

The European Union's Seventh Framework Programme

Legal and financial aspects



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Introduction: General

- International organisations and organisations in third countries (which includes SA) are eligible for funding
- But the organisation must be essential for carrying out an action (i.e. can't just be in the project to learn)



Introduction: Terminology

- **Grant Agreement:** contract
- **Beneficiary:** project partner / participant
- **Funding Schemes:** project types
- **Certificate on Financial Statement:** audit certificate
- **Third Country:** country that is not an EU member, a Candidate country, or an associated country
- **Contribution:** the financial amount that the EC gives you towards the cost of the project

Legal aspects



Agreements: Key documents

- Grant agreement
 - Signed between beneficiaries and EC
 - Establishes rights and responsibilities of the beneficiaries to each other and to the EC
 - Consists of core grant agreement and annexures including Annex 1 (Description of Work)
- Consortium agreement
 - Signed between beneficiaries
 - Implements the grant agreement, establishes provisions related to consortium management, distribution of the Community financial contribution and IP
- It is important to make sure that the grant agreement and the consortium agreement talk to each other, particularly in relation to IP sharing

Agreements: Legal entities

- Only legal entities can sign grant agreements
- Unlikely that more than 1 SA organisation per project will be allowed: bring other researchers on as associates if needed
- Sub-contracting is NOT recommended; must be provided for in the proposal
- It is recommended that you have a single point of contact who can check the forms, ensure the correct authorised signatories sign the documents, etc.
- If one researcher at an institution signs, for example, an indirect cost rate of 20%, then ALL future contracts will be at that rate!

