

ANNEX 5

SPECIFIC RULES

CONFIDENTIALITY AND SECURITY (— ARTICLE 13)

Sensitive information with security recommendation

Sensitive information with a security recommendation must comply with the additional requirements imposed by the granting authority.

Before starting the action tasks concerned, the beneficiaries must have obtained all approvals or other mandatory documents needed for implementing the task. The documents must be kept on file and be submitted upon request by the coordinator to the granting authority. If they are not in English, they must be submitted together with an English summary.

For requirements restricting disclosure or dissemination, the information must be handled in accordance with the recommendation and may be disclosed or disseminated only after written approval from the granting authority.

EU classified information

If EU classified information is used or generated by the action, it must be treated in accordance with the security classification guide (SCG) and security aspect letter (SAL) set out in Annex 1 and Decision 2015/444¹ and its implementing rules — until it is declassified.

Deliverables which contain EU classified information must be submitted according to special procedures agreed with the granting authority.

Action tasks involving EU classified information may be subcontracted only with prior explicit written approval from the granting authority and only to entities established in an EU Member State or in a non-EU country with a security of information agreement with the EU (or an administrative arrangement with the Commission).

EU classified information may not be disclosed to any third party (including participants involved in the action implementation) without prior explicit written approval from the granting authority.

ETHICS (— ARTICLE 14)

Ethics

Actions involving activities raising ethics issues must be carried out in compliance with:

- ethical principles

¹ Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

and

- applicable EU, international and national law, including the EU Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Supplementary Protocols.

The beneficiaries must pay particular attention to the principle of proportionality, the right to privacy, the right to the protection of personal data, the right to the physical and mental integrity of persons, the right to non-discrimination, the need to ensure protection of the environment and high levels of human health protection.

Before the beginning of an action task raising an ethical issue, the beneficiaries must have obtained all approvals or other mandatory documents needed for implementing the task, notably from any (national or local) ethics committee or other bodies such as data protection authorities.

The documents must be kept on file and be submitted upon request by the coordinator to the granting authority. If they are not in English, they must be submitted together with an English summary, which shows that the documents cover the action tasks in question and includes the conclusions of the committee or authority concerned (if any).

INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE (— ARTICLE 16)

Definitions

Access rights — Rights to use results or background.

Dissemination — The public disclosure of the results by appropriate means, other than resulting from protecting or exploiting the results, including by scientific or professional publications in any medium.

Exploit(ation) — The use of results in further innovation and deployment activities other than those covered by the action concerned, including among other things, commercial exploitation such as developing, creating, manufacturing and marketing a product or process, creating and providing a service, or in standardisation activities.

Fair and reasonable conditions — Appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.

List of background — Background free from restrictions

The beneficiaries must, where industrial and intellectual property rights (including rights of third parties) exist prior to the Agreement, establish a list of these pre-existing industrial and intellectual property rights, specifying the rights owners.

The coordinator must — before starting the action — submit this list to the granting authority.

Where the call conditions restrict participation or control due to security or EU strategic autonomy reasons, background that is subject to control or other restrictions by a country (or entity from a country) which is not one of the eligible countries or target countries set out in the call conditions and that impact the results (i.e. would make the results subject to control or restrictions) must not be used and must be explicitly excluded in the list of background — unless otherwise agreed with the granting authority.

Results free from restrictions

Where the call conditions restrict participation or control due to security or EU strategic autonomy reasons, the beneficiaries must ensure that the results of the action are not subject to control or other restrictions by a country (or entity from a country) which is not one of the eligible countries or target countries set out in the call conditions — unless otherwise agreed with the granting authority.

Ownership of results

Results are owned by the beneficiaries that generate them (unless the consortium agreement specifies another ownership regime).

Protection of results

The beneficiaries must adequately protect their results — for an appropriate period and with appropriate territorial coverage — if protection is possible and justified, taking into account all relevant considerations, including the prospects for commercial exploitation, legitimate interests of the other beneficiaries and any other legitimate interests.

