



EU Grants

Participation in Digital Europe Programme (DEP), Horizon Europe (HE) and European Defence Fund (EDF) restricted calls

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IMPORTANT NOTICE

Under the new MFF 2021-2027, participation in certain calls for proposals launched under some of the Programmes (European Defence Fund, Horizon Europe, and Digital Europe) may be restricted to legal entities established in Member States (or in specified eligible third countries). In accordance with the relevant basic acts, in certain cases, legal entities established in Member States (or in specified eligible third countries) can participate in the calls for proposals only if they are directly or indirectly controlled by Member States or by nationals of Member States (or by entities or nationals of specified eligible countries). These restrictions apply for duly justified security reasons, where they are necessary to protect essential security and/or defence interests of the Union and/or its Member States or to maintain public order and public security. With respect to certain calls for proposals, the legal entities in question may be eligible to participate only if they comply with certain requirements (provide guarantees).

The calls that are subject to such restrictions and the precise conditions for each call are set out, for each Programme, in the Work Programmes published on the Funding & Tenders Portal. In the case of the European Defence Fund, they apply to the whole Programme.

This guidance is designed to help **applicants** that wish to apply in such restricted calls to become aware of the requirements, in particular, the ownership control assessment procedure that will be conducted to determine control and the guarantees that may be required if control by an (ineligible) third country, a third country entity or a third country national is confirmed.

It gives details on how EU services intend to apply the relevant criteria and how applicants may provide the guarantees.

This document aims at developing a corporate approach to the eligibility requirements set out in the various Programme Regulations. For the time being, it is published only as a draft, pending final adoption. The intention is to test this approach in practice and take stock of the user-feedback and operational experience before endorsing it in a more formal way, in order to be able to fine-tune or revise the approach for future calls, if needed.

Until then, it can be used by the applicants for reference for the calls concerned.

This draft guidance was prepared by and expresses the views of the Commission services and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In the future this draft Guidance might be extended to other EU programmes.

HISTORY OF CHANGES		
Version	Publication Date	Change
0.1 DRAFT	20.12.2021	▪ Initial version (new MFF)
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1. Background

Under the new MFF 2021-2027, participation in certain calls for proposals launched under some of the Programmes (European Defence Fund, Horizon Europe, and Digital Europe) may be restricted to legal entities established in Member States (or in specified eligible third countries). In accordance with the relevant basic acts, in certain cases, legal entities established in Member States (or in specified eligible third countries) can participate in the calls for proposals only if they are directly or indirectly controlled by Member States or by nationals of Member States (or by entities or nationals of specified eligible countries). These restrictions apply for duly justified security reasons, where they are necessary to protect essential security and/or defence interests of the Union and/or its Member States or to maintain public order and public security. With respect to certain calls for proposals, the legal entities in question may be eligible to participate only if they comply with certain requirements (provide guarantees).

Some EU funding programmes provide that, in addition to the standard eligibility conditions, certain calls for proposals may further restrict participation ('restricted calls') to:

- legal entities that are established in Member States and specified eligible countries (type 1);

and/or

- legal entities that are established in Member States and specified eligible countries *and* controlled by Member States/Member States nationals and eligible countries/eligible country entities (type 2).

Such restrictions are in principle allowed in the following programmes:


- Digital Europe (DEP), for actions under specific objectives 1 (High Performance Computing), 2 (Artificial Intelligence) and 3 (Cybersecurity and Trust) (*Article 12(5)-(6) and 18(4) Digital Europe Regulation 2021/694*);
- European Defence Fund (EDF), for all actions (*Article 9 EDF Regulation 2021/697*);
- Horizon Europe (HE), for actions related to EU strategic assets, interests, autonomy or security (*Article 22(5) of Horizon Europe Regulation (EU) 2021/695*).

Restricted calls (or restricted parts of a call) will be flagged as such in the call conditions.

For type 1 restrictions, entities established in ineligible third countries will not be eligible to participate.

For type 2 restrictions, the ownership control assessment will be conducted to determine control. Furthermore, depending on the programme, Work programme or call document, guarantees may be required if control by an (ineligible) third country, a third country entity or a third country national is confirmed.

