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*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Decision of 18 December 2012 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (Text with EEA relevance) (2012/838/EU, Euratom). (See end of Document for details)*

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Commission Decision of 18 December 2012 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (Text with EEA relevance) (2012/838/EU, Euratom)

## COMMISSION DECISION

of 18 December 2012

on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities

(Text with EEA relevance)

(2012/838/EU, Euratom)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)<sup>(1)</sup>, and in particular Article 16(4),

Having regard to Council Regulation (Euratom) No 1908/2006 of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in action under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007 to 2011)<sup>(2)</sup>, and in particular Article 15(4),

Whereas:

- (1) By Decision C(2007) 2466 of 13 June 2007 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and under the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011), the Commission has

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drawn up the rules ensuring consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under Decision No 1982/2006/EC of the European Parliament and the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)<sup>(3)</sup> and Council Decision 2006/970/Euratom of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)<sup>(4)</sup> (hereinafter ‘the Rules’).

- (2) Those Rules were designed to establish a clear and transparent framework to be implemented in a homogeneous manner by all services involved in the management of grants awarded under Decision No 1982/2006/EC and Decision 2006/970/Euratom. Those Rules aimed to ensure a coherent approach across the Programmes established by those Decisions, and for the duration of those Programmes, while allowing a measure of flexibility where necessary.
- (3) Those Rules should be modified in order to specify some elements and codify the practice up to date, such as definitions of legal statuses/categories and provisions on requested documents and the effective date, cases of incomplete, contradictory or false declarations and/or supporting documents, the Legal Entity Appointed Representative, the modification and the review of validations and the Validation Panel.
- (4) It is necessary that those Rules are changed to guarantee a uniform implementation and interpretation by introducing specific cases. In addition, the section on protection measures needs to be reinforced.
- (5) At the same time, those Rules should be brought in line with the Treaty on the Functioning of the European Union.
- (6) For reasons of clarity and legal security, Decision C(2007) 2466 should therefore be replaced,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under Decision No 1982/2006/EC, Decision 2006/970/Euratom and Council Decision 2012/93/Euratom<sup>(5)</sup> are set out in the Annex to this Decision.

#### *Article 2*

Decision C(2007) 2466 is repealed. References to the repealed Decision shall be construed as references to this Decision.

#### *Article 3*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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Done at Brussels, 18 December 2012.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX

### FOREWORD

The Rules for Participation for FP7<sup>(6)</sup> (FP7 RP) stipulate that ‘*the Commission shall adopt and publish rules to ensure consistent verification of the existence and legal status of participants in indirect actions as well as their financial capacity. The Commission shall refrain from renewing such verification unless the situation of the participant concerned has changed*’<sup>(7)</sup>.

This document defines these rules. It is based on the regulatory requirements provided by the FP7 RP and the Financial Regulation<sup>(8)</sup> (FR) and its associated Implementing Rules<sup>(9)</sup> (IR). It has been adopted by the Commission on the 13th of June 2007 and it is applicable from the 1st of January 2007 for any relevant FP7 indirect actions.

These rules concern all FP7 indirect actions taking the form of an EC or EURATOM grant agreement and will be applied by services implementing FP7 indirect actions (‘Research Directorates-General’ and bodies to which these tasks have been delegated) up to the date of entry into force of a subsequent version of this document.

For any subsequent versions, a change history and a comparison to the previous version(s) will be provided in order to identify the modifications/updates and ease the understanding.

The following substantial modifications have been made in the rules in order to clarify a number of points based on experience to date:

- Part 1 on the ‘Verification of the legal existence and legal status/category’ has been updated with:
  - definitions of legal statuses/categories,
  - provisions regarding requested documents and the effective date,
  - provisions regarding cases of incomplete, contradictory or false declarations and/or supporting documents,
  - provisions regarding the Legal Entity Appointed Representative (LEAR),
  - provisions regarding the modification and the review of validations,
  - provisions regarding the Validation Panel.
- Part 3 and 4 regarding the ‘Verification of the financial capacity’ have been modified as follows:
  - Section 3.4 on the ‘Requested data and documents’ is complemented with specific cases.
  - The relevant sections on the financial viability ratios (sections 3.5.3 and 4.2.1) are complemented with the definition of exceptional cases.
  - Section 4.2.2 on the ‘Protection measures’ is modified.

In addition, the following editorial modifications have been introduced:

- Section 1 and 3 have been updated with a reference to the validation services<sup>(10)</sup> carrying out the verification of the legal existence and legal status/category, verifying the accuracy of the participant's financial data and carrying out the concise financial analysis.
- The references to the Unique Registration Facility are replaced by references to the Research Participant Portal.
- Further editorial modifications were made necessary in order to take into account the autonomy of the executive agencies and other bodies implementing FP7 (references to the Commission services are replaced by references to ‘services implementing FP7’

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as far as tasks are performed by services of the Commission as well as other bodies to which implementing tasks have been delegated).

— The text is brought in line with the Treaty on the Functioning of the European Union.

## GENERAL PURPOSE

This document addresses the rules to ensure a consistent verification of:

- the legal existence;
- the FP7 status;
- the operational capacity; and
- the financial capacity

of an FP7 participant in order to ensure the implementation of an indirect action (achievement of the expected objectives and results) and the protection of the financial interests of the Union.

The following guiding principles, developed over successive meetings of a working group involving all Research Directorates-General and based on a strong will of simplification and rationalisation, underlie the approach adopted by the Commission:

- Only information that is strictly required by the FP7 RP and/or the FR and/or its IR or for the provision of essential statistics (Commission Annual Activity Report – cf Article 190 TFEU) will be requested from the applicants/participants.
- The Research Participant Portal (<http://ec.europa.eu/research/participants/portal>) facilitates the participation of legal entities in subsequent FP7 proposals. Through the Research Participant Portal legal entities have to provide their basic data and official documents only once. However, they will be obliged to inform the validation services, also via the Participant Portal, of any modifications.
- Each validated legal entity must appoint one person, a Legal Entity Appointed Representative (LEAR), who is authorised to manage online the legal and financial information of the legal entity via the Research Participant Portal.
- Information requested at proposal stage will not be asked again during negotiations or that information that e.g. needs to be verified at grant agreement stage is not requested at proposal stage, unless it is obvious that the information provided is no longer up to date at the time of verification<sup>(11)</sup>.
- The verification will as much as possible rely on the self-declaration and auto-verification by applicants/participants. For this to happen the Commission will ensure that they have access to clear information/instructions and any tools they need (e.g. to assess themselves their financial viability). The results delivered by such tools provide non-binding indications; they do not pre-empt the results of a formal financial viability check by the services implementing FP7. Irregularities and/or false declarations may lead to the application of financial penalties or administrative penalties in the form of exclusion of the applicants/participants for future participation.
- While the legal and operational verification has to be performed for each entity, not all entities are subject to financial capacity verification. Section 3.3 which includes a ‘Decision Tree on Financial Capacity Verification’ gives detailed information on the conditions that lead to a verification of the financial capacity of an entity.
- Due to the introduction of a Participants' Guarantee Fund (PGF), no additional financial guarantee or security will be requested from participants or imposed on them, such as reduction of pre-financing for a particular participant, trust accounts, blocked accounts, financial guarantees, etc. The services implementing FP7 will however strengthen ex-post controls to ensure the good implementation of FP7 indirect actions and protect the financial interests of the participants and of the Union.

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## 1. VERIFICATION OF THE LEGAL EXISTENCE AND LEGAL STATUS/CATEGORY

### 1.1. Principles

#### 1.1.1. Confidentiality and protection of data

All data and documents related to the legal and financial verification communicated to the validation services shall be treated as confidential and subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(12)</sup>. All data shall be processed in accordance with the principles of transparency, proportionality, impartiality and legality.

#### 1.1.2. Legal Existence

In compliance with Article 4 of the FP7 RP, a grant can only be awarded to an existing legal entity who:

- has submitted an eligible proposal using the procedure defined by the Commission; and
- is not in one of the situations mentioned in Articles 93(1), 94 and 96(2)(a) of the FR.

In accordance with Article 2(1) of the FP7 RP, a legal entity is any natural person, or any legal person created under the national law of its place of establishment, or under Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations.

#### 1.1.3. Legal status according to the Rules for Participation for FP7 (Categories of legal entities)

The FP7 RP (as well as, in certain cases, the Work Programme and the call for proposals) refer to different categories of legal entities. These differences are mainly based on the legal status and/or characteristics of the legal entity.

According to the category(ies) of legal entities to which it belongs, a legal entity may have different rights and obligations<sup>(13)</sup>, in particular with respect to:

- rights in terms of the EU financial contribution to a participant (including its maximum level of funding);
- whether or not a financial capacity check of a legal entity will be mandatory;
- whether or not a competent public officer is allowed to certify the financial statement(s)<sup>(14)</sup>;
- the financial responsibility in the implementation of the indirect action (cf implementation modalities of the Participants' Guarantee Fund).