Exploitation of results

Beneficiaries must — up to four years after the end of the action (see Data Sheet, Point 1) — use their best efforts to exploit their results directly or to have them exploited indirectly by another entity, in particular through transfer or licensing.

Where the call conditions restrict participation or control due to security or EU strategic autonomy reasons (and unless otherwise agreed with the granting authority), the beneficiaries must produce a significant amount of products, services or processes that incorporate results of the action or that are produced through the use of results of the action in the eligible countries or target countries set out in the call conditions.

Where the call conditions impose moreover a first exploitation obligation, the first exploitation must also take place in the eligible countries or target countries set out in the call conditions.

The beneficiaries must ensure that these obligations also apply to their affiliated entities, associated partners, subcontractors and recipients of financial support to third parties.

Transfers and licensing of results

Where the call conditions restrict participation or control due to security or EU strategic autonomy reasons, the beneficiaries may not transfer ownership of their results or grant licences to third parties which are established in countries which are not eligible countries or target countries set out in the call conditions (or are controlled by such countries or entities

from such countries) — unless they have requested and received prior approval by the granting authority.

The request must:

- identify the specific results concerned
- describe in detail the new owner and the planned or potential exploitation of the results and
- include a reasoned assessment of the likely impact of the transfer or license on the security interests or EU strategic autonomy .

The granting authority may request additional information.

The beneficiaries must ensure that their obligations under the Agreement are passed on to the new owner and that this new owner has the obligation to pass them on in any subsequent transfer.

Access rights — Additional rights of use

Rights of use of the granting authority on results for information, communication, publicity and dissemination purposes

The granting authority also has the right to exploit non-sensitive results of the action for information, communication, dissemination and publicity purposes, using any of the following modes:

- **use for its own purposes** (in particular, making them available to persons working for the granting authority or any other EU service (including institutions, bodies, offices, agencies, etc.) or EU Member State institution or body; copying or reproducing them in whole or in part, in unlimited numbers; and communication through press information services)
- **distribution to the public** in hard copies, in electronic or digital format, on the internet including social networks, as a downloadable or non-downloadable file
- **editing** or **redrafting** (including shortening, summarising, changing, correcting, cutting, inserting elements (e.g. meta-data, legends or other graphic, visual, audio or text elements) extracting parts (e.g. audio or video files), dividing into parts or use in a compilation
- **translation**(including inserting subtitles/dubbing)in all official languages of EU
- **storage** in paper, electronic or other form
- **archiving** in line with applicable document-management rules
- the right to authorise **third parties** to act on its behalf or sub-license to third parties, including if there is licensed background, any of the rights or modes of exploitation set out in this provision
- **processing**, analysing, aggregating the results and **producing derivative works**

- **disseminating** the results in widely accessible databases or indexes (such as through ‘open access’ or ‘open data’ portals or similar repositories, whether free of charge or not).

The beneficiaries must ensure these rights of use for the whole duration they are protected by industrial or intellectual property rights.

If results are subject to moral rights or third party rights (including intellectual property rights or rights of natural persons on their image and voice), the beneficiaries must ensure that they comply with their obligations under this Agreement (in particular, by obtaining the necessary licences and authorisations from the rights holders concerned).

Access rights for the granting authority and EU institutions, bodies, offices or agencies to results for policy purposes

The beneficiaries must grant access to their results — on a royalty-free basis — to the granting authority, other EU institutions, bodies, offices or agencies, for developing, implementing and monitoring EU policies or programmes.

Such access rights are limited to non-commercial and non-competitive use.

Access rights for the granting authority to results in case of a public emergency

If requested by the granting authority in case of a public emergency, the beneficiaries must grant non-exclusive, world-wide licences to third parties — under fair and reasonable conditions — to use the results to address the public emergency.