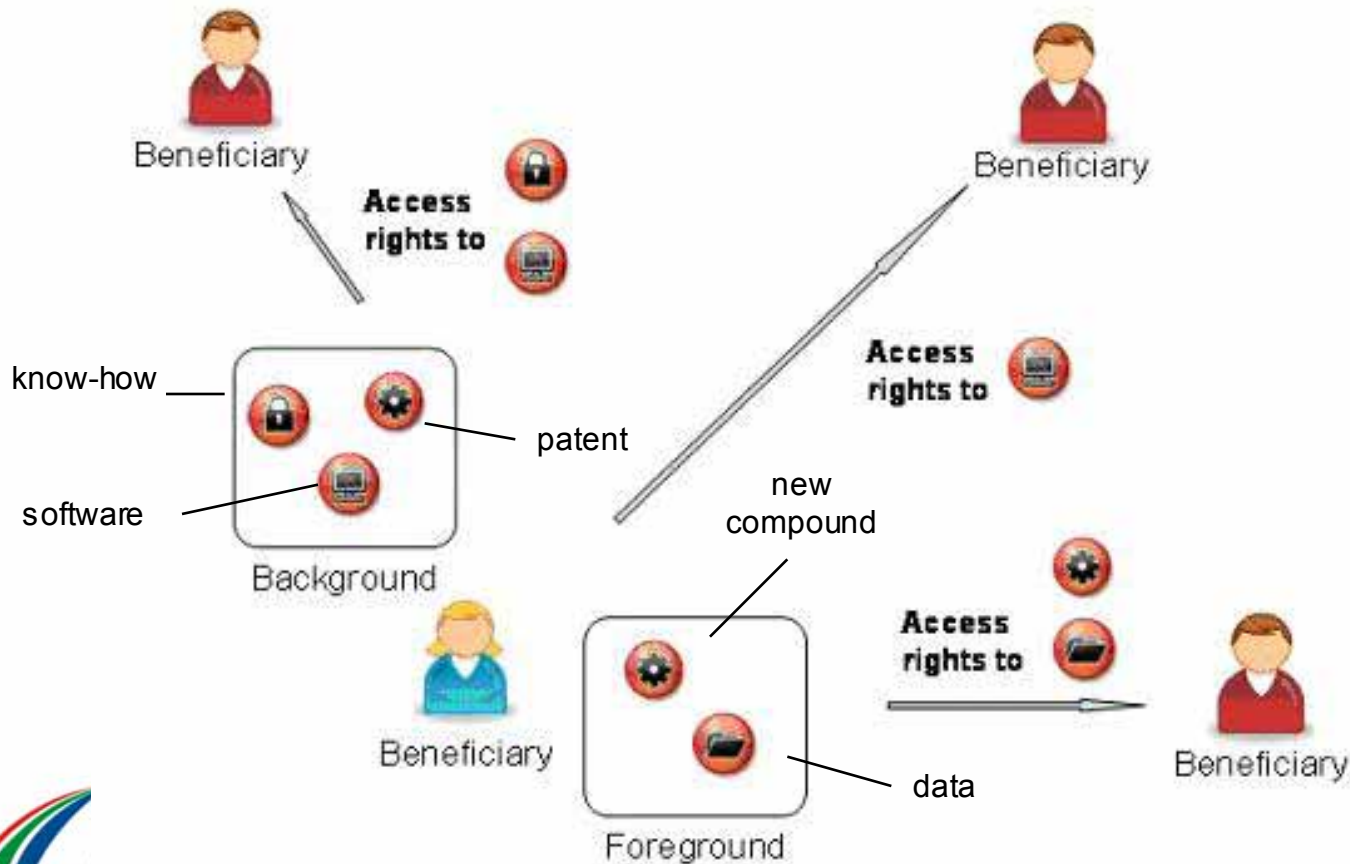
Agreements: Contract negotiation

- Project passes hurdles and selected for negotiation!
- Letter of invitation to negotiations (includes evaluation summary report)
- Negotiation mandate given
 - Changes to be made based on ESR
 - Maximum EC contribution
 - Project duration
 - Deadlines (usually non-negotiable)
 - 1st draft Description of Work (modified proposal)
 - Grant Preparation Forms (GPFs)
 - Negotiation completion (Technical and Legal/Financial)
- Coordinator negotiates with EC, we negotiate with consortium

Access rights: Exchange of information

- Beneficiaries exchange information and know-how (software, patents, work methods, etc.) in order to
 - Benefit from each other's resources
 - Carry out tasks
 - Carry out exploitation efforts
- Each beneficiary has the right to request access rights to the other beneficiaries' background and foreground, as long as it needs them in order to carry out its work under the project or to use its own foreground:
 - “**Background**” is project-related information and IP rights beneficiaries hold before entering the project
 - “**Foreground**” is the information and IP rights that beneficiaries generate within the project, the results of the project