The main categories of legal entities that shall be identified are the following<sup>(15)</sup>:

|                             |             |                        |
|-----------------------------|-------------|------------------------|
| Natural person <sup>a</sup> |             |                        |
| Legal person                | Public body |                        |
|                             | Profit      | Non-profit public body |

<sup>a</sup> A natural person can qualify as an enterprise in the meaning of the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36), e.g. if self-employed with a VAT number.

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|          |   |                             |
|----------|---|-----------------------------|
|          |   | <i>Profit public body</i>   |
|          | <i>International Organisation</i>   | <i>Of European Interest</i> |
|          |   | <i>Other</i>                |
|          | <b>Secondary and Higher education Establishment</b>   |                             |
|          | <b>Research Organisation</b>  |                             |
|          | <b>Enterprise</b>   | SME                         |
|          |   | Non-SME                     |
| <b>a</b> | A natural person can qualify as an enterprise in the meaning of the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36), e.g. if self-employed with a VAT number. |                             |

The verification of the eligibility criteria that are introduced in specific funding schemes and/or in specific calls for proposals will also be part of the categorization exercise<sup>(16)</sup>.

As a general rule, if a legal entity may be categorized in different categories the validation services shall consider the most favourable one for this legal entity in terms of rights and/or obligations<sup>(17)</sup>.

Even if the participant loses its status/category of non-profit public body, secondary and higher education establishment, research organisation or SME, he/she will retain the advantages of this status for the signed grant agreements for the whole duration (unless it can be shown that the status/category granted was based on false declarations or manipulated intentionally with the sole purpose of obtaining the FP7 grant). However, participants must inform the validation services whenever such change occurs. If the participant signs another grant agreement after having lost the respective status it will not qualify to have the status.

#### 1.1.3.1. *Definitions*

1. 'Public body' means according to Article 2(13) of the EC FP7 RP and Article 2(12) of the EURATOM FP7 RP any legal entity established as such by national law, and international organisations. 'Established as public body by national law' means

- (1) incorporated as a public body in the formal act of creation or recognised as public body by the national law and
- (2) governed by public law.

However, public bodies may act and be subject to private law for some or most of their activities. A legal entity established under private law with a public service mission is not considered as a public body according the FP7 RP.

2. 'Non-profit public body' (Article 32(5) and Article 33(1) of the FP7 RP) means any legal entity which cumulatively meets the conditions of being a 'public body' and of being a 'non-profit organisation'.
3. 'Non-profit organisation' means a legal entity which by its legal form is non-profit-making and/or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members. The decisions of the managing board, associates, stakeholders, members or representatives of the organisation on the distribution of profits are not considered as sufficient elements to prove the non-profit nature of an entity.

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4. 'Research organisation' means according to Article 2(7) of the EC FP7 RP and Article 2(7) of the EURATOM FP7 RP a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives. The definition of 'non-profit organisation' set forth in point 3 above shall apply. The mere financing of research activities carried out by other entities, the dissemination of knowledge and the promotion or coordination of research activities are not considered as research activities within the sense of this definition.
  5. 'Secondary and higher education establishment' means a legal entity which is recognised as such by its national education system, being either a public or a private body.
  6. 'SMEs' mean according to Article 2(14) of the EC FP7 RP and Article 2(13) of the EURATOM FP7 RP micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC<sup>(18)</sup>.
    - (a) According to Article 1 of the Annex of Recommendation 2003/361/EC an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.
    - (b) According to Article 2(1) of the Annex of Recommendation 2003/361/EC the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons (expressed in annual working units as defined in Article 5 of the Recommendation) and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
    - (c) The following definitions shall apply in addition to those set out in Recommendation 2003/361/EC:
      - (i) A legal entity is considered to be engaged in an economic activity, if it proves to be involved in any form of trade or activity done for remuneration or pecuniary interest in a given market. In general, any activity consisting in offering goods or services on a given market is an economic activity.
      - (ii) The following shall not be considered economic activities
        - (1) Activities which do not entail some sort of pecuniary offset; or
        - (2) Activities for which there is no given/direct market; or
        - (3) Activities for which the income generated is not distinct from the personal income of its members or shareholders.
    - (d) For non-autonomous SMEs (partner enterprises and linked enterprises as set forth in Article 3(2) and (3) of the Annex of Recommendation 2003/361/EC), that is SMEs owned or controlled by other enterprises ('upstream enterprises') or which own or control others ('downstream enterprises') the data of upstream and downstream enterprises shall be used according to Article 6(2) to (4) of Recommendation 2003/361/EC to determine whether the enterprise meets the criteria to qualify as an SME.



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(e) According to Article 4(2) of the Annex of Recommendation 2003/361/EC, SME status is only lost after exceeding the ceilings stated in Article 2 of the Recommendation over two consecutive accounting periods. This rule is not applicable if an SME is merged or acquired by a larger group, in which case the SME shall lose its status immediately from the date of the transaction.

Therefore, applicants who had their validation as SME refused on grounds of having exceeded the ceilings stated in Article 2 of Recommendation 2003/361/EC during the last accounting period shall get the validation reversed if they prove that those ceilings were not reached in the second-last accounting period. This does not apply if an SME has exceeded the thresholds as a result of a merger or acquisition.

#### 1.1.4. Requested data and documents

Applicants, depending on their legal type, shall provide in the framework of the validation process supporting documents (except if previously provided and no changes have since taken place), which shall prove:

- (1) Their legal name;
- (2) Their legal form when they are legal persons;
- (3) Their legal address; this shall be, by default, the address of the head office for legal persons or the address of the habitual residence for natural persons.

Documents are accepted in all the official EU languages. To facilitate the work of the validation services applicants may be requested to submit a free translation of these documents. Documents submitted in a non-EU official language<sup>(19)</sup> may be refused if not accompanied by a certified/official/legal translation by an accredited body or translator. The supporting documents must not be over 6 months old.

Legal entities shall provide in particular the supporting documents listed in the following. An electronic version of these documents is accepted.

- (a) A signed legal entity identification form<sup>(20)</sup>.
- (b) For natural persons:
  - (i) A legible photocopy of the valid identity card or passport;
  - (ii) If applicable, an official VAT document.
- (c) For public bodies:
  - (iii) A copy of the resolution, law, decree or decision establishing the legal entity in question as a public body; or, in the absence of this, any other official document attesting the establishment of the entity as a public body;
  - (iv) If applicable, an official VAT document. If a legal entity is not registered for VAT, the proof of the VAT exemption may be requested by the validation services.
- (d) For other legal entities:
  - (v) A copy of any official document (e.g. official gazette, register of companies, etc.) showing the applicant's legal name and address and the registration

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- number given to it by the national authorities or, depending on the country of registration, a copy of any other acceptable legal document;
- (vi) A copy of the VAT registration document, if any, and only if the VAT number does not appear on the official document referred to above. If an entity is not registered for VAT, the proof of the VAT exemption shall be requested.
- (e) For SMEs:
- (vii) An annual balance sheet and profit and loss accounts for the last accounting period;
- (viii) The annexes to these accounts with the indication of downstream and upstream enterprises when this is not shown in the balance sheet;
- (ix) A declaration on the staff headcount expressed in Annual Working Units as defined in Article 5 of Recommendation 2003/361/EC;
- (x) The balance sheet and the profit and loss accounts, and their annexes, for the latest approved accounting period, as well as the staff headcount of upstream and downstream enterprises as defined in Article 6 of Recommendation 2003/361/EC.
- (xi) As laid down in Article 4(3) of Recommendation 2003/361/EC in the case of newly established enterprises whose accounts have not yet been approved, a declaration including a bona fide estimate made in the course of the financial year shall be accepted.
- (xii) A declaration shall be accepted as means of evidence to demonstrate that, in spite of lack of turnover, the enterprise is engaged in an economic activity, namely by the investments made and the likely expected return.
- (xiii) The supporting documents above can be replaced by an official certificate issued by an official authority or competent body in the Member State in which the legal entity has its legal address or habitual residence and which certifies that the enterprise is an SME in the sense of Recommendation 2003/361/EC. However, sworn or solemn statements made by the applicant before a judicial or administrative authority, a notary or a public officer in the country of origin or provenance shall not be accepted as replacement of the required supporting documents.
- 1.1.5. *Effective date of the legal existence and the legal status/category*
1. The date on which the legal existence and the legal status/category of a legal entity are taken into account as being effective by the Commission (effective date) is the date upon which the legal act establishing the constitution or incorporation of a legal entity becomes valid. That date shall be, in order of precedence:
- (1) The date of registration in the country's official registry (e.g. commercial registry);
- (2) The date of publication on the national official journal;
- (3) The date of the legal deposit of the act in the court registry;
- (4) The date of signature of the parties.
2. When there is no act of constitution or incorporation, the legal entity shall be deemed to exist since a default date.

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3. The effective date of SME status shall be the account closure date of the accounting period on which the assessment of the SME status is based in accordance with Article 4(2) of the Annex of Recommendation 2003/361/EC (see section 1.1.3.1, point (6)(e) above). For newly established enterprises whose accounts have not yet been closed, the effective date is the date of their creation.

