



FP7 Project Amendments

DG CNECT
R5 – Programme Operations

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What is an amendment?

A legal act that modifies the commitments originally accepted by the parties

Article II.36 and II.37 of the GA (Annex II)

Only in writing – exchange of letters

Amendment becomes an integral part of the GA

Not all parts of the GA may be amended

Amendment has to be compatible with rules applicable to GA (e.g. Financial Regulation, Rules for Participation)

FP7 amendment guidelines

http://ec.europa.eu/research/participants/data/ref/fp7/89604/amendments-ga_en.pdf

When does the GA need to be amended?

*As a general rule an **amendment request** (AR) is necessary whenever the GA has to be modified (e.g. any change of the data included in the core part of GA and changes of Annex I)...*

....but may not have the purpose or the effect of making changes which might call into question the decision awarding the grant or result in unequal treatment.

*Some changes do not need a formal amendment but can be implemented via an **information procedure***

Before introducing an AR beneficiaries are encouraged to contact informally for advice, the Project Officer (PO) in charge of the project

Implementation of an amendment (I)

*An amendment can be implemented only **during the lifetime of the grant agreement** (therefore only after the its entry into force and before the final payment is made) but the request should be introduced before the end of the project.*

Exchange of letters : request and acceptance letter

The model letters enclosed in the FP7 Amendment guide should be used

Must be signed by persons having the same capacity to represent the legal entity as those who signed the initial GA

Implementation of an amendment (II)

*Usually, a written **request from the coordinator (COO)** on behalf of the consortium (proof of the agreement of the beneficiaries must exist and is made available in the event of an audit)*

Only in the specific case of a change of COO (without its agreement) can beneficiaries submit an amendment request (all of them or one representing the rest of them)

***No tacit approval** (Exception : tacit approval after 45 days in case of addition of a new beneficiary or termination – with its consent- of the participation of 1 beneficiary)*

Implementation of an amendment (III)

The request for amendment :

- *must be **complete** including supporting documents justifying the modifications*
- *must be **unambiguous** and refer to the GA which is to be amended (correct GA number & acronym)*
- *must be submitted in **writing***
- *to be **submitted in time**, i.e. immediately after the event occurred and not months later*
- *In case of a request from the Commission, a time-limit is established for accepting the request. After the expiry of that deadline, the Commission is no longer bound by its offer*

Entry into force and taking effect

“Entry into force” refers to the date upon which the amendment has legal force

→ Amendments enter into force upon signatures of the parties (the coordinator and the AO)

« Taking effect » means the date from which the actions of the amendment apply

→ can be the date of entry into force

→ can also be different from date of entry into force

Changes not requiring an amendment : Information procedure

Changes that do not depend on the agreement of the parties but the GA needs to reflect them.

*Implementation via **information procedure** :*

- Request to be introduced by the LEAR (legal entity appointed representative) of each beneficiary via URF/Participant Portal
- Registration of the changes in PDM done centrally by REA (when done POs responsible for affected projects are informed)
- Changes are not registered at the level of each individual GA

Main cases:

- Change of name and legal details of a beneficiary (e.g change of legal address)
- Universal transfer of rights and obligations (UTRO)
- Change of indirect cost methodology (ICM)

Other changes not requiring an amendment

Beneficiaries are also required to inform (via coordinator) the Commission on the following changes :

- *Names and contact details of person(s) managing and monitoring the beneficiary's work*
- *Any event which might affect the implementation of the project and the rights of the Union*
- *Contact address and legal representative of the beneficiary + changes regarding legal, financial, organisational or technical situation of the beneficiary*
- *Circumstances affecting the conditions of participation*

*Legal reference : **Article II.3 (f)** of the GA*

Some examples

Addition of a new beneficiary

Withdrawal of a beneficiary

Change of coordinator

Transfer of rights and obligations

Addition of a new beneficiary (I)

Request for amendment :

- Addition of a new beneficiary
- Modification of Description of work (annex I)

Supporting documents :

1. Modified annex I with description of the work to be performed by the new beneficiary;
2. Signed and duly completed Grant Preparation Form (GPFs)
3. Duly signed Form B (annex V of the GA) by the coordinator and new beneficiary
4. An accompanying letter explaining the context and the nature of the proposed change is not mandatory but should be sent by the coordinator

Addition of a new beneficiary (II)

Remarks :

- *Should the new beneficiary not be yet registered, a self-registration in the URF (Unique Registration Facility) is necessary*
- *In case the selection of the new beneficiary was done following a competitive call, supporting documents to be submitted as well,*

Termination of the participation of a beneficiary

Request for amendment :

- Termination of the participation of the beneficiary
- Modification of Description of work (annex I)
- (Addition of a new beneficiary)

Supporting documents

1. Modified annex I with reallocation of tasks&budget + reasons
2. Letter of opinion of the beneficiary whose participation is terminated (or proof that it has been requested to express its views)
3. Reports and deliverables

Change of coordinator (I)

Different situations can happen :

1. Does the old coordinator agree with the change?

If **Yes**, request for change has to be signed by both new and old coordinator

If **No**, request for change has to be signed by all other beneficiaries forming the consortium or by one of them representing the others.

2. Is the new coordinator already a beneficiary?

If no, request should include « addition of new beneficiary »

3. Does the old coordinator remain in the consortium?

If no, request should include « termination of the participation of a beneficiary »

Change of coordinator (II)

In all cases, request should at least contain :

- **modification of bank details**
- **communication of contact address**
- **modification of annex I**

In all cases, the following supporting documents :

- **modified annex I,**
- **signed GPFs (including Financial Identification form) by new coordinator,**
- **financial documents where applicable (to carry out the verification of the financial capacity).**

Transfer of rights and obligations (I)

The sentence "transfer of rights and obligations" is used in cases such as mergers, acquisitions and other changes going beyond the change of ownership.

The "transfer of rights and obligations" can be universal or partial

Transfer of rights and obligations (II)

Universal transfers of rights or obligations (UTRO)

- **Case of takeovers**
- **« new » entity assumes universally all rights and obligations of the old entity**
- **No amendment requested except if**
 - beneficiary is coordinator
 - a special clause needs to be inserted following the transfer

Transfer of rights and obligations (III)

Partial transfer of rights and obligations

2 scenario might happen

The original entity keeps existing and a new legal entity purchases part of the business of the former entity.

The **GA may be affected or not**. Example

- the purchasing entity buys the mobile phone division of "selling" entity": if the project involved this division, an amendment will be needed.
- the purchasing entity buys another division of "selling" entity" not involved in the project: no amendment is needed.

The original entity disappears but there is not universal transfer of right but **two or more "purchasing companies"** that absorb divisions of the "selling" company. **An amendment to the GA is always needed.**

Thank you for your attention.