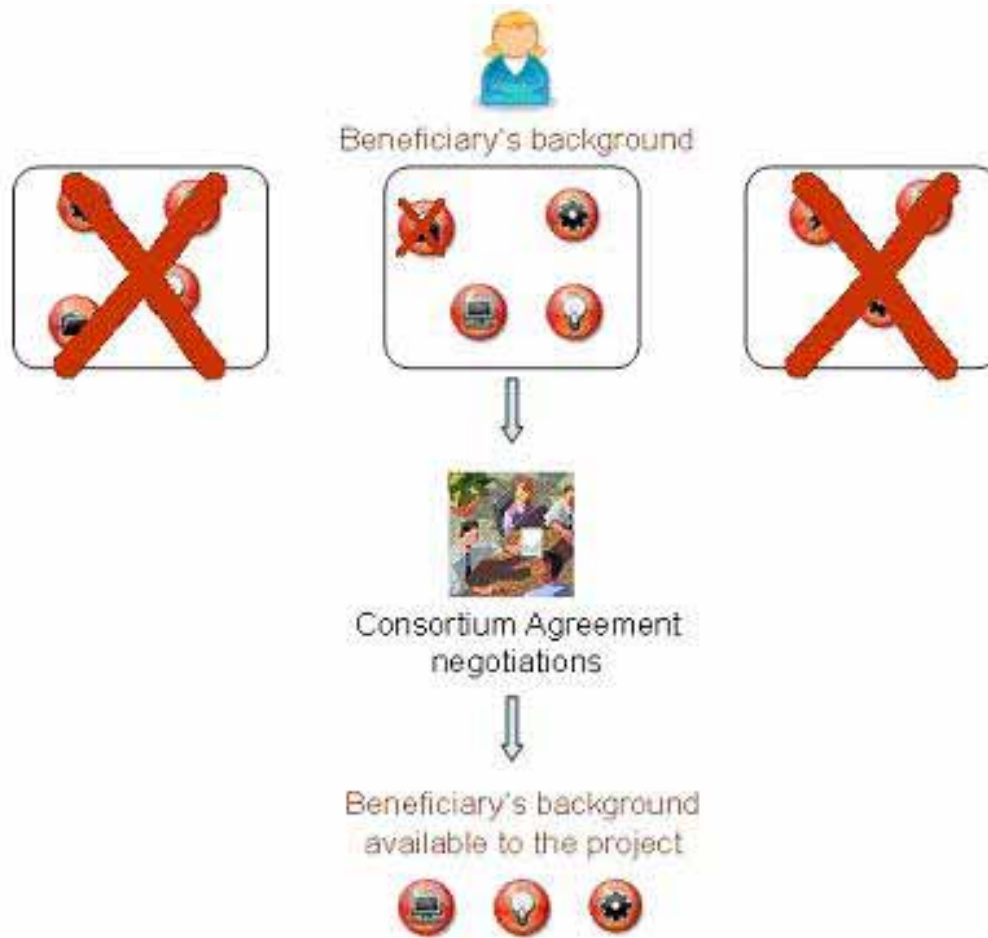
Access rights: Exchange of information



Access rights: Background

- Beneficiaries have the right to define the background that will be made available to the project
 - Have right to exclude specific background from their obligation to grant access rights
 - All agreements on the identification/exclusion of background are made in writing, usually in the consortium agreement