## 1.2. Implementation of the verification of legal existence and legal status/category

Any legal entity shall register its basic administrative and legal data (such as organisation's legal name, legal address, etc.) in the web interface of the Participant Portal. Registration is necessary only once. In order to avoid double registrations, the 'Participant Identification Code' (PIC) issued at the first registration shall be used in any subsequent participation of the legal entity<sup>(21)</sup>.

Entities without an independent legal personality shall participate using the same 'Participant Identification Code' (PIC) as the legal entity from which they depend. However, the following entities may be validated as separate entities and be attributed a separate PIC:

- (1) Ministries or other executive services part of the central public administration of the – central or federated – State, directly linked to the government in accordance with the officially published organisation of the State,
- (2) Specialised agencies set up by international organisations, including (but not limited to), the ones referred to in Article 43(2) of the IR.
- (3) The Joint Research Centre and its delegations.

At the stage of proposal submission no supporting documents will be requested and no verification of the data by the services implementing FP7 will be carried out.

Entities need to have a PIC, registered and validated in the Commission's database, before a grant agreement can be signed. To this end, the legal existence and legal status/category of the entity have to be verified by the validation services on the basis of the data and supporting documents provided by the entity if this has not been done before<sup>(22)</sup>. The verification of legal existence and the attribution of a legal status/category shall be carried out once the entity has self-registered. It shall only be carried out if the basic legal data (legal name, legal form and legal address) of the entity are clearly indicated and supported by the required supporting documents, provided none of these are manifestly erroneous, incorrect or illegible.

The same procedure will be used and the same documents will be requested for legal entities joining an indirect action or for any changes of the legal personality of a participant during the implementation of this indirect action, which lead to a new validation of the entity starting with its self-registration at the Participant Portal.

The supporting documents for proving the legal existence and legal status/category shall be submitted to the validation services via the web interface of the Participant Portal or by e-mail<sup>(23)</sup> within the deadline specified by the services implementing FP7 in the invitation or/and in the framework for negotiation.

In case of non-solicited self-registrations, the validation services, when requesting clarifications and supporting documents, will specify the timeframe within which the applicant must reply. If the applicant does not submit, clarify or complete the supporting documents within the indicated timeframe, taking into account any special and justified circumstances, the validation services reserve the right to discard self-registrations.

While the validation services verify the legal existence of the applicant, they also verify if the entity is already registered in the Research Participant Portal or in another central European

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Once the legal existence of the applicant is determined, the validation services shall verify on the basis of the supporting documents the FP7 legal status and identify the category to which each legal entity participating in an FP7 indirect action belongs.

After having verified the legal existence and legal status/category of an entity the validation services shall verify and record the indirect cost method declared by the applicant.

1.2.1. *Provisions regarding cases of incomplete, contradictory or false declarations and/or supporting documents*

1. All evidence is presumed to be truthful and provided in good faith. The validation services may resort to all publicly available information for clarification purposes.

- (a) If the findings do not corroborate the applicant's declaration,
- (b) If the evidence provided by the applicant is illegible, incomplete or ambiguous,
- (c) If indications point at incomplete or false declarations or other irregularities,

the validation services shall inform the applicant and request to provide further clarification or to complete the documents submitted within a reasonable deadline.

2. In the following cases, namely

- (a) If the applicant fails to supply the requested information,
- (b) If he commits a misrepresentation in supplying the information required,
- (c) If the supporting documents are invalid or outdated,
- (d) If there remains a manifest contradiction between the applicant's declaration and the supporting documents,

the validation services shall:

- (i) Where it concerns the proof of legal existence, refuse the validation of the concerned legal entity;
  - (ii) Where it concerns the attribution of legal status/category, validate the legal entity in accordance with the documents submitted and not of the applicant's declaration.
3. In case of refusal of validation or of refusal of the attribution of the self-declared legal status/category the validation services shall inform the applicant of the grounds and of the legal consequences.
4. In case of irregularities and/or false declarations the validation services shall inform the concerned Authorising officer and, if necessary, the European Anti-Fraud Office (OLAF).

Irregularities and/or false declarations may lead to the application of financial penalties or administrative penalties in the form of exclusion of the applicants/participants for future participation, as laid down in Article 96 of the Financial Regulation

1.2.2. *Information on the outcome of the validation and the validated 'Participant Identification Code' (PIC)*

*Status: Point in time view as at 31/01/2020.*

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The validation services shall duly inform the applicants, of the outcome of the verification of the legal existence and the attributed legal status/category.

Each validated entity receives a unique validated 9-digit registration number, the 'Participant Identification Code' (PIC) which shall be used in any participation of the entity in subsequent FP7 proposals.

#### 1.2.3. *Declaration on the correctness of the basic data in the Grant Preparation Form*

During negotiations the basic administrative and legal data registered by the legal entity in the Participant Portal will be automatically uploaded into the Grant agreement Preparation Forms (GPF).

The legal representative of the organisation is the person authorised to commit the organisation and to sign the grant agreement. He/she must:

- (a) Verify that the basic administrative and legal data provided in the GPF for his/her organisation are correct; and, if not, ask for their modification via the Participant Portal.
- (b) Declare on his/her honour that all the information provided in the GPF regarding his/her organisation is complete, accurate and correct, declare that it is not in one of the situations mentioned in Articles 93(1), 94 and 96(2)(a) of the FR and provide a signature certifying the above in the GPF. Supporting documents regarding the legal representatives of the legal persons mentioned in this section can be requested by the services implementing FP7.

#### 1.2.4. *Legal Entity Appointed Representative (LEAR)*

After the validation of the legal entity, the legal representative shall appoint a Legal Entity Appointed Representative (LEAR) who will be the official contact person recognised by the validation services and authorised to request changes to validation data, on the basis of relevant supporting documents. To this end, the legal representative will send the Lear Appointment Form – by regular mail or by e-mail - duly signed and stamped, to the validation services. The nomination of a LEAR is mandatory. Being appointed as LEAR is an administrative function which may but need not be distinct from being a legal representative of the entity.

As soon as registered in the central database the LEAR becomes the official contact person to the validation services on all issues related to the legal and financial data and the FP7 status/category of the entity. The LEAR has access to a dedicated online tool on the Research Participant Portal and has to maintain the validated information of the entity up to date. He/she shall inform the validation services of any change in the legal data or legal status/category of the entity immediately following the change. Upon request, he/she provides also financial data of the entity.

In case of such changes of legal data or legal status/category, the LEAR shall request a modification of a previous validation on the basis of the legal and/or financial supporting documents.

#### 1.2.5. *Modification of validations*

Requests for modification of a previous validation shall only be accepted if submitted by the LEAR. If a LEAR has not been nominated yet, this nomination process must be achieved for the treatment of the modification request to begin.

##### 1.2.5.1. *Modifications of validations due to an error of the initial validation*

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Such modifications are registered retroactively with an effective date as from the date of the initial validation.

However, in such cases and if considered necessary, other protection measures, i.e. listed in point 4.2.2, can be implemented. When the modification concerns an error attributable to the validation services, the retroactive effect may be waived by the authorising officer of the competent service implementing FP7, when duly justified and complying with the principles of sound financial management and proportionality.

#### 1.2.5.2. *Modifications of validations due to a change of the legal existence and legal status/category*

The validation services shall encode the effective date of the modification of the legal existence or legal status/category of a legal entity which is determined by the date on which the act establishing the change becomes valid, unless the terms of this act stipulate another date. For SMEs the effective date of the modification of status shall be the closure date of the accounting period on which the change of status is based and which is determined according to the rules laid down in section 1.1.3.1, paragraph (6)(e) above.

#### 1.2.5.3. *Changes of the indirect cost method (ICM)*

The validation services shall reflect changes of the indirect cost method declared by the participant in accordance with the rules laid down in Article II.15 of the Model Grant Agreement.

Indirect costs are those eligible indirect costs which cannot be identified by the participant as being directly attributed to the project but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project. They may be identified according to the methods specified in Article II.15(2) of the Model Grant Agreement<sup>(25)</sup>.

The following situations of changes of the ICM can be distinguished<sup>(26)</sup>:

Any requests for change of the ICM shall be duly justified either by an evolution of the legal status or of the accounting system of the participant; or by a mistake made during the negotiation of the first project where the legal entity participates.

By requesting an ICM change, the participant declares to have read and accepted the rules regarding the choice of the ICM (Article II.15 of the Model Grant Agreement).

#### (1) Changes of the legal status of the participant

If a change of the legal status of the participant results in the acquisition of the status/category of non-profit public body, secondary and higher education establishment, research organisation or SME, the participant may ask for the application of the 60 % flat rate for future projects if it fulfils the other conditions set in the Model Grant Agreement for the use of this specific rate<sup>(27)</sup>.

The effective date of the change of the ICM shall be the same as that of the change of legal status/category laid down in section 1.2.5.2.

The effective date of the change of the ICM is only applicable for the future and shall therefore not affect on-going projects.