The present document is intended to provide guidance on how these restrictions will be handled in practice.

 Please be aware that eligibility conditions must be fulfilled not only at proposal submission and grant signature, but throughout the entire action duration. Any changes in the control ownership status that occur during the project must be

immediately notified by the coordinator to the granting authority (please note that this is an existing contractual information obligation in the Grant Agreement).

2. Which types of participants are targeted?

Both type 1 and type 2 restrictions in question are intended to cover entities participating in any capacity (as beneficiary, affiliated entity, associated partner, subcontractor or recipient of financial support to third parties). For EDF they also extend to sub-subcontractors¹.

The precise scope of participants will be set out in the call conditions.

The ownership control assessment check will permit to establish eligibility at the latest before any grants are signed.

In addition, beneficiaries must ensure that other participants follow the provisions in the Grant Agreement and call documents.

3. When will an entity be considered to be controlled?

'Control' will be defined as the possibility to exercise decisive influence on the participant, directly or indirectly, through one or more intermediate entities, 'de jure' or 'de facto'. The fact that no influence is actually exercised is not relevant, as long as the possibility exists.


Where type 2 restrictions apply, a participant will be considered to be 'controlled' when an (ineligible) third country, third country entity or third country national has the possibility to exercise decisive influence on the entity concerned, notably in relation to its strategic business decisions (*such as appointment and removal of senior management, budget, investment business plans, market-specific decisions, etc*).

No guidance can anticipate upon all possible constellations of control of an entity, hence, any assessment has to be done on a case-by-case basis, looking at the legal and factual position in each individual case. As a consequence this document provides only some general considerations for that assessment.

Control will be assessed at the level of the ultimate ownership and control line and all intermediate layers (in case of indirect control).

The following elements will, in particular, be taken into account:

- ownership structure and specific rights;
- corporate governance;
- commercial links conferring control;
- financial links conferring control;
- other sources of control.

 Public bodies (validated as such in the Funding & Tenders Portal Participant Register) will automatically be considered as controlled by their country.

Ownership structure and specific rights

¹ Sub-subcontractors to which at least 10% of the total eligible costs of the action is allocated and sub-subcontractors which may require access to classified information in order to carry out the action.

The ownership structure will be analysed to establish which countries, entities or natural persons have decisive influence on the participant, notably with regard to the strategic business decisions:

- if the participant is directly owned and controlled by natural persons, the nationality of these natural persons will be the key element of assessment, i.e.:
 - if all the owners are nationals of Member States (or eligible third country nationals) and there are no commercial or other links that could confer control on other persons or entities, further assessment may not be necessary,
 - if some of the owners are individuals with (ineligible) third country nationality, their ability to exercise control has to be further assessed.
- if several ownership and control layers exist between the participant and its ultimate owners (persons who effectively control it):
 - ownership and control will be identified at each layer, and at each layer the existence of controlling ineligible country nationals/ineligible country entities has to be assessed,
 - participants will be asked to demonstrate to the extent possible that, all along the chain of control until the ultimate owners, there is no control by an ineligible country/ineligible country entity,
 - if shareholding is widely spread, and one or several ineligible country shareholders are the largest shareholders (even if their participating interest may look insignificant), a detailed control assessment may have to be conducted,
 - ultimate owners with 5% (or more) of the shares/ voting rights must be identified (upon request even shareholders with less than 5%).
- if the participant is a company listed in the stock exchange, a subsidiary of a listed company or is controlled by a listed company, control will in principle be assessed in the same way as described above. Where the participant has a substantial number of shares that are floating (shares on regulated stock markets), the emphasis will be on:
 - the bodies entrusted with the adoption of strategic decisions,
 - the decisions that are taken at the general meeting of shareholders and the quorum required (participation and majority),
 - the decisions that are taken in other management bodies (such as Executive Board, Supervisory Board, Board of Directors, Advisory Boards, CEO) and the quorum required (participation and majority),
 - the appointment of management bodies and the possibilities for the largest shareholders to appoint them,
 - veto rights or multiple voting shares (*e.g. golden shares*), if any.
- if not all the ultimate owners can be identified (*e.g. listed companies with important floats*), the participant will be asked to demonstrate that under the applicable national law unknown shareholders cannot (alone or in concert)

exercise a decisive influence, and must confirm that there is no shareholders agreement to act in coalition.