Access rights for third parties to ensure continuity and interoperability

Where the call conditions impose continuity or interoperability obligations, the beneficiaries must make the results produced in the framework of the action available to the public (freely accessible on the Internet under open source licences).

COMMUNICATION, DISSEMINATION AND VISIBILITY (— ARTICLE 17)

Communication and dissemination plan

The beneficiaries must provide a detailed communication and dissemination plan, setting out the objectives, key messaging, target audiences, communication channels, social media plan, planned budget and relevant indicators for monitoring and evaluation.

Dissemination of results

The beneficiaries must disseminate their results as soon as feasible, in a publicly available format, subject to any restrictions due to the protection of intellectual property, security rules or legitimate interests.

They must upload the public **project results** to the Digital Europe Project Results platform, available through the Funding & Tenders Portal.

In addition, where the call conditions impose additional dissemination obligations, they must also comply with those.

Additional communication activities

The beneficiaries must engage in the following additional communication activities:

- **present the project** (including project summary, coordinator contact details, list of participants, European flag and funding statement and special logo and project results) on the beneficiaries' **websites** or **social media accounts**.

SPECIFIC RULES FOR CARRYING OUT THE ACTION (— ARTICLE 18)

Implementation in case of restrictions due to security or EU strategic autonomy

Where the call conditions restrict participation or control due to security or EU strategic autonomy reasons, the beneficiaries must ensure that none of the entities that participate as affiliated entities, associated partners, subcontractors or recipients of financial support to third parties are established in countries which are not eligible countries or target countries set out in the call conditions (or are controlled by such countries or entities from such countries) — unless otherwise agreed with the granting authority.

The beneficiaries must moreover ensure that any cooperation with entities established in countries which are not eligible countries or target countries set out in the call conditions (or are controlled by such countries or entities from such countries) does not affect the security interests or EU strategic autonomy and avoids potential negative effects over security of supply of inputs critical to the action.

Specific rules for PAC Grants for Procurement

When implementing innovative procurements in PAC Grants for Procurement, the beneficiaries must respect the following conditions:

- avoid any conflict of interest and comply with the principles of transparency, non-discrimination, equal treatment, sound financial management, proportionality and competition rules
- assign the ownership of the intellectual property rights under the contracts to the contractors (unless there are exceptional overriding public interests which are duly justified in Annex 1), with the right of the buyers to access results — on a royalty-free basis — for their own use and to grant (or to require the contractors to grant) non-exclusive licences to third parties to exploit the results for them — under fair and reasonable conditions — without any right to sub-license
- allow for all communications to be made in English (and any additional languages chosen by the beneficiaries)
- ensure that prior information notices, contract notices and contract award notices contain information on the EU funding and a disclaimer that the EU is not participating as contracting authority in the procurement
- allow for the award of multiple procurement contracts within the same procedure (multiple sourcing)
- for procurements involving classified information: apply the security rules set out in Annex 5 mutatis mutandis to the contractors and the background and results of the contracts

- where the call conditions restrict participation or control due to security or EU strategic autonomy reasons: apply the restrictions set out in Annex 5 mutatis mutandis to the contractors and the results under the contracts
- where the call conditions impose a place of performance obligation: ensure that the part of the activities that is subject to the place of performance obligation is performed in the eligible countries or target countries set out in the call conditions
- to ensure reciprocal level of market access: where the WTO Government Procurement Agreement (GPA) does not apply, ensure that the participation in tendering procedures is open on equal terms to bidders from EU Member States and all countries with which the EU has an agreement in the field of public procurement under the conditions laid down in that agreement, including all Horizon Europe associated countries. Where the WTO GPA applies, ensure that tendering procedures are also open to bidders from states that have ratified this agreement, under the conditions laid down therein.