#### (2) Changes in the accounting system of the participant:

(a) In cases of changes of the accounting system, the LEAR shall inform the validation services, in its request for change of the ICM via the Participant Portal, on the date

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to which the change shall take effect. The effective date registered by the validation services is the date stated by the LEAR if it is accepted as such by the services implementing FP7.

- (b) If the participant had originally opted for a flat rate and decided afterward to opt for the actual indirect cost method for subsequent participation the change does not need to be proved.
- (c) The effective date of the change of the ICM is only applicable for the future and shall therefore not affect on-going projects. However, if due to changes in their accounting system participants are no longer able to identify the actual indirect costs, the effective date of the change of the ICM is applicable for on-going projects.
- (3) If a mistake regarding the ICM has been made during the negotiation of the first project where the legal entity participates and if the correction of such a mistake has been accepted by the services implementing FP7, the effective date of the modification of the ICM is the same date as that of the initial validation of the entity and is applicable for on-going projects.

#### 1.2.6. *Administrative review of validations*

1. Prior to any request for review, the applicant shall ask for the confirmation of the outcome of the validation.
2. Requests for review<sup>(28)</sup> of validations may be addressed in writing with no other formalities being required directly to the competent validation service by the nominated LEAR of the concerned legal entity.

Requests for review submitted by a party not concerned by the validation shall be rejected.

3. The validation services shall acknowledge the receipt of the request for review. They shall duly inform the concerned party of the decision thereon. In case of rejection, the grounds shall be given.

A request for review of a validation does not suspend the validation, which shall remain in force until it is overturned. This administrative review process is without prejudice to the applicant's rights of appeal before the European Ombudsman or the Court of Justice of the European Union.

#### 1.2.7. *The Validation Panel*

The DGs and the Executive Agencies of the European Commission implementing FP7 shall set up an inter-service panel for coordination purposes (referred to as the validation panel) and shall delegate their representative to this panel. The validation services shall participate in the validation panel without voting rights and assure the secretariat of the validation panel under the supervision of the Chair of the validation panel. The Commission shall establish the rules of procedure for the coordination processes including a register of common practices.

In case a request for review is submitted by an applicant to the competent validation services in accordance with 1.2.7 above, these services shall refer the request to the validation panel. The validation panel shall review and decide on the referred cases of legal entity validation. The validation panel does not have the mandate to deal with cases related to the verification of the financial capacity.

## 2. VERIFICATION OF THE OPERATIONAL CAPACITY

### 2.1. Principles

*Status: Point in time view as at 31/01/2020.*

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Decision of 18 December 2012 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (Text with EEA relevance) (2012/838/EU, Euratom). (See end of Document for details)* As mentioned in Article 115 of the FR and Article 176 of its IR, the operational and financial capacity of an applicant must be assessed in order to ensure the applicant's ability to complete the proposed action or work programme.

The operational capacity is to be distinguished from the financial capacity for which a specific verification will be carried out (see *infra*).

The term ‘operational capacity’ relates to the professional (technical, scientific, technological, managerial, administrative ...<sup>(29)</sup>) skills, qualifications, tools and/or knowledge necessary to achieve the objectives and expected results.

Since most of the FP7 indirect actions are implemented by a consortium of several legal entities, two levels of operational capacity are distinguished:

- The consortium's operational capacity;
- Each applicant's operational capacity.

The purpose of the verification is therefore to assess whether the applicants (collectively and individually) have or will have in due time the professional competencies and qualifications required to complete the indirect action.

In case a natural person performs the specific role of coordinator, particular attention has to be given to the assessment of his/her operational capacity.

## 2.2. Implementation

### 2.2.1. *At proposal stage*

The operational capacity of the consortium will be addressed at the Evaluation Stage<sup>(30)</sup> by the independent external evaluators when assessing the evaluation criterion ‘Implementation’.

In order to allow the independent external evaluators to perform this task, the applicants will be required to provide *inter alia* within their proposal: at applicant level, a brief description of the organisation and a short profile of staff members who will undertake the work (See Guide for Applicants); at consortium level, the applicants will describe how they collectively constitute a consortium capable of achieving the project objectives (See Guide for Applicants).

An above-threshold score will indicate a positive assessment by the independent external evaluators.

The independent external evaluators will provide comments to the services implementing FP7 (cf Evaluation Summary Report) for any legal entity for which they consider that the necessary operational capacity to perform its foreseen tasks is obviously insufficient or not enough demonstrated.

### 2.2.2. *At negotiation stage*

As a general rule, the services implementing FP7 will follow the recommendations of the independent external evaluators regarding the operational capacity – including the possibility to refuse the participation of an applicant from a positively evaluated proposal because of its operational incapacity. If the services implementing FP7 are aware of any additional information that may impinge on the judgement of the independent external evaluators, the services implementing FP7 may decide not to select a legal entity and/or a proposal for EU financial contribution, on the basis of a strong and well-supported argumentation. Such additional information may come from different sources such as the findings of previous audits, management of previous (or on-going) projects, the consultation of external databases, etc.



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Each applicant shall provide to the services implementing FP7 a declaration on its honour that it has, or will have in the time required, the necessary resources for the implementation of their work in the relating FP7 indirect action. This declaration is part of the GPF and will be signed by a person authorised to sign the grant agreement and to legally commit the organisation. When an applicant does not have the own operational resources for the implementation of the work, the applicant should describe how he/she intends to fulfil his/her obligations. If any task is to be subcontracted or other third parties are involved in the project, it will have to be discussed and agreed during negotiations, and clearly described in Annex I to the Grant Agreement.

In the particular case of a legal entity joining the consortium during the negotiation or during the implementation of the indirect action, the assessment of its operational capacity will be based on the same principles.

### 3. VERIFICATION OF THE FINANCIAL CAPACITY: RULES OF IMPLEMENTATION

#### 3.1. Principles

The verification of the financial capacity to carry out the proposed action is an integral part of the negotiation stage and needs to be completed before the signature of the grant agreement.

The following rules specify the minimum requirements for financial checks that authorising officers must conduct in accordance with Article 16(4) of the FP7 RP and with Articles 173 and 176 of the IR of the FR.

The verification of the financial capacity of an applicant to carry out the action essentially proceeds in four steps:

- As a first step, legal entities subject to a mandatory verification of their financial capacity are identified in accordance with FP7 RP, the FR and its IR (see section 3.3);
- In a second step, these legal entities provide – if not already available – their financial information and relevant supporting documents covering the last closed financial year (see section 3.4); the information is then verified by the validation services.
- In a third step, on the basis of the above, the validation services will proceed with a concise financial analysis on the last closed financial year. This concise financial analysis will consist of:
  - a financial viability check (see section 3.5);
  - in addition the Equity flag will be checked (see section 3.5);
  - a co-financing capacity's check and financial exposure flag (if relevant) (see section 3.6).
- Finally, as a fourth step, on the basis of the above, the authorising officer will take the appropriate measures, including, if necessary, a more in-depth financial analysis. (See Section 4).

The same procedure and documents, as described hereafter, will be used/requested for legal entities joining an indirect action during the negotiation or the implementation of this indirect action.

#### 3.2. Reasons for a concise financial analysis as a general rule

Given the important number of applicants whose financial capacity has to be analysed and in order to avoid unreasonable delays, a concise financial viability check is carried out. However, if the result of the concise financial viability check<sup>(31)</sup> of a legal entity is 'weak', a more in-depth financial analysis<sup>(32)</sup> shall be carried out<sup>(33)</sup>.

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### 3.3. **Categories of legal entities subject to (or exempted from) a verification of their financial capacity**

In compliance with the FR and its IR (article 176(4)), the following categories of legal entities are not subject to a verification of their financial capacity:

- natural persons in receipt of scholarships;
- public bodies;
- international organisations referred to in Article 43(2) of the IR:
  - international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;
  - the International Committee of the Red Cross (ICRC);
  - the International Federation of National Red Cross and Red Crescent Societies;
  - the European Investment Bank and the European Investment Fund.

Moreover, due to the introduction in the FP7 RP of a Participants' Guarantee Fund:

- in compliance with article 38 of the FP7 RP (paragraphs 5 and 6), the following categories of legal entities are not subject to a verification of their financial capacity:
  - legal entities whose participation in the indirect action is guaranteed by a Member State or an Associated country;
  - higher and secondary education establishments.
- In addition, in compliance with paragraph 6 of article 38 of the FP7 RP, any other category of legal entities applying for an EU financial contribution in an FP7 indirect action inferior or equal to EUR 500 000, are also not subject to a verification of their financial capacity, except if:
  - the legal entity is the coordinator of the indirect action and it does not belong to one of the above-mentioned categories; and/or
  - in exceptional circumstances, according to information already available to the services implementing FP7, there are justified grounds to doubt the financial capacity of an applicant (eg.: if there are findings of serious administrative errors or fraud involving the entity; or if the entity is subject to pending legal procedures or judicial proceedings for serious administrative errors or fraud; or if the entity is subject to an attachment order or significant recovery order for an outstanding amount issued by the Commission on which the payment is significantly overdue); or
  - it has been subject to substantial financial findings relating to its financial capacity following a financial audit carried out by the Commission, the Court of Auditors or their duly authorised representatives within the last 2 years).

