Moreover, the fact that the collaboration between the beneficiary organisation and the organisation established in the United States is based on a long term agreement (Memorandum of Understanding) does not imply that this organisation may automatically qualify as a linked third party (for explanations on this legal status-please see the AGA annotations –page 148 and following). Other options for third parties could be considered, such as: to carry out work under the action as a subcontractor of the beneficiary subject to the best value for money and no conflict of interest principles (Art 13 MGA) or participate without receiving EU funding, as an international partner (Art 14 a MGA) , provided that all the conditions under the H2020 MGA for the respective legal status are met.

## **Eligibility of costs – IP**

### **Cost of a licensing agreement for the use of a patent**

- The patent is owned by the parent company and would be licensed to the subsidiary which is registered in a different EU country.  
If the cost of the license is validated and an open call procedure is followed, would the cost of an agreement to license a patent owned by the parent company to a subsidiary be allowed in an R&D grant?

The costs of a licensing agreement for the use of a patent owned by a parent company may fall under costs of other goods and services as set out in Article 6.2.D.3 of Horizon 2020 MGA and as such, they must comply with all the eligibility conditions set out therein, as well as with the general eligibility conditions set out in Article 6.1.

As explained in the Annotated Grant Agreement (AGA) under Article 6.2.D.3, such cost may include royalties paid for IPR access rights, if all the eligibility conditions are fulfilled (e.g. necessary for the implementation of the action, incurred during the action, reasonable, etc.).

Some are however not eligible (or eligible only within certain limits). For example, royalties for licensing agreements which were already in force before the start of the action may only be eligible within certain limits i.e. only the part of the licence fee that can be linked to the action is eligible (since the licence presumably goes beyond the action implementation). If the royalties would relate to access rights to background for implementation purposes granted by other beneficiaries under Article 25.2 additional conditions apply. Since the default rule is that such access rights are granted on a royalty-free basis and beneficiaries may deviate only if agreed before GA signature, royalties are eligible only if explicitly agreed by all beneficiaries before GA signature and all the other eligibility conditions are met (e.g. necessary for the implementation of the action, reasonable, etc.)

If it is the usual accounting practice to consider (some of) the costs referred to as indirect costs, they cannot be declared as direct costs (as they will already be covered by the 25% flat rate).

Further explanations are available in the AGA (available from [http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/amga/h2020-amga\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf)), particularly under Article 6.1 and Article 6.2.D.3 page 88.