Access rights: Background



Access rights: Agreement

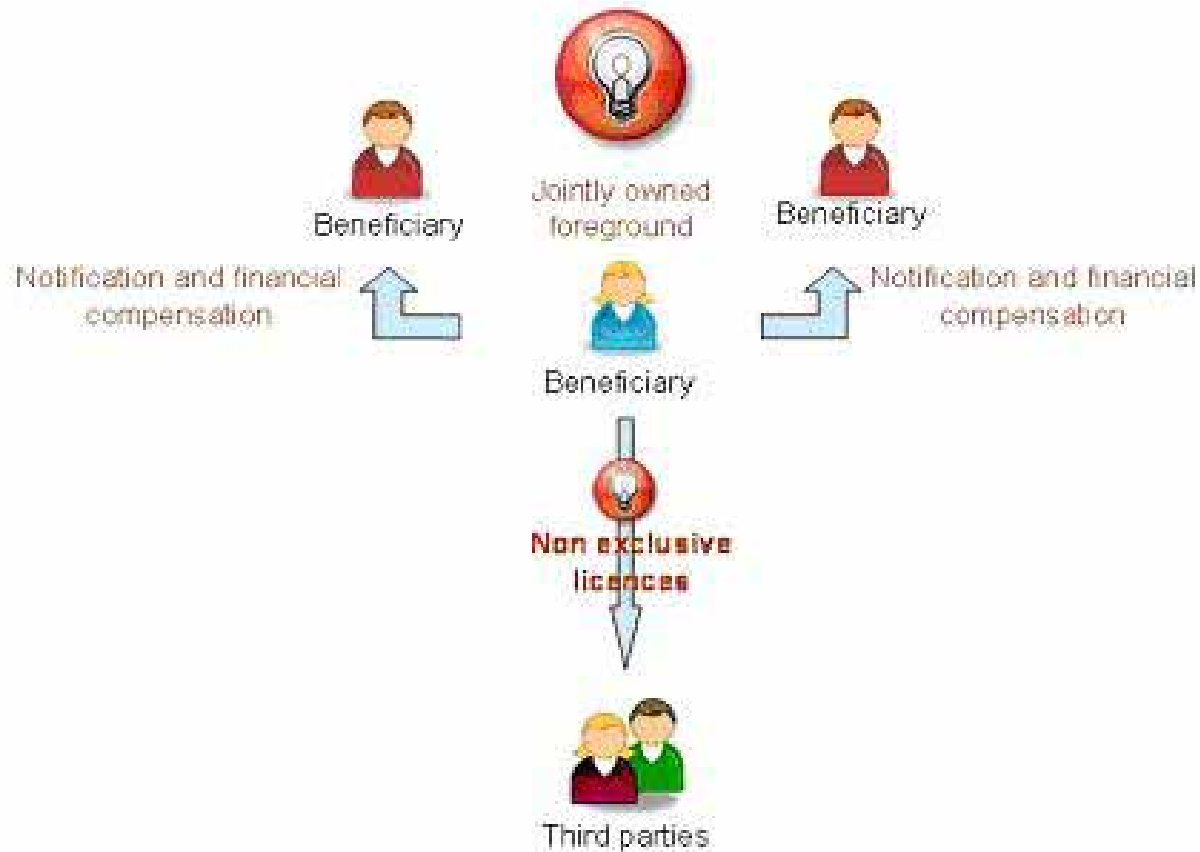
- Granting of access rights:
 - Exact rights to be transferred are defined
 - Purposes for which the access rights may be used
 - Confidentiality / Royalties
- Grant agreement establishes economic conditions for the granting of access rights
- Beneficiaries may further define it in their consortium agreement