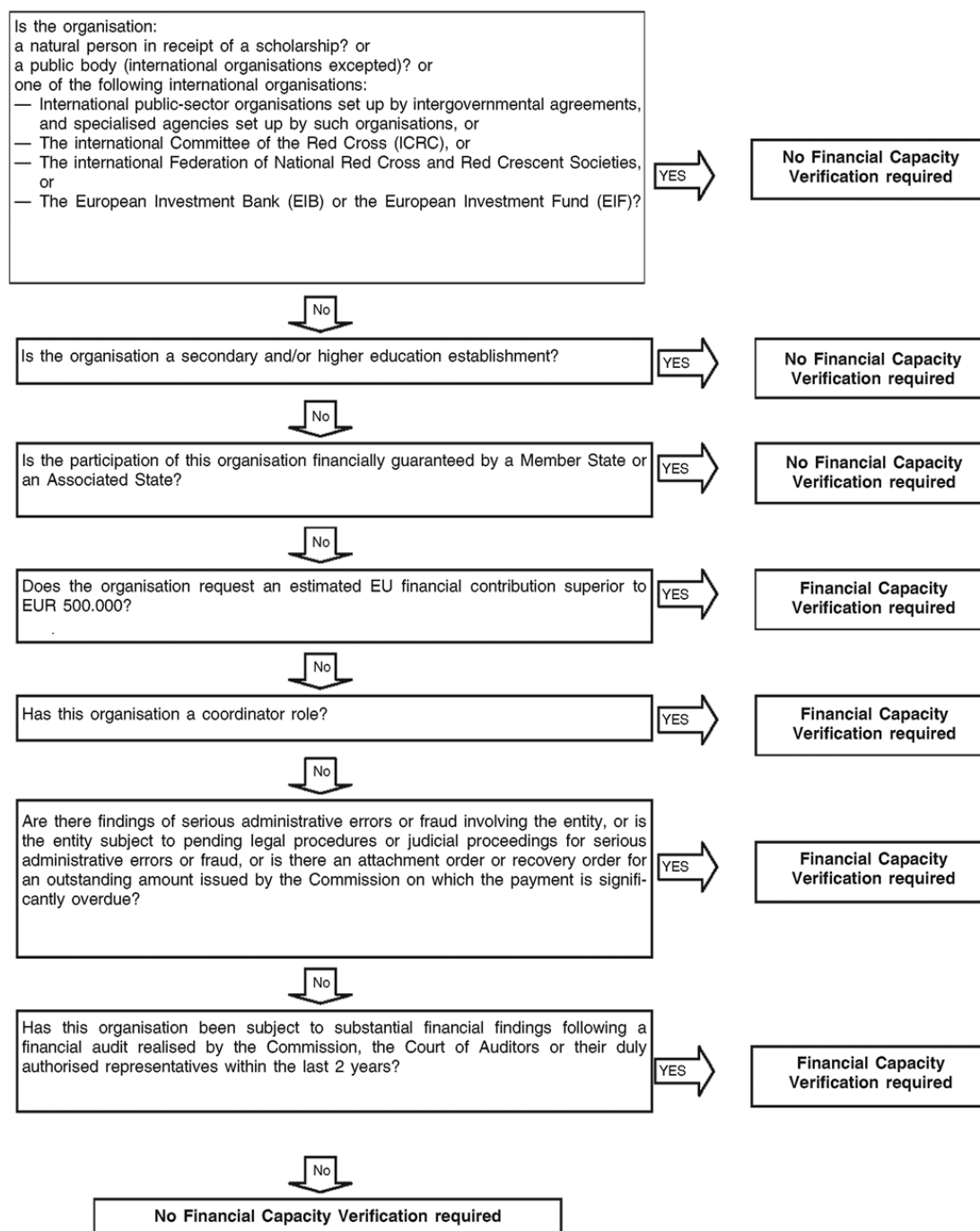
For any other legal entity participating in an FP7 indirect action, a verification of its financial capacity is mandatory.

A decision tree to identify categories of legal entities subject to a verification of their financial capacity is provided in the next page.

#### **Decision tree on financial capacity verification**

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### 3.4. Requested data and documents

In accordance with FP7 RP, the term ‘legal entity’ shall include both legal persons and natural persons.

#### 3.4.1. Legal persons

At the negotiation stage, and in compliance with FP7 RP:

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- Each legal person subject to a verification of its financial capacity shall provide the validation services for the last financial year for which the accounts are closed:
  - Balance sheet;
  - Profit and loss account;
  - Statutory audit report on the 2 above financial statements if available. If the statutory reports are available, no further audit report is required<sup>(34)</sup>.
- Each legal person subject to a verification of its financial capacity is required - by the validation services - to complete the synthesis of its last available balance sheet and profit and loss account in a specific format called ‘Simplified accounts’ (via the Research Participant Portal or by other means).
- Each legal person subject to a verification of its financial capacity requesting an estimated EU financial contribution exceeding EUR 500 000 shall provide the validation services with a full audit report certifying the accounts of the last available financial year<sup>(35)</sup>. It can only be delivered by a professionally qualified external auditor.

As a general rule, no prospective financial data should be used, except in the case of ‘young’ legal entities (such as start-up companies) without any closed accounts. For these legal entities, a Business Plan will be required (especially ‘young’ SMEs) or (a) similar relevant document(s) of prospective activities.

Only the non-consolidated financial statements related to the validated entity are accepted for the purpose of financial viability checks even if the entity has linked or partner enterprises.

If the entity, in its capacity as a parent company (upstream enterprise) of a group of enterprises, is exempt from publishing a non-consolidated profit and loss account under its national legislation, the validation services can require the synthesis of the non-consolidated profit and loss account in a specific format (‘Simplified accounts’).

If the entity, in its capacity as a subsidiary of a parent company (downstream linked applicants), is exempt from a statutory audit under its national legislation and only the consolidated statements are available, the validation services can limit their request to the synthesis of the non-consolidated balance sheet and the profit and loss account in a specific format (‘Simplified accounts’), supported by a copy of the official consolidated financial reports of the parent company and the related audit reports. Nevertheless, if such entity requests more than EUR 500 000 EU contribution, a full audit report certifying the non-consolidated accounts of the last available financial year for the subsidiary has to be provided.

#### 3.4.2. *Natural persons*

Even if the situations where a natural person will:

- request an estimated EU financial contribution exceeding EUR 500 000; and/or
- be a coordinator;

are theoretical, these possibilities must be foreseen, in order to comply with paragraph 6 of article 38 of the FP7 RP.

At the negotiation stage, and in compliance with FP7 RP and with the IR of the FR, each natural person subject to a verification of its financial capacity shall provide the validation services with:

- its last income tax declaration;
- a certified declaration of its current patrimony<sup>(36)</sup>;
- an exhaustive list (with relevant dates and figures) of its debts, broken down in short-term debts (maximum one year) and medium/long-term debts (more than one year), as certified by its creditors;

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— an audit report, as described in section 3.4.1, if requesting an estimated EU financial contribution exceeding EUR 500 000.

### 3.4.3. Other remarks

The verified information of the ‘Simplified accounts’ is stored in the central Commission database and is available for the LEAR of each entity via the Research Participant Portal.

The financial data has to be provided at the beginning of negotiations and in some cases additional information may be required during the implementation of the project as well<sup>(37)</sup>.

Subject to the decision of the responsible authorising officer, a legal entity that does not provide its requested data and documents in due time will not be able to participate in the FP7 indirect action in question.

## 3.5. Financial viability check

### 3.5.1. Purpose

In order to be financially viable, a legal entity must be:

- liquid: capable of covering its short-term commitments;
- solvent: capable of covering its medium and long-term commitments;
- profitable<sup>(38)</sup>: generating profits, or at least with self-financing capacity.

As a consequence, the liquidity, the financial autonomy, the profitability and the solvency of the legal entity must be assessed in the financial analysis.

The validation services provide a user-friendly electronic tool to applicants to carry out their financial viability check for their own information<sup>(39)</sup>.

The following ratios, noteworthy value and thresholds apply for legal persons. Specific criteria will be used for natural persons (see section 3.5.4).

### 3.5.2. Used ratios and noteworthy value

The concise financial viability is based on the 3 financial ratios defined as follows:

| Purpose              | Indicators        | Ratios   | Concise Analysis |
|----------------------|-------------------|--|------------------|
| <b>Liquidity</b>     | Quick ratio       | $\frac{\text{Current assets} - \text{Stocks} - \text{Debtors} > 1 \text{ year}}{\text{Short-term debt (bank and non-bank)}}$ | —                |
| <b>Profitability</b> | Profitability (1) | $\frac{\text{GOP}}{\text{Turnover}}$   | —                |
| <b>Solvency</b>      | Solvency          | $\frac{\text{Total debt}}{\text{Equity}}$<br>a   | —                |

a *Equity = Capital and reserves - 50 % of intangible assets*

### Equity flag

In addition, a noteworthy value based on equity is used as a complementary data (Flag). The Equity flag will be considered ‘positive’ if the indicator ‘Total debt / Equity’ is superior or equal to 0 and inferior or equal to 10 (where

Equity = Capital and reserves – 50 % of the intangible assets

).

