

## Webinar 16/05/2019

# Key Findings of Meet & Exchange Workshop on Legal & Financial Aspects of International Cooperation

***The Brussels Agency for Business Support  
(hub.brussels)  
NCP Academy – Partner***

# NCP Academy helps NCPs...



- Continuation and expansion of the former NCP Academy support action, Sept. 2018 to Aug. 2020 [www.ncpacademy.eu](http://www.ncpacademy.eu)
- Brings together Horizon 2020 **NCP Coordinators and Legal and Financial NCPs** to implement training on cross-cutting issues for NCP and address quality standards and good practice
- Focus
  - Tools for capacity building on Horizon 2020 Legal & Financial issues
  - Training & **Exchange of NCP experiences**
  - Developing the NCP system



Atrium, Brussels Invest & Export and Impulse  
A single Agency since 01.01.2018!  
More info on [www.hub.brussels](http://www.hub.brussels)



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# Meet your speaker



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# My organisation's mission



Is to **help entrepreneurs to do business**

Funded by the Ministry of Economy of Brussels-Capital Region

Key player on guidance (2 other poles: infrastructure & finance)

**Free-of-charge services to Brussels-based organisations**

- Inform, raise awareness of (future) entrepreneurs in Brussels (BE)
- Provide collective and individual guidance  
Including BE legal/fiscal aspects, EU R&I support to (future) projects

# What will we achieve today

- Understand the **context and views**
- **Share** good practices, challenges and bottlenecks in **International Cooperation** focusing on **Legal and Financial** matters
- **Spread ideas and recommendations** for simplification under Horizon Europe to NCPs and the broader EU R&I community

# Follow-up of a Meet & Exchange workshop 16/04/2019



## A **mix of stakeholders**

- NCPs (Legal & Financial, Coordinators and/or thematic from the 3 pillars), applicants/beneficiaries, international contract specialists and lawyers, representation offices of Third Countries
- 7 Member States, 1 Associated Country, 5 Third Countries, the EC DG RTD Common Legal Support Services

## **One day** to

- Present and analyse anonymised cases
- Explore hurdles and envisage solutions (H2020 and Horizon Europe)

# The context of H2020 Legal & Financial aspects with International Cooperation

## We all have partial views

- Programme and rules envisaged from **distinct viewpoints** (Member State/Associated Country or Third Country)
- **Motivation** to take part in H2020 vary: scientific excellence, reputation, networking... funding...
- Applicants do not share same context/challenges but should **work together** toward successful and projects beneficial to all  
**Rules for participation** of International Partners not well known by MS/AC



- **Participants from anywhere in the world can take part... but are not always funded**
- **Individual researchers from any country in the world** seeking the opportunity to work in Europe for a certain period of their career can apply for funding through the [European Research Council](#) and the [Marie Skłodowska-Curie actions](#)

# International Cooperation



**124**

**non-EU countries**  
participating to Horizon  
2020 projects

**4,700**

**participants**  
from non-EU countries  
in Horizon 2020

**18%**

**success rate**  
of non-associated  
countries, higher than  
EU average of 15%

**€300m**

**own contribution**  
of non-associated  
countries in Horizon  
2020 projects

**7%+4%**

**of participations**  
respectively from 16  
associated + 108 non-  
associated countries

Source: EC RTD From Horizon 2020 to Horizon Europe Monitoring Flashnews #3

**“After all, science is essentially international, and it is only through lack of the historical sense that national qualities have been attributed to it.” Marie Skłodowska-Curie**

# Country eligible for funding ?

## Automatically eligible for funding

- **Member States**
- **Associated Countries**  
16 (Albania to Ukraine)  
[http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/hi/3cpart/h2020-hi-list-ac\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf)
- **Developing countries**  
130 (Afghanistan to Zimbabwe)  
[http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/hi/3cpart/h2020-hi-list-ac\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf)

Industrialised countries and emerging economies **need to find own funding**

## Exceptionally, eligible for EC funding IF

- **bilateral agreement** between that country and the EU
  - the country is **explicitly identified** in the call for proposal as being eligible for funding
- OR
- their participation is **deemed essential by the EC** for carrying out the action (“coordinated call”)

# “Typical” perspectives



## MS / AC legal entity

- Funding → **eligibility of costs**
- Rules applicable to Beneficiaries
- Beneficiary retains the sole responsibility for the work and the costs declared !