In this context, the place of residence of owners that are natural persons will be considered irrelevant. Individual owners with dual nationality (eligible and ineligible country) will be considered as eligible country nationals.

Concerning specific rights, some examples of owners' rights may deserve closer scrutiny in terms of 'control':

- right to veto a transfer of shares,
- some forms of pre-emption rights (right given to an existing shareholder to be the first option in case other shareholders want to sell their shares),
- specific rights to sell shares, purchase additional shares or conditions imposed by the third country shareholder for its investment in the participant,

if they lead to a situation where an (ineligible) third country, a third country entity or a third country national control the participant.

Corporate governance

The corporate governance will be examined to establish whether strategic decisions may be influenced, actively (through an action) or passively (by not exercising its rights, *e.g. abstention*), by an (ineligible) third country, a third country entity or a third country national.

The assessment will identify at which level (by which bodies) the strategic business decisions are taken, the decision-making procedures (including majorities and quorum requirements, voting rules and prerogatives accorded to other bodies, if any) and the nature of decisions taken.

If (ineligible) third countries, third country entities or third country nationals have the possibility to influence the voting rights (or the possibility to veto decisions), this may lead to consider that they exercise decisive influence.

Commercial links conferring control

Commercial links will, where necessary, be analysed, in combination with other factors, to establish whether the participant (or its owners) are dependent on commercial cooperation with an ineligible country/ineligible country entity, in a way that could give them strategic influence (*e.g. long-term supply or buy agreements that allow it to decide on the commercial strategy, joint venture or other commercial cooperation*).

Financial links conferring control

Financial links will be analysed to establish whether the participant (or its owners) are financially dependent on an ineligible country/ineligible country entity, in a way that could allow the ineligible country/ineligible country entity to obtain the power to adopt or influence strategic decisions.

All modes of financing may be taken into account, such as capital increase, loans, guarantees, debt waivers, bails² and grants.

² E.g. an investor issuing a guarantee to a bank and the bank therefore is willing to grant a loan

If the financial link is with a shareholder, the degree of financial dependence will be measured in proportion to the shareholding (i.e. how much more than the value of the shares was financed).

Other sources of control

There might be other sources of control (i.e. other means, processes or links ultimately conferring control to ineligible countries/ineligible country entities).

They will be assessed on the basis of the information provided in the ownership control declaration.

4. How will control be checked? – Ownership control assessment procedure— Guarantees

Ownership control declaration

For type 2 restricted calls, the participants that must undergo an ownership control assessment must fill in the [ownership control declaration](#), annexed to the application form.

This declaration must be signed by a person empowered to represent the legal entity.

The coordinator must combine all declarations into one single document and submit it with the proposal (signed originals should be kept on file by the participants). Proposals missing this annex for any of their participants may be declared inadmissible.

Public bodies are exempted from this obligation but they will automatically be considered as controlled by their country. ⚠️ Formal validation in the Participant Register is required; 'declared' status is not sufficient.

Assessment by the EU services

If your proposal passed evaluation, the Central Validation Service³ will then contact you during grant preparation to upload the necessary supporting documents.

The documents required will be listed in the notification you receive. In general, you will need to provide documents showing your ownership/control situation (*documents showing all direct and indirect shareholders, statutes, articles of association, shareholders' agreements, reports/minutes of shareholders meetings, ID documents of ultimate owners, etc*).

⚠️ Please use the link in the notification, please do NOT send us any documents before (or via other means) and please respect the deadlines set by the Central Validation Service.

In case of doubt, the Central Validation Service may use publicly available information to clarify questions about the data or information provided or contact you for clarifications or additional information.

All data and documents will be treated as confidential.

Personal data will be handled in accordance with EU Regulation [2018/1725](#)⁴ to ensure


³ CEF-DIG is currently not handled by the Central Validation Service

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

compliance with the principles of transparency, proportionality, impartiality and legality.

The assessment will be carried out based on the information provided in the ownership control declaration and the supporting documents submitted later (and updates in case of changes).