### 3.5.3. Thresholds

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According to the results obtained for each of the abovementioned ratios, the following quotes are given:

| Purpose       | Indicators        | Weak                | Acceptable              | Good                    |
|---------------|-------------------|---------------------|-------------------------|-------------------------|
|               |                   | 0                   | 1                       | 2                       |
| Liquidity     | Quick ratio       | $i < 0,5$           | $0,5 \leq i \leq 1$     | $i > 1$                 |
| Profitability | Profitability (1) | $i < 0,05$          | $0,05 \leq i \leq 0,15$ | $i > 0,15$              |
| Solvency      | Solvency          | $i > 6,00$ or $< 0$ | $6,00 \geq i \geq 4,00$ | $i < 4,00$ and $\geq 0$ |

The following rules are applied for the special cases where the ratio is negative, or contains a zero denominator or numerator:

#### Liquidity:

- If  $(\text{Current assets} - \text{Stock} - \text{Debtors after one year}) \leq 0$ , the result shall be 0 with weak qualifications. The value for  $(\text{Current assets} - \text{Stock} - \text{Debtors after one year})$  cannot be negative.
- If the short term debt (bank and non-bank) = 0, and the above  $(\text{Current assets} - \text{Stock} - \text{Debtors after one year})$  is not zero, the result shall be 2 with good qualifications.

#### Profitability (1):<sup>(40)</sup>

- If  $\text{GOP} \leq 0$ , the result shall be 0 with weak qualifications.
- If the Turnover = 0, the Operating income shall be used for the calculation.
- If the Operating Income = 0 or negative, the result shall be 0 with weak qualifications.
- Turnover cannot be negative.

#### Solvency:

- If Equity = 0, the result shall be -1 with weak qualifications in all cases.
- If Total debt = 0 and the Equity is positive, the result shall be 0 with good qualifications.
- If Total debt = 0 and the Equity is negative, the result shall be -1 with weak qualifications.
- The calculation of the Equity flag is based on the same principles, but it will be considered 'positive' if the indicator 'Total debt/Equity' is superior or equal to 0 and inferior or equal to 10.

#### 3.5.4. Particular case of natural persons

For natural persons, the financial viability will be assessed as follows:

##### 3.5.4.1. Used ratios

The financial viability is based on the 2 financial ratios as follows:

| Purpose   | Indicators  | Ratios  |
|-----------|---|---|
| Liquidity | Quick ratio   | $\frac{\text{Current patrimony} + \text{annual revenues}}{\text{Short-term debt (bank and non-bank)}}$<br>abc |
| a         | as indicated in the declaration of patrimony                |   |
| b         | as indicated in the income tax declaration                  |   |
| c         | as indicated in the list(s) of debts certified by creditors |   |

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|                 |   |                                    |
|-----------------|---|------------------------------------|
| <b>Solvency</b> | Solvency  | Total of doubts<br>Patrimony<br>ca |
| <b>a</b>        | as indicated in the declaration of patrimony                |                                    |
| <b>b</b>        | as indicated in the income tax declaration                  |                                    |
| <b>c</b>        | as indicated in the list(s) of debts certified by creditors |                                    |

### 3.5.4.2. Thresholds

According to the results obtained for each of the abovementioned ratios, the following quotes are given:

| Purpose   | Indicators | Weak    | Acceptable          | Good      |
|-----------|------------|---------|---------------------|-----------|
|           |            | 0       | 1,5                 | 3         |
| Liquidity | Quickratio | $i < 2$ | $2 \leq i \leq 3$   | $i > 3$   |
| Solvency  | Solvency   | $i > 1$ | $1 \geq i \geq 0,5$ | $i < 0,5$ |

## 3.6. Co-financing capacity check

### 3.6.1. Purpose

The purpose of this check is to assess the co-financing capacity of an applicant.

This check will only be performed if an audit report<sup>(41)</sup> of the accounts has been issued (i.e.: only in the case of a legal entity requesting for its participation in this FP7 indirect action an estimated EU financial contribution exceeding EUR 500 000) and this report raised also serious qualifications in terms of co-financing capacity appreciated by the Authorising Officer.

The co-financing capacity of an applicant will not only be judged on the basis of the relating FP7 indirect action, but at least on the basis of all on-going indirect actions supported by the Union requesting co-financing that the authorising officer is aware of. In this context, the authorising officer may request from an applicant a list of projects supported by the EU budget in which it is involved<sup>(42)</sup>. This check will however not be performed for applicants authorised to receive an EU financial contribution of up to 100 % of their eligible costs.

The following ratios, noteworthy value and thresholds apply for legal persons. Specific criteria will be used for natural persons (see section 3.6.4).

### 3.6.2. Used ratios and noteworthy value

The co-financing capacity check is based on the financial ratios as follows:

Co-financing capacity indicators:

| Purpose               | Indicators                    | Ratios  |
|-----------------------|-------------------------------|---|
| Co-financing capacity | CashFlow Indicator            | $= \frac{\text{CashFlow}}{\sum_p \left( \frac{\text{EligibleCost}_p - \text{EUContribution}_p}{\text{Duration project}_p} \times \frac{\text{Min}(365, \text{DaysLe}_p)}{365} \right)}$ |
|                       | NetOperating Profit Indicator | $= \frac{\text{NOP}}{\sum_p \left( \frac{\text{EligibleCost}_p - \text{EUContribution}_p}{\text{Duration project}_p} \times \frac{\text{Min}(365, \text{DaysLe}_p)}{365} \right)}$      |

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|                               |   |   |
|-------------------------------|---|---|
| p                             | : | on-going project where the legal entity is participating                        |
| Duration <sub>project p</sub> | : | Total Duration of the project p in Years  |
| EligibleCost <sub>p</sub>     | : | Total Eligible Cost for the participant in the project p                        |
| EU contribution <sub>p</sub>  | : | Total EU Contribution for the participant in the project p                      |
| DaysLeft <sub>p</sub>         | : | number of days left for the project p   |
| Cash flow                     | : | (gross operating profit + financial income) – (interest paid + similar charges) |

Not taken into account for this calculation: ended projects and projects where the EU contribution = Eligible costs of the project.

*Financial exposure flag:*

In addition, and for coordinators only, a noteworthy value based on the project total pre-financing and the coordinators turnover is used as complementary data (Flag). The Financial Exposure Flag will be considered 'positive' if the indicator 'project total pre-financing/turnover' is equal or inferior to 0,5. (If the turnover is 0, the operating income shall be used for the calculation.)

### 3.6.3. Thresholds

According to the results obtained for each of the abovementioned ratios, the following quotes are given:

| Purpose               | Indicators                     | Weak | Good  |
|-----------------------|--------------------------------|------|-------|
|                       |                                | 0    | 1     |
| Co-financing capacity | Cash Flow Indicator            | < 1  | > = 1 |
|                       | Net Operating Profit Indicator | < 1  | > = 1 |

An overall score of less than 1 will be considered as a 'weak' co-financing capacity.

### 3.6.4. Particular case of natural persons

For natural persons, the co-financing capacity check will be assessed as follows:

#### 3.6.4.1. Used ratios

| Purpose               | Indicators       | Ratios  |
|-----------------------|------------------|---|
| Co-financing capacity | Short term       | $\frac{\text{Current patrimony} + \text{annual revenues}}{(\text{Project eligible cost} - \text{EU contribution (CP)})}$ in average per year<br>abc |
|                       | Medium/Long Term | $\frac{\text{Patrimony}}{(\text{Project eligible cost} - \text{EU contribution (CP)})}$<br>ab   |

a as indicated in the declaration of patrimony

b as indicated in the income tax declaration

c CP: Costs and EU contribution of all projects of the participant with the EU.

#### 3.6.4.2. Thresholds

According to the results obtained for each of the abovementioned ratios, the following quotes are given:



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| Purpose               | Indicators       | Weak | Good  |
|-----------------------|------------------|------|-------|
|                       |                  | 0    | 1     |
| Co-financing capacity | Short Term       | < 1  | > = 1 |
|                       | Medium/Long Term | < 1  | > = 1 |

#### 4. VERIFICATION OF THE FINANCIAL CAPACITY: CONCLUSION OF THE ANALYSIS (CHECKS) AND POSSIBLE MEASURES TO BE TAKEN

##### 4.1. Assessment of the results of the concise analysis

The concise financial assessment results in an overall score for the financial capacity of an applicant in the range of ‘good’, ‘acceptable’ or ‘weak’ on the basis of the above mentioned ratios.

As a general rule, any legal entity subject to a verification of its financial capacity which obtains under a concise analysis a minimum of **3 points** as a result of its financial viability check will be considered to have a ‘positive’<sup>(43)</sup> financial capacity, unless it is subject to one (or several) of the situations mentioned hereafter.