## Third Country legal entity not Beneficiary

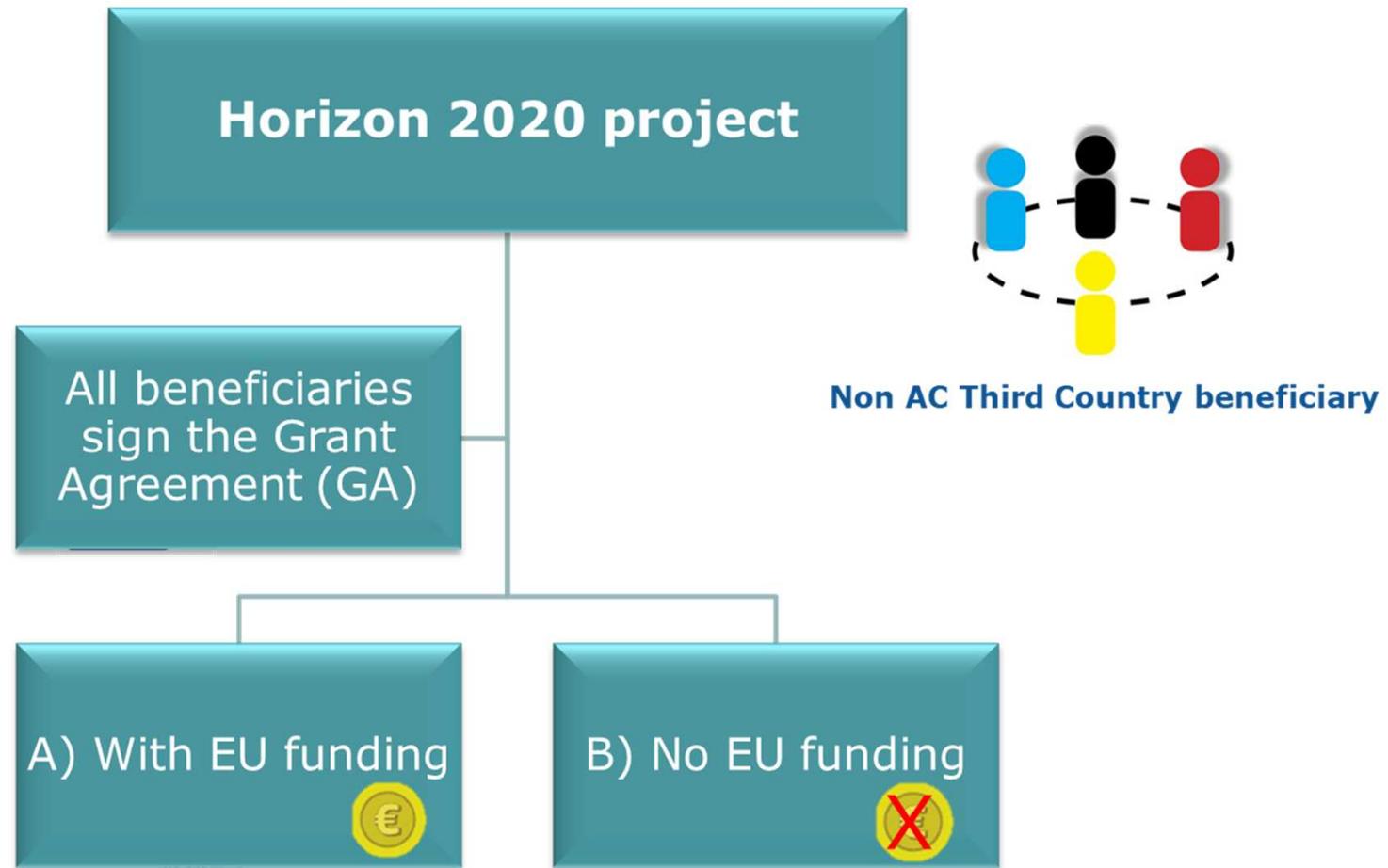
- **Rules applicable to International Partners** (or other types of Third Party)
- Own / national funding and rules