Specific rules for Grants for Financial Support

When implementing financial support to third parties in Grants for Financial Support, the beneficiaries must respect the following conditions:

- avoid any conflict of interest and comply with the principles of transparency, non-discrimination and sound financial management
- for the selection procedure and criteria:
 - publish open calls widely (including on the Funding & Tenders Portal and the beneficiaries' websites)
 - keep open calls open for at least two months
 - inform recipients of call updates (if any) and the outcome of the call (list of selected projects, amounts and names of selected recipients)

Specific rules for JU actions

JU actions must contribute to the long-term implementation of the JU partnership, including the JU Strategic Research and Innovation Agenda, the JU objectives and the exploitation of research and innovation results.

Moreover, when implementing JU actions, the members and contributing partners of the Joint Undertaking must fulfil their obligations regarding contributions to the Joint Undertaking:

- the description of the action in Annex 1 must include, for beneficiaries, affiliated entities, associated partners or other participants or third parties which are members or contributing partners, the estimated contributions to the action, i.e.:
 - in-kind contributions to operational activities ('IKOP'; if applicable)
 - in-kind contributions to additional activities linked to the action ('IKAA'; if applicable)
 - financial contributions ('FC'; if applicable)

- the contributions must be reported during the implementation of the action in the Portal Continuous Reporting tool
- at the end of the action, the members and contributing partners that have not received funding under the grant must ensure that financial and in-kind contributions of EUR 430 000 or more (see Article 21) are supported by statements of contributions (CS) and certificates on the statements of contributions (CCS) which fulfil the following conditions:
 - be provided by a qualified approved external auditor which is independent and complies with Directive 2006/43/EC (or for public bodies: by a competent independent public officer)
 - the verification must be carried out according to the highest professional standards to ensure that the statements of contributions comply with the provisions under the Agreement and the applicable JU Regulation, that the contributions cover activities that are part of the action and that they have not been reimbursed by the grant
- contributions must comply with the following conditions:
 - costs covered by financial contributions cannot be claimed for reimbursement under the JU grant.

The beneficiaries must comply with the additional IPR, dissemination and exploitation obligations set out in the call conditions (Article 16 and Annex 5), in particular:

- for all JU grants: the granting authority right to object to transfers or licensing also applies to results generated by beneficiaries not having received funding under the grant.

In addition to the obligations set out in Article 17, communication and dissemination activities as well as infrastructure, equipment or major results funded under JU actions must moreover display the Joint Undertaking's special logo:



and the following text:

“The project is supported by the [insert JU name] and its members [*OPTION for actions with national contribution top-ups*: (including top-up funding by [name of the national funding authority])].”

For EuroHPC JU grants, the beneficiaries must respect the following conditions when implementing actions with national contribution top-ups from Participating States:

- the beneficiaries must ensure visibility of the national contributions (see below)

- the payment deadlines for prefinancing, interim or final payments are automatically suspended if a national funding authority is late with its payments to the Joint Undertaking for the national contribution top-up
- the European Anti-Fraud Office (OLAF), European Public Prosecutor's Office (EPPO), European Court of Auditors (ECA), the National Court of Auditors and other national authorities can exercise their control rights on the project implementation and costs declared, including for the national contribution top-up.

Specific rules for blending operations

When implementing blending operations, the beneficiaries acknowledge and accept that:

- the grant depends on the approved financing from the Implementing Partner and/or public or private investors for the project
- they must inform the granting authority both about the approval for financing and the financial close — within 15 days
- the payment deadline for the first prefinancing is automatically suspended until the granting authority is informed about the approval for financing
- both actions will be managed and monitored in parallel and in close coordination with the Implementing Partner, in particular:
 - all information, data and documents (including the due diligence by the Implementing Partner and the signed agreement) may be exchanged and may be relied on for the management of the other action (if needed)
 - issues in one action may impact the other (e.g. suspension or termination in one action may lead to suspension also of the other action; termination of the grant will normally suspend and exit from further financing and vice versa, etc.)
- the granting authority may disclose confidential information also to the Implementing Partner.



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