#### CONCISE ANALYSIS

|                                     | Weak | Acceptable | Good |
|-------------------------------------|------|------------|------|
| Result of financial viability check | 0-2  | 3          | 4-6  |

Despite of the abovementioned results, the financial capacity of a legal entity will in any case be considered as ‘weak’, and therefore be subject to a more in-depth analysis, if:

- an audit report (cf. section 3.4) of the accounts has been issued with serious qualification (not only on co-financing capacity);
- the result(s) obtained through Equity Flag (section 3.5.2) and/or Co-financing capacity check and/or Financial Exposure Flag (section 3.6) (if relevant) is(are) ‘weak’;
- the legal entity has been subject to substantial financial findings relating to its financial capacity following a financial audit carried out by the Commission (including OLAF<sup>(44)</sup>, the Court of Auditors or their duly authorised representatives within the last 2 years (cf. section 3.3).

If the legal entity obtained a ‘positive’ result under a concise financial analysis but there are findings of serious administrative errors or fraud involving the entity; or the entity is subject to pending legal procedures or judicial proceedings for serious administrative errors or fraud; or the entity is subject to an attachment order or significant recovery order for an outstanding amount issued by the Commission on which the payment is significantly overdue, it will be considered as having a ‘weak’ financial capacity but will not be subject to a more in-depth financial analysis. For this kind of entity, the authorising officer in charge will have to consider protection measures as defined under section 4.2.2.

##### 4.2. Actions to be taken in case of ‘weak’ result

If the result of the concise financial viability check is ‘weak’, the authorising officer in charge will have first of all to conduct a more in-depth financial analysis (see section 4.2.1).

If, according to the results of this more in-depth analysis, the financial capacity of the applicant:

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- is ‘acceptable’ or ‘good’, the applicant can participate in the indirect action, without any other action to be taken.
- remains ‘weak’, the authorising officer in charge will have to consider protection measures as defined under section 4.2.2.
- is ‘insufficient’<sup>(45)</sup> (see section 4.2.1), the applicant cannot participate in the indirect action, except if duly justified reasons are provided by the authorising officer according to his/her own risk assessment.

For other cases (‘positive’ financial viability but with ‘weak’ results for co-financing check, Equity Flag, Financial Exposure Flag; audit report with serious qualification; substantial financial findings relating to the financial capacity of a legal entity following a financial audit carried out within the last 2 years), the authorising officer in charge will have to consider protection measures as defined under section 4.2.2.

#### 4.2.1. A more in-depth financial analysis

##### 4.2.1.1. For legal persons

This more in-depth financial analysis will consist of an extended analysis of the financial viability of the legal entity.

The 5 following ratios will be used:

| Purpose            | Indicators                   | Ratios   | More in depth analysis |
|--------------------|------------------------------|--|------------------------|
| Liquidity          | Quick ratio                  | $\frac{\text{Current assets}-\text{Stocks}-\text{Debtors} > 1 \text{ year}}{\text{Short-term debt}(\text{bank and non-bank})}$ | —                      |
| Financial autonomy | Gross Operating Profit Ratio | $\frac{\text{Interest}}{\text{GOP}}$   | —                      |
| Profitability      | Profitability (1)            | $\frac{\text{GOP}}{\text{Turnover}}$   | —                      |
|                    | Profitability (2)            | $\frac{\text{NOP}}{\text{Turnover}}$   | —                      |
| Solvency           | Solvency                     | $\frac{\text{Total debt}}{\text{Equity}}$<br>a   | —                      |

a *Equity = Capital and reserves – 50 % of intangible assets*

Correction: Gross Operating Profit Ratio is calculated as: Interest paid/GOP.

According to the results obtained for each of the abovementioned ratios, the following quotes are given:

| Purpose            | Indicators                   | Weak & Unsufficient | Acceptable               | Good                 |
|--------------------|------------------------------|---------------------|--------------------------|----------------------|
|                    |                              | 0                   | 1                        | 2                    |
| Liquidity          | Quick ratio                  | $i < 0,5$           | $0,5 \leq i \leq 1$      | $i > 1$              |
| Financial autonomy | Gross Operating Profit Ratio | $i > 0,40$ or $< 0$ | $0,40 \geq i \geq 0,30$  | $0 \leq i \leq 0,30$ |
| Profitability      | Profitability (1)            | $i < 0,05$          | $0,05 \leq i \leq 0,15$  | $i > 0,15$           |
|                    | Profitability (2)            | $i < 0,02$          | $0,025 \leq i \leq 0,04$ | $i > 0,04$           |

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|                 |          |                     |                         |                   |
|-----------------|----------|---------------------|-------------------------|-------------------|
| <b>Solvency</b> | Solvency | $i > 6,00$ or $< 0$ | $6,00 \geq i \geq 4,00$ | $0 \leq i < 4,00$ |
|-----------------|----------|---------------------|-------------------------|-------------------|

Exceptions:

The following rules are applied for the special cases where the ratio contains a zero denominator or numerator:

Financial autonomy:

- If  $GOP \leq 0$ , the result shall be -1 with weak qualifications.
- The Interest paid cannot be negative.

Profitability (2):

- If  $NOP = 0$ , the result shall be 0 with weak qualifications.
- If the Turnover = 0, the Operating income shall be used for the calculation.
- If the Operating Income = 0 or negative, the result shall be 0 with weak qualifications.
- Turnover cannot be negative.

Any legal entity subject to a verification of its financial capacity who obtains under a more in depth financial analysis a minimum of **4 points** as a result of its financial viability check will be considered to have a ‘positive’<sup>(46)</sup> financial capacity, unless it is subject to one (or several) of the situations mentioned in section 4.1.

#### MORE IN DEPTH ANALYSIS

|                                     | <b>Insufficient</b> | <b>Weak</b> | <b>Acceptable</b> | <b>Good</b> |
|-------------------------------------|---------------------|-------------|-------------------|-------------|
| Result of financial viability check | 0                   | 1-3         | 4-5               | 6-10        |

#### 4.2.1.2. For natural persons

There will be no more in-depth financial analysis for a natural person.

However, if the result of the concise financial analysis has shown:

- Either a quick ratio (liquidity) inferior to 1,5;
- Or a solvency ratio superior to 1,2

the financial capacity will be considered as ‘insufficient’ and, as a consequence, the applicant cannot participate in the indirect action, except if duly justified reasons are provided by the authorising officer according to his/her own risk assessment.

#### 4.2.2. Protection measures

In compliance with article 38(7) of the FP7 RP, the Participants' Guarantee Fund (PGF) shall be considered as a sufficient guarantee under the FR. As a consequence, no additional financial guarantee or security (e.g. reduction of pre-financing, trust accounts, blocked accounts, financial guarantees from a bank/financial institution/mother company, etc.) may be requested from the participants or imposed on them.

Notwithstanding the previous paragraph, if the application of protection measures is deemed necessary, one or several protection measures, as listed below, may be implemented:

- A natural person cannot be the coordinator of an indirect action.

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- A legal entity with a ‘weak’ financial capacity following a more in-depth analysis based on the 5 financial ratios (Liquidity, Financial Autonomy, Profitability 1, Profitability 2 and Solvency) as described in section 4.2.1 shall not be accepted as a coordinator by the services implementing FP7<sup>(47)(48)</sup>. This legal entity will nonetheless be able to be a participant.
- For any legal entity and without prejudice to the provisions of the respective Grant Agreement, the services implementing FP7 reserve the right to systematically initiate, during the implementation of the relating FP7 indirect action, a financial audit, which may be accompanied if necessary by a technical audit, carried out by the services implementing FP7 (including OLAF), or its duly authorised representatives, or by the Court of Auditors, if:
  - it is considered as ‘weak’ after a more in-depth financial analysis of its financial viability; or
  - the result of its co-financing capacity check is ‘weak’ (*if relevant*); or
  - the results obtained through Equity Flag or Financial Exposure Flag are ‘weak’; or
  - an audit report of the accounts has been issued with serious qualification;
  - it has been subject to substantial financial findings relating to its financial capacity following a financial audit carried out by the Commission (including OLAF), the Court of Auditors or their duly authorised representatives within the last 2 years; or
  - if there are findings of serious administrative errors or fraud involving the entity; or the entity is subject to pending legal procedures or judicial proceedings for serious administrative errors or fraud; or the entity is subject to an attachment order or significant recovery order for an outstanding amount issued by the Commission on which the payment is significantly overdue.
- Any legal entity with a ‘weak’ financial capacity will be subject to a reinforced monitoring during the implementation of the project (e.g.: appropriate additional reviews by the services implementing FP7 and/or independent external expert(s), including on the spot check(s)). The authorising officer could always exclude a ‘weak’ entity from being coordinator of an indirect action.

The services implementing FP7 will immediately inform:

- the coordinator of the consortium that, due to its ‘insufficient’ financial capacity, (a) legal entity(ies) involved in the proposal cannot participate in the FP7 indirect action. The coordinator will inform the consortium;
- the relevant applicant(s) of an FP7 indirect action of the results and consequences, especially any necessary protection measure, of the verification of its (their) financial capacity, if the latter is ‘weak’. However, this shall not allow the consortium to exclude this (these) applicant(s) for that single reason.