If the outcome of the ownership control assessment is 'controlled', the consortium will be asked to replace the participant concerned (or redistribute the tasks between the other participants). If this is not possible and the consortium cannot propose any other acceptable solution, the proposal will have to be rejected.

 Only solutions that do not imply substantial changes to the proposal can be accepted (solutions that — if they had been known — would have impacted the evaluation result cannot be accepted).

Guarantees


For programmes which allow for guarantees, participation may however still be possible even for participants that are subject to control by an ineligible country/ineligible country entity.

In this case, participants must guarantee compliance with the specific conditions set out in the work programme and in the call conditions, for instance:

- that the involvement will not contravene the security, defence or public order interests of the EU and its Member States;
- that the involvement will not contravene the objectives of the funding programme;
- that measures have been put in place to ensure that:
 - the control of ineligible countries/ineligible country entities is not exercised in a manner that:
 - restrains, restricts or compromises the participant's capacity to carry out the action and deliver;
 - imposes restrictions concerning infrastructure, facilities, assets, resources, intellectual property or know-how needed for the action.
 - access by ineligible countries/ineligible country entities to sensitive information relating to the action is prevented (including the necessary technical, legal and organisational measures to prevent transfer or access — including unsolicited transfers or access — to personal or non-personal data, including processed data and meta-data, held in the EU that would be unlawful under EU law or applicable national law) and the employees or other persons involved in the action have adequate security clearance, where appropriate;
 - ownership of the intellectual property arising from, and the results of, the action:
 - remain with the participant during and after the end of the action;
 - are not subject to control or restriction by the ineligible countries/ineligible country legal entities and;

- are not transferred/exported outside the eligible countries;
- cannot be accessed from outside the eligible countries or by ineligible entities without the approval of the eligible country in which the participant is established and in accordance with the objectives of the programme.

The requirements may differ from call to call.

 The guarantees must cover all conditions and explain the concrete measures put in place to ensure compliance.

The guarantees must be signed by the participant, they will be assessed by EC services during grant preparation.


If ineligible country control is already known at proposal submission, you are strongly advised to already prepare the guarantees as part of your proposal (the approval, if needed, may be provided later during grant preparation).

In the case of EDF and DEP, if control is established by the Commission in the context of the ownership control assessment check, you will be requested to provide the guarantees, accompanied by a document of your country of establishment (eligible country), which approves them, within 30 working days from receiving notification⁵.

For HE, if control is established by the Commission in the context of the ownership control assessment check, you will be requested to provide the guarantees during grant preparation, within 15 working days from receiving notification. The EC will contact the national authorities of your country of establishment (eligible country) on the assessment of the guarantees and seek their confirmation, which will have to be provided within 30 working days⁶.

Since the guarantee procedure constitutes a derogation, the conditions will be interpreted strictly. Guarantees/approvals which include a disclaimer will be rejected.

If the guarantees/approval is not complete or inadequate, you may be contacted for changes or updates.

 The measures set out in the guarantees must be complied with/implemented during the action, otherwise the guarantee will be considered void and the proposal might be declared ineligible.

New participants joining during the action

New participants, who join the project later on, will have to submit their ownership control declaration as part of the amendment supporting documents and the same rules as above apply *mutatis mutandis*.

5. What happens if the ownership control status changes during grant implementation

Eligibility conditions must be fulfilled not only at proposal submission and grant signature, but throughout the entire action duration.

⁵ For duly justified reasons, and in agreement with the EC, these time limits may be extended up to 60 working days

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You are contractually obliged to notify any changes in the control/ownership status that occur during the project. Such changes must be immediately notified by the coordinator to the granting authority (*see art 19.3 of the Grant Agreement*). The same applies to changes affecting the content of guarantees/approvals.

If a participant becomes controlled by an ineligible country/ineligible country entity during the action (*e.g. as a result of an acquisition by a foreign entity*), its related costs will become automatically ineligible as from the date of loss of eligibility and its participation may have to be terminated.

For programmes with guarantees, the same principles apply as above. If an entity becomes controlled during the action, it may still continue to participate if it provides the necessary guarantees.