Access rights	For project execution purposes	For use purposes
To background	Royalty-free unless otherwise agreed <u>before</u> signature of the grant agreement	Royalty-free or on fair and reasonable conditions
To foreground	Royalty-free	

Access rights: Ownership of foreground

- Each beneficiary is owner of the foreground it generates.
 - Contractual relationships with its personnel and third parties must guarantee its ownership of foreground
 - Must enable it to comply with its obligations under the grant agreement and the consortium agreement.
- If foreground is generated by common efforts and it is not possible to distinguish individual contributions
 - The contributors will have joint ownership of the foreground
 - A joint ownership agreement will be signed to define the shares and the management of the joint ownership
- If there is no such agreement, the default joint ownership allows:
 - Each joint owner to grant non-exclusive licences to third parties
 - Provided that it notifies the other joint owners and grants them fair and reasonable compensation

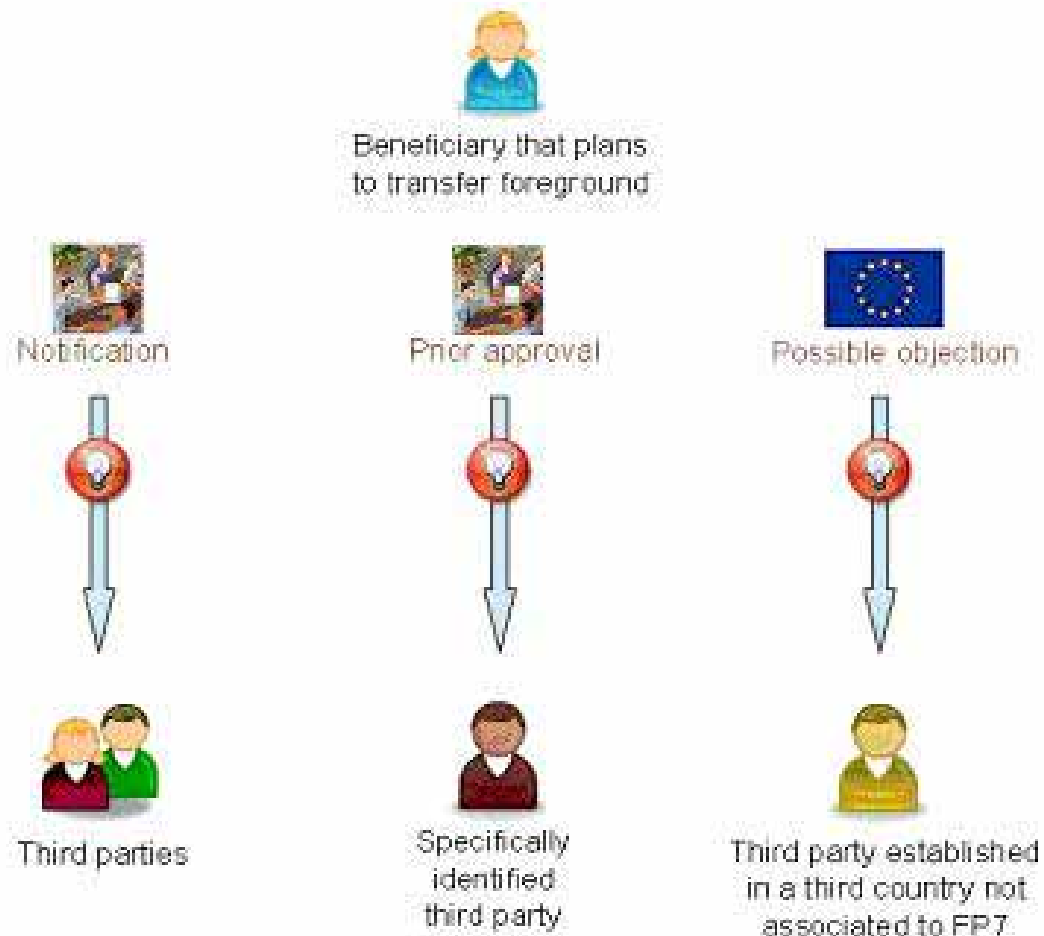
Access rights: Ownership of foreground



Access rights: Transfer of ownership

- If ownership is transferred the transfer must be under the same conditions as the original agreement
- The other beneficiaries must be informed of transfer plans and they can object if their access rights are not safeguarded
- The EC may oppose transfers to entities established in third countries if it considers that such transfers are contrary to the interests of the European economy, to ethical principles or security considerations