#### 4.3. Additional protection measures, including sanctions

In order to reinforce the requirement of proposals submitted by solid consortia with effective and appropriate governance mechanisms and internal controls, the Union will not simply rely on recovering amounts due from the PGF to ensure the protection of its financial interests.

Indeed, and in addition to the abovementioned actions regarding the verification of the legal existence, the legal status/category, the operational capacity and the financial capacity of applicants, the following actions will be implemented, where appropriate, and in compliance with the FR, its IR and the FP7 model grant agreement<sup>(49)</sup>:

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- recovery orders issued against defaulting participants to the benefit of the PGF shall be enforced in all cases and by all means foreseen by regulations relating to the protection of the financial interests of the Union. In addition, when signing/joining the grant agreement, any participant will accept that any amount due from it to the Union will be assigned to the PGF;
  - in accordance with the FR and its IR, sanctions - including the exclusion from the benefit of any EU grant for a number of years - will be enforced, and the FP7 model grant agreement will foresee appropriate financial and administrative penalties (in particular Articles II.24 and II.25).

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- (1) [OJ L 391, 30.12.2006, p. 1.](#)
- (2) [OJ L 400, 30.12.2006, p. 1.](#)
- (3) [OJ L 412, 30.12.2006, p. 1.](#)
- (4) [OJ L 400, 30.12.2006, p. 60.](#)
- (5) [OJ L 47, 18.2.2012, p. 25.](#)
- (6) **EC FP7 RP** – Regulation (EC) No 1906/2006.  
**EURATOM FP7 RP** – Regulation (Euratom) No 1908/2006 and Council Regulation (Euratom) No 139/2012 of 19 December 2011 laying down the rules for the participation of undertakings, research centres and universities in actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013), ([OJ L 47, 18.2.2012, p. 1](#)).  
The **EC FP7 RP** and the **EURATOM FP7 RP** together are hereinafter referred to as **FP7 RP** (in particular when reference is made to articles which bear the same number in both regulations).
- (7) Article 16(4) of the **EC FP7 RP** and Article 15(4) of the **EURATOM FP7 RP**.
- (8) **FR** – Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([OJ L 248, 16.9.2002, p. 1](#)).
- (9) **IR** – Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ([OJ L 357, 31.12.2002, p. 1](#)).
- (10) The validation services are set up by the Commission in order to support the services responsible for the evaluation of proposals, for the negotiation of grants or for the management of grant agreements, e.g. by verifying the legal existence and legal status/category of applicants, recording the indirect cost method declared by the applicant, and verifying the financial data provided by the applicant.
- (11) More specification on the role and responsibility of the LEAR is provided in section 1.2.4.
- (12) [OJ L 8, 12.1.2001, p. 1.](#)
- (13) The categorization of legal entities participating in an FP7 indirect action must be carried out in due time (initially during the negotiation stage; subsequently during the implementation stage, before any payment if a change occurs during a reporting period of the project) in order to protect the interests of the participants and of the Union, and to avoid delays of implementation or duplications at the different stages of the procedure(s).
- (14) The services implementing FP7 may require the audit methodology used by the competent public officer for the calculation of eligible costs.
- (15) As defined in Article 2 of the **EC FP7 RP** and in Article 2 of the **EURATOM FP7 RP** and referred to in Art 32(5) and Art 33(1) of the **EC FP7 RP** and of the **EURATOM FP7 RP**.
- (16) Even if an applicant is not eligible to participate in an indirect action, this does not automatically lead to the non-eligibility of the proposal: in such a case (non-eligibility of one or several applicant(s)), the proposal is non-eligible only if the eligibility criteria in the Rules for Participation, Work programme and the call are not met. As examples: ERA-NET Coordination and Support Actions will limit the participation to certain types of legal entities (National authorities like Ministries or regions, Executive agencies of these national authorities, etc...); a call for proposals of collaborative projects may restrict the participation to a certain type of legal entities, e.g. SMEs or Civil Society Organisations.
- (17) Legal entities belonging to several categories will be registered as such, in particular for statistical purposes.
- (18) See also [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm).
- (19) Regulation No 1 determining the languages to be used by the European Economic Community ([OJ 17, 6.10.1958, p. 385/58](#)).
- (20) EN: [http://ec.europa.eu/budget/info\\_contract/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/info_contract/legal_entities_en.htm).

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- (21) The temporary PIC issued at the first registration will become final once the entity is validated. Basic legal and financial data of FP7 participants are accessible via the Research Participant Portal (<http://ec.europa.eu/research/participants/portal>).
- (22) The sequence of these verification procedures is referred to as 'validation'.
- (23) To the functional mailbox: REA-URF-Validation@ec.europa.eu.
- (24) If the legal entity is subject to exclusion in application of points a, b, c, d, e of Article 93(1), Article 94 or Article 96, the entity will be automatically excluded from the participation. Further reference: Commission Decision 2008/969/EC, Euratom of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ L 344, 20.12.2008, p. 125) and Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database (OJ L 344, 20.12.2008, p. 12).
- (25) The detailed conditions of the use of the methods of calculation of indirect costs and of the distinction between direct and indirect costs, are specified in Annex II, Part B, Section 1 of the relevant Model Grant Agreement, in particular Article II.15 (the general Seventh Framework Programme Model Grant Agreement, the ERC Model Grant Agreement and the REA Model Grant Agreement are available under the following link: [http://cordis.europa.eu/fp7/calls-grant-agreement\\_en.html#standard\\_ga](http://cordis.europa.eu/fp7/calls-grant-agreement_en.html#standard_ga) and in the Guide to Financial Issues relating to FP7 Indirect Actions [ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf)).
- (26) For more detailed information see Amendments Guide for FP7 Grant Agreements, [ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf).
- (27) See the relevant section regarding Article II.15 MGA in the Guide to Financial Issues relating to FP7 Indirect Actions [ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf).
- (28) Acts of an executive agency can be referred to the Commission for a review of its legality under Article 22 of Council Regulation EC No 58/2003.
- (29) For example, the coordinator of an indirect action has to demonstrate its professional skills and qualifications in terms of administrative, financial, legal and team management.
- (30) The evaluation takes place after the proposal submission and before the negotiation of the award of FP7 grants.
- (31) See section 3.5.
- (32) See section 4.2.1.
- (33) The electronic tools automatically display all financial ratios on the basis of the Simplified Balance Sheet's data.
- (34) The requirement of the statutory audit reports can be waived for those legal entities which are exempted from such audit reports under their national legislation.
- (35) This report shall include the clear mandate to audit, the responsibilities of both the management and the auditor, the way of conducting the audit, including the reasonable assurance about whether the financial statements are free of material misstatement, and the auditor's opinion.
- (36) Patrimony includes notably:
  - 'Fixed' patrimony like land, tenement, hereditament, medium/long-term time deposits (more than one year), stock options (if the right of exercise is not available within one year), etc.
  - 'Current' patrimony like available cash, savings, short-term time deposits (maximum of one year), stock-options (if the right of exercise is available within one year), etc.
- (37) The status of Small and Medium Enterprise (SME), in compliance with the Recommendation 2003/361/EC in the version of 6 May 2003, is defined according to financial criteria, some of which being linked to annual data provided through balance sheets and profit and loss accounts. See section 1.1.3.1(6) and section 1.1.4 point (e).
- (38) The profitability is not relevant for natural persons.
- (39) See the Research Participant Portal on <http://ec.europa.eu/research/s/portal/page/lfvSimulation>
- (40) When deciding about the financial viability of non-profit entities, their non-profit-making nature can be taken into account.
- (41) See section 3.4.1.

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**Status:** Point in time view as at 31/01/2020.

**Changes to legislation:** There are currently no known outstanding effects for the Commission Decision of 18 December 2012 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (Text with EEA relevance) (2012/838/EU, Euratom). (See end of Document for details)

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- (42) If appropriate, the Commission or bodies implementing FP7 can examine the co-financing capacity of any entity on the basis of the available information in their IT systems.
- (43) 'Positive' means 'good' or 'acceptable'.
- (44) OLAF stands for European Anti-Fraud Office.
- (45) Both in terms of financial viability and, if relevant, of co-financing capacity.
- (46) 'Positive' means 'good' or 'acceptable'.
- (47) For grant agreements with a single beneficiary, the latter will be subject to the other protection measures. The purpose of protection measures for a coordinator is only relevant in the case of a consortium, due to the fact that the coordinator receives the EU financial contribution for all the participants.
- (48) Except if the legal person provides on a voluntary basis a guarantee which can be considered to be 'equivalent to a guarantee by a Member State or an Associated State'.
- (49) **FP7 MGA** – Commission Decision C(2007) 1509 of 10 April 2007. See [http://cordis.europa.eu/fp7/calls-grant-agreement\\_en.html](http://cordis.europa.eu/fp7/calls-grant-agreement_en.html).



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