## Why rules are so important

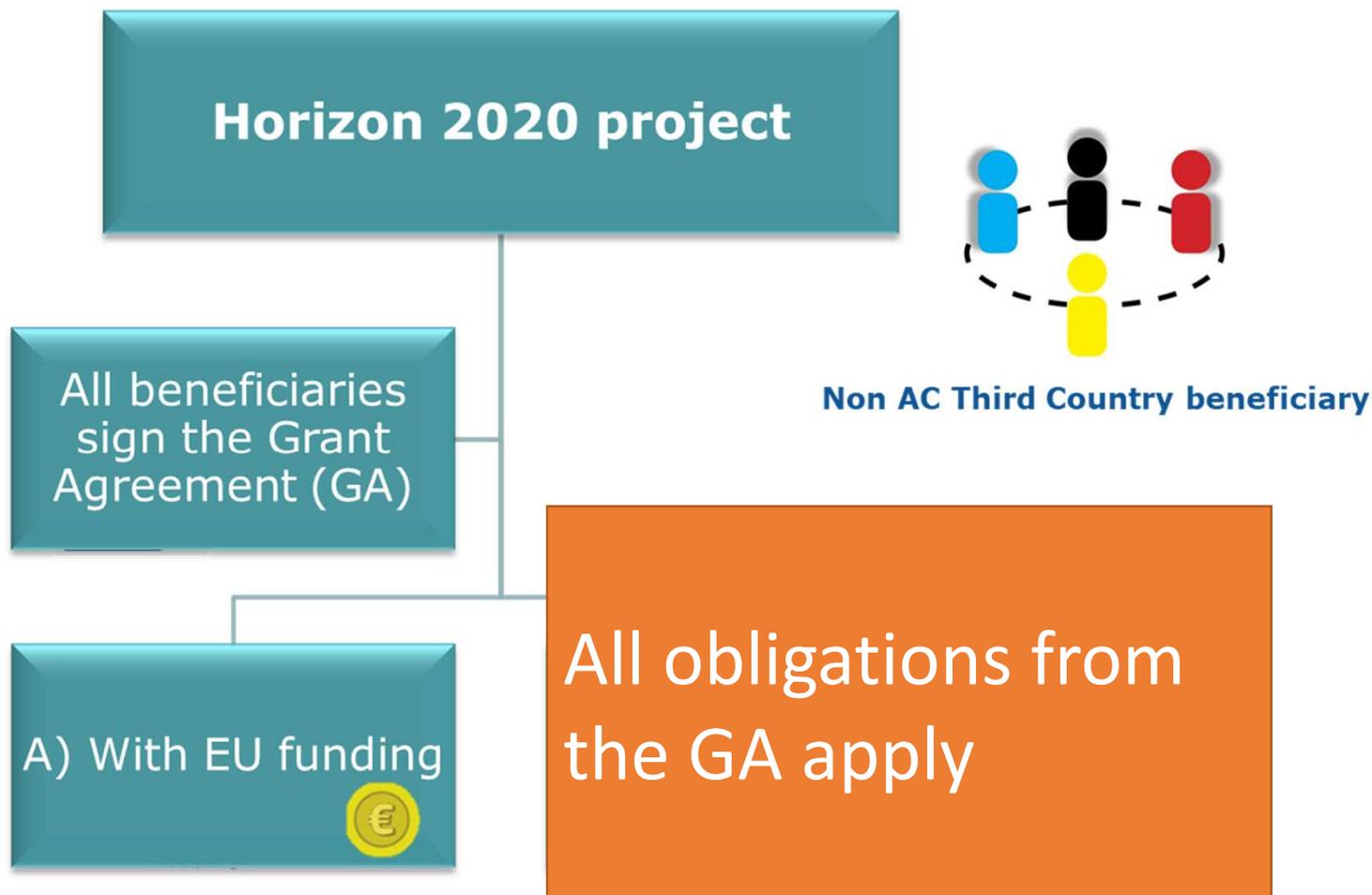
- **Standard rules for each type of role and set-up**
- Some contractual conditions are imposed on **ALL parties** (even if you do not sign the Grant Agreement or ask funding)
- *Your clients need to understand before they commit*
- Not only about **money: reputation, reliability, partners relationships...**