Access rights: Transfer of ownership



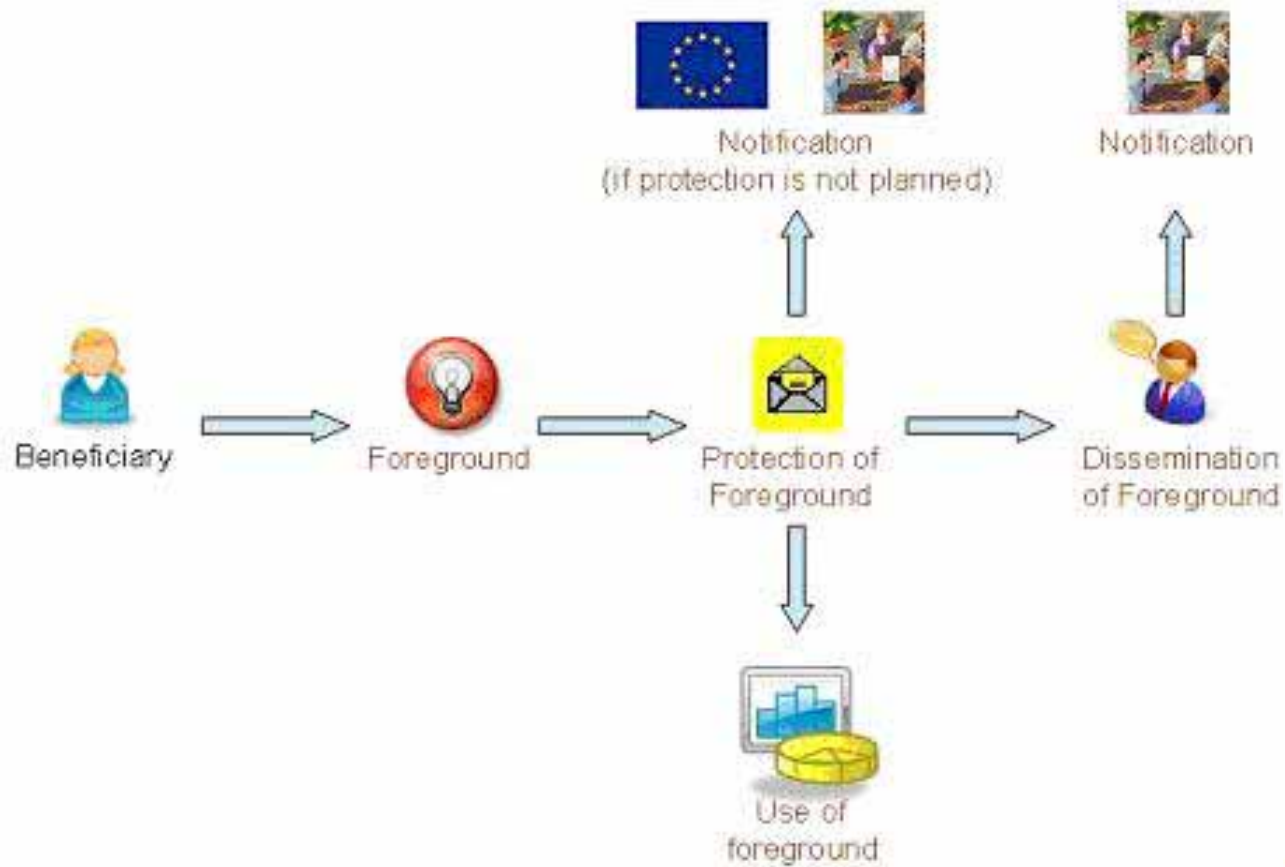
Obligations on foreground

- Beneficiaries obligations regarding foreground are to
 - **protect** it if appropriate
 - **use** it in further research or commercial activities
 - **disseminate** it to the relevant public or the public in general
- **Use** of foreground:
 - Beneficiaries may use the foreground themselves or grant licences to third parties:
 - Access rights of the other beneficiaries must be maintained
 - An exclusive licence to background or foreground can only be given with written permission from the other beneficiaries
 - The EC may object to the granting of an exclusive licence to foreground in a third country for ethical principles or security considerations.



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Obligations on foreground



Financial aspects



Funding principles:

Maximum grant

- The maximum grant is based on an estimation of eligible costs prepared by the consortium partners
- You will get reimbursed for eligible costs BUT you must co-finance a portion of the costs
- The amount you must co-finance depends on the activity and on the type of organisation to which you belong
- What you actually spend is taken into account to determine the final financial contribution by the EC

Funding principles: Types of organisation

- **Public body:** legal entity established as such by national law, and international organisations
- **Research organisation:** legal entity established as a non profit organisation which carries out research or technological development as one of its main objectives
- **Secondary and higher education establishments** includes universities, schools for applied sciences and similar
- **SMEs:** small and medium-sized enterprises as defined in Europe:
 - fewer than 250 employees,
 - annual turnover not exceeding €50 million, and/or
 - annual balance-sheet total not exceeding €43 million

Funding principles: Funding rates for R&D activities

- Public bodies: up to 75%
- Secondary and higher education establishments: up to 75%
- Research organisations (non-profit): up to 75%
- SMEs: up to 75%
- Otherwise up to 50% of eligible costs

Funding principles: Funding rates for other activities

- Demonstration activities: up to 50%
- Management: up to 100%
- Frontier research actions: up to 100%
- Coordination and support actions: up to 100%
- Training and career development of researchers: up to 100%

Funding principles: Eligible costs

- Must actually be incurred
- Must be incurred during the project
- Must be determined according to usual accounting and management principles/practices
- Must be used solely to achieve project objectives
- Must be recorded in accounts

Funding principles: Non-eligible costs

- Identifiable indirect taxes including VAT
- Duties
- Interest owed
- Provisions for possible future losses or charges
- Exchange losses, cost related to return on capital
- Costs declared or incurred, or reimbursed in respect of another project
- Debt and debt service charges, excessive or reckless expenditure

Preparing a budget: Summary

- Total project budget =
- Eligible direct costs
 - Personnel
 - Subcontracting
 - Other direct costs (capital equipment, travel and subsistence, consumables, audit certificate, IP protection, etc.)
- + Indirect costs

Preparing a budget: Personnel costs

- WILL REQUIRE A TIMESHEET “SYSTEM”!
- Permanent and temporary employees at TOTAL COST OF EMPLOYMENT, not just salary; must be paid in accordance with the normal practices of the organisation
- Can use average personnel costs (*see CoM on Certificates slide*)
- Must work under sole technical supervision and responsibility of the organisation
- If you normally consider certain costs as overheads (e.g. HR support staff) then their costs cannot be included as direct costs
- Public officials paid directly from government are also eligible

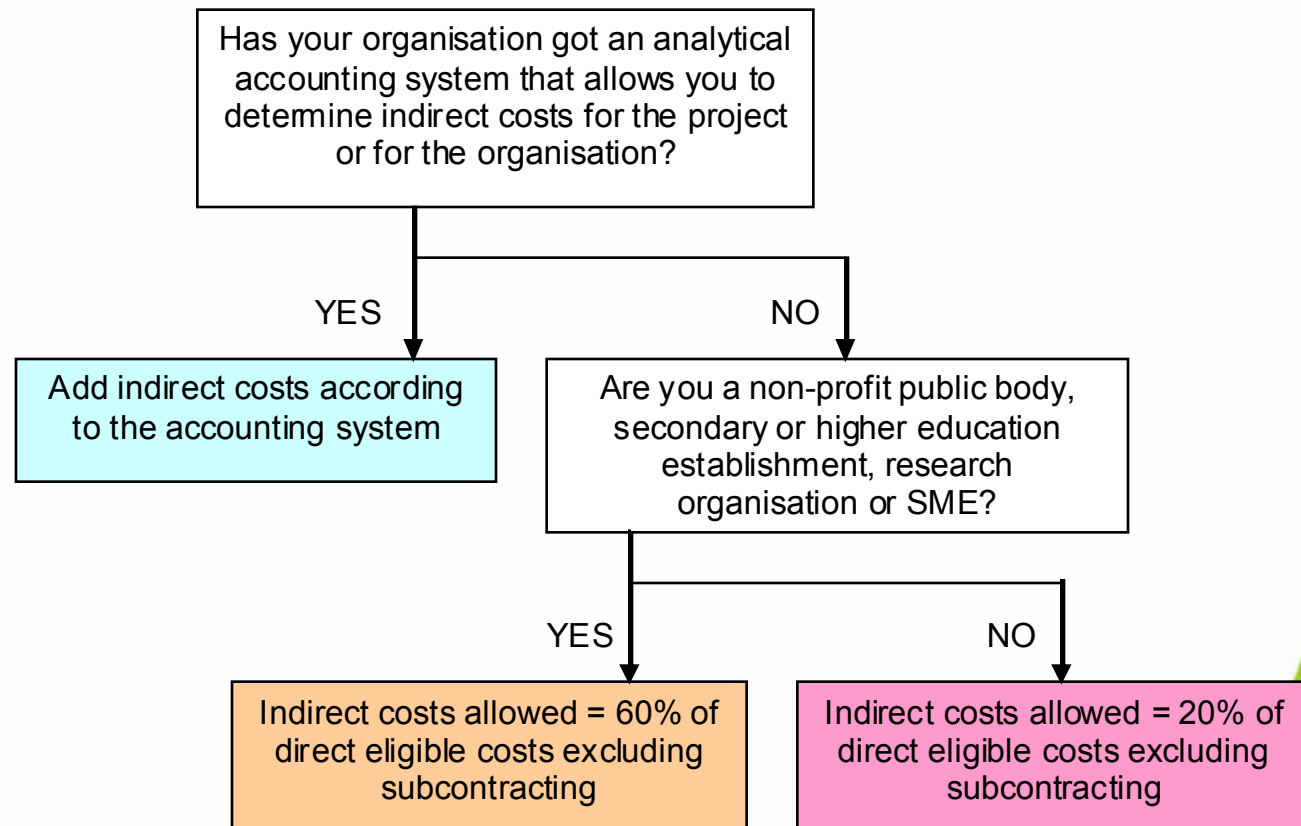
Preparing a budget: Indirect costs

- Determined according to the information you have from your accounting system:
 - Actual indirect costs:
 - If your accounting system allows you to determine your actual indirect costs for the project
 - Simplified actual indirect costs:
 - If your accounting system allows you to determine your indirect costs for the organisation but not for the project
 - Flat rate:
 - If you can't determine your indirect costs from your accounting system then you can use 20% of direct costs less subcontracting costs OR
 - a transitional flat rate depending on the activity and type of organisation (*see next slide*)
 - For Coordination and Support Actions, the maximum indirect costs allowed are 7% of direct costs less subcontracting costs

Preparing a budget: Transitional flat rate

- Eligible activities:
 - Research and technological development
 - Demonstration
- Eligible types of organisations:
 - Non-profit public bodies
 - Secondary and higher education establishments
 - Research organisations
 - SMEs
- Transitional flat rate applied:
 - 2007 – 2009: 60% of direct costs less subcontracting costs
 - 2010 – 2013: 40% of direct costs less subcontracting costs

Preparing a budget: Decision tree on indirect costs



For coordination and support actions:
Reimbursement of costs = direct costs + indirect costs (7% of direct eligible costs excl subcontracting)