# Participation of entities from non-associated third countries in Horizon 2020 projects

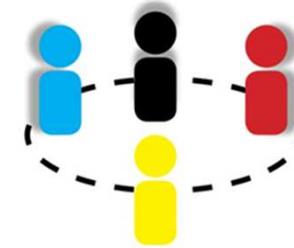
# Participation as Beneficiary



# With EU funding



# No EU funding



**Non AC Third Country beneficiary**

Most obligations from the GA apply, except those linked to funding and some re: results



# No EU funding provisions applying



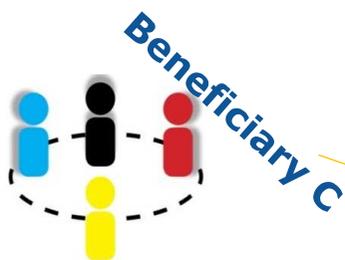
- **Scientific and technical implementation** e.g. joint technical responsibility, provide technical reports, allow technical checks, reviews, audits, investigations or evaluations of the project impact
- **Disseminate results** asap, give other beneficiaries **access to their background or results** under certain conditions
- **Liability for damages** (to the EC)
- **Applicable law** (EU law + if necessary Belgian law)...

# Participation as International Partner

## NEW from February 2017



# Article 14a International Partner



## Beneficiary C must:

- ✓ **Extend certain obligations to the international partner** (e.g. relating to scientific & technical reporting/record keeping, promoting the project, verification of proper implementation)
- ✓ Ensure it can comply with its obligations regarding results



## International Partner:

### ✓ **Is linked to a beneficiary**

- ✓ Does not sign GA
- ✓ Is identified in the GA and carries out work as specified in the technical annex
- ✓ Not eligible for EU funding, thus needs its own (non EU) budget
- ✓ Its costs are estimated in GA but no financial reporting
- ✓ Only needs a Participant Identification Code (PIC nr) for statistical purposes

# A few examples of difficulties

# Case 1: intellectual property rights

One reason why MIT cannot currently participate in H2020 except MSCA global fellowships  
MGA Article 30.3:

**OPTION 1: “The [REA] may — [for] four years — object to a transfer of ownership or the exclusive licensing of results...”**

OPTION 3: “Not Applicable.”

Issue: conflicts with USA Government laws & MIT Policy, which:

Require MIT personnel to assign IP to MIT

Require MIT to own IP

Require no restrictions on MIT’s ability to dispose of IP

Resolution: case-by-case, uncertain

## Case 2: time recording

- Coordinator AT organisation, partner USA university
- Issue: USA university's **personnel costs not accepted by EC** = *“system for charging personnel costs to the project does not comply with the applicable rules....an effective time-recording system is a requisite for the eligibility of the costs.”*
- => EC asked for carrying out an alternative assessment
- Consulted: EC Project and Legal Officer, Legal department AT Org., Legal NCP AT
- Resolution: USA Org. left project, reallocation of work and budget

## Case 3: MoU / consortium clauses

- Canadian researcher was invited to participate in a Societal Challenge 2 proposal by EU partners (public institutions from France, Germany, Ireland, the Netherlands, Italy, Spain, Austria and others as well as private companies)
- As “International Partner” (Art 14.a), Canada was not required to sign the Grant Agreement, but participate as a third party via **MOU with the project coordinator** and **sign the Consortium Agreement**
- Issues (not yet resolved)
  - MOU is required by EU partner to be legally binding
  - Consortium Agreement makes reference to Grant Agreement clauses that are not acceptable to Canada e.g. Brussels law and financial audits

## Case 4: liability

- In a running project a Third Country Beneficiary not receiving EU Funding lost its national funding and couldn't carry out its project tasks anymore. Its task was essential for the project. No more additional EC budget possible. No budget left in the project.
- Art. 41.1 The **beneficiaries are jointly and severally liable** for the technical implementation of the action as described in Annex 1. If a beneficiary fails to implement its part of the action, the other beneficiaries become responsible for implementing this part (without being entitled to any additional EU funding for doing so)
- Resolution: changed the partner, budget shifting, amendment of the GA and accession of new partner. Be flexible and foresee the unforeseeable

# Major findings and recommendations

1. Article 14a is one of several options available to TC legal entities

- **More explicit guidance** on the different options would be appreciated (Portal, on-line manual, funding guides to INCO participants)
- EC should **analyse the use of Article 14a since its addition** in 2017, and compare with other ways of TC participation, as part of the evaluation of the improvement of TC inclusion in H2020 (for Horizon Europe)

*Has Art. 14a solved issues encountered before by TC participants as Beneficiary, Linked Third Party... or did it add to the overall complexity without solving key issues?*

## 2. Not all TC participants share the same concerns

- **Depends on the drives to take part and on national rules (not necessarily aligned with GA rules of H2020)**
- **Besides the legitimate interests of the European Union and MS/AC participants, future changes should **take this variety of views into account****

*Ex conflicts of interest, checks, reviews, audits, applicable law mentioned in the Grant Agreement is a real hurdle for Japanese participants. Applicable law is also a concern for Canadian participants. It is not for USA participants who are more concerned with the damages/liability.*

### 3. Open to the world policy

- **Is understood and appreciated**
- **Practical implementation** at different stages of the project lifecycle **should be clarified**, more guidance should be provided
- **Financial reporting is a bigger issue for TC participants than technical reporting**

*Ex which section of the proposal should specify why a TC participant is deemed essential by the consortium? Is it really needed to have a PIC number for the TC participant under Art.14a ? To use time sheets?...*

## 4. Who takes responsibility

- **Current Art. 14a : major responsibilities are thrust upon the Linked Beneficiary** (linked to the International Partner)
- **Future: instead of the Beneficiary being responsible for “its” International Partner, the European Commission could be responsible for them, as it is fully part of the EC’s Open to the world policy and the associated risks would be shared at EU level**

*For example : a system combined with / similar to the guarantee fund*

## 5. More flexibility on IPR ?



- **Future: there could be a clear understanding that the EC empowers the project consortium to come up with a solution on the transfer of ownership or exclusive licence for example**
- **Suppression of Article 30.3 on IPR would be appreciated by TC participants**

## 6. A lump sum system for International partner ?

- In the spirit of “**here is the money, please report on the results you deliver**”

*Similar to the current pilot run for some calls of H2020?*

- It could be a “no go” for some third countries: the USA for example has strict national rules regarding fixed price agreements. The **legal frame of the current lump sum pilot should be explored in detail**, in order to confirm whether they are compatible.
- If lump sum approach at GA level, there will be more need for detailed, binding and explicit consortium / cooperation agreements

## 7. A more limited definition of liability for damages ?



- It would seem reasonable to **limit the liability to the actual responsibility of each Partner within its project roles and scopes**
- **Liability agreements should be designed so that they do not “punish” the consortium as a whole for non-compliances/errors of one TC participant or the Beneficiary linked to that TC participant**

## 8. Clarify the legal frame

- **Current DESCAs template does not take into account Article 14a. To be included in a next version ?**
- **Guidance on other Consortium Agreements / Memorandum of Understanding (MoU) with TC participants would also be appreciated**

*Ex misunderstandings between MS/AC and TC participants as to whether a MoU is binding or not are too frequent*

## 9. No binding clause at all on non-funded participants ?

- **Acceptable for the EC ?**  
**Vs legitimate interests of EU**
- **Acceptable for the MS/AC Beneficiaries?**  
**Vs their responsibilities and liabilities**



## 10. Lets dream further



- **A 10 pages max. Grant Agreement**
- **A “global” law instead of EU law supplemented by Belgian law**

# Take home messages

## Aspects to consider

- **Intellectual Property** rights, ownership, transfer and licencing of results with Third Country partners (Art. 26.3, Art. 30.3 of the model GA)
- **Checks, reviews, audits and investigations, evaluation of the impact, conflict of interest, confidentiality, promoting the action/visibility of EU funding** (Art. 22-23, Art 35, 46, 38)
- **Keeping records/supporting documentation, reporting/payment requests** (Art. 18.1.1, Art 20.3(a), 20.4(a) and 20.7)
- **Budget, liability for damage, role in the consortium/other practical aspects related to project implementation** (Art. 14a, Annex 2, Art. 46.2)

# Examine all legal possibilities

- Under the H2020 rules, for a **successful project**
  - What is a **real hurdle** case-by-case  
Examine the various options available  
Consider **all partners views** (MS/AC and Third Country)
  - Not all cases are solved positively
  - Contact your Legal & Financial NCP
- Under Horizon Europe: work in progress  
Stay tuned with NCP Academy / INCO Facility services