Preparing a budget: Example for R&D project

Organisation	Personnel costs	Sub-contracting	Other direct costs	Indirect costs	Total budget	Maximum funding
Science Council, company	200 000	50 000	100 000	400 000 (e.g. 2 x personnel costs) ♣	750 000	562 500 (75% of total budget)
University	200 000	50 000	100 000	180 000 (60% of personnel + other)	530 000	397 500 (75% of total budget)

♣ Will depend on the accounting practice of the specific organisation

Preparing a budget: Example for support project

Personnel costs	Sub-contracting	Other direct costs	Indirect costs	Total budget	Indirect costs allowed	Maximum funding
200 000	50 000	100 000	400 000	750 000	21 000 (7% of personnel + other allowed as indirect)	371 000 (direct costs + indirect costs allowed)

Certificates: CFS and CoM

- Certificate on Financial Statements (CFS) are required for projects where cumulative requested contribution is > €375 000
 - Auditor will carry out procedures in a detailed report
 - The Commission will draw conclusions from the report as to acceptability
 - The CoM will be used for determination of average personnel costs
- Certificate on the Methodology (CoM)
 - Certificate on methodology used to calculate the average personnel costs and indirect costs
 - Methodology must be consistent with the beneficiary's management principles and usual accounting practices
 - Averages calculated according to the certified and accepted methodology must be deemed not to differ significantly from actual personnel costs

Certificates: Eligible auditors

- Beneficiaries are free to choose an external auditor, but must be:
 - Independent
 - Qualified
- Public bodies, secondary and higher education establishments and research organisations may opt for a Competent Public Officer instead of an external auditor
- The submission of a certificate does not waive the right of the Commission to carry out its own audits

Payment: Disbursements

- One pre-financing (upfront) payment, typically 160% of average yearly budget
- Interim payments based on financial statements
- 10% of amount payable is retained until the project is signed off

Payment: Guarantee fund

- No collective financial responsibility
- 5% of total project budget set aside at start of project
- Reimbursement on project completion and finalisation with restraints

Thank you

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- More information available on www.esastap.org.za
- The IPR Helpdesk is acknowledged as a source of information for pictures and text in this presentation

