CEF-Transport model grant agreement

Legal aspects

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Framework

• New legal basis: CEF Regulation
• Single model grant agreement for three sectors
• Terms and conditions in line with the Financial Regulation of the EU budget taking into account specific requirements of the CEF Regulation
• CEF model grant agreement has been agreed upon and approved by Commission services
• Any change to standard provisions cannot be accepted!
Why grant agreements?

- More adapted to multi-beneficiary/ complex actions
- Non-EU participants
- Should allow for administrative simplification, notably regarding amendments
- BUT very similar terms and conditions as grant Decisions with adaptations to CEF and clarifications based on the TEN-T experience
Grant agreement structure

List of parties signing the GA
Special conditions (core text)
Signatures
Annex I – Description of the Action
Annex II – General conditions
Annex III – Budget of the Action
Annex IV – Template for the coordinator's mandate
Annex V & VI – Templates for final report and requests for payments
Annex VII – ToR and model report for certificates on financial statements
CEF specificities and other new items

• Specific conditions
  Costs eligibility for Cohesion appropriations, Non-EU beneficiaries

• Clarifications for increased transparency / legal certainty
  Reporting periods, coordinator's role and mandate(s) to the coordinator (Annex IV), notion of cost 'incurred', calculation of further pre-financing payments (where applicable), beneficiaries not receiving EU funding

• Increased flexibility: budget transfers

• MS certification / Third countries

• Certificate on financial statements (Annex VII)
The beneficiaries

- Are jointly and severally responsible for carrying out the action in line with the grant agreement
- Are responsible for complying with any legal obligation incumbent on them under EU law, international or national law
- Shall make internal arrangements for the proper implementation of the action (e.g. by signing an internal cooperation agreement)
- Shall inform immediately the coordinator (or the Agency if no coordinator) of any change likely to affect the action implementation

Article II.1 MGA
The coordinator

• Is a beneficiary and must be designated formally by the other beneficiaries (mandate template Annex IV MGA)
• Should sign on behalf of all beneficiaries
• Should be the sole recipient of payments made by the Agency
• Is the intermediary for all communications with the Agency
• Establishes the requests for payments and submits technical reporting
• Where it receives all payments, will ensure that all appropriate payments are made to the other beneficiaries
• Where it does not receive all payments, will be responsible for providing to the Agency the methods for allocating the amounts to be paid to each beneficiary by the Agency

Article II.1 MGA
Legal obligations include i.a.:

- Tasks and responsibilities as coordinator and/or beneficiary
- Compliance with EU law, e.g. environmental legislation
- Reporting duties
- Absence of conflicts of interest
- Confidentiality
- Visibility of Union funding
- Award of contracts
- Rights of audits/ checks and evaluation
Affiliated entities and implementing bodies

- To be designated in the grant agreement for costs to be eligible (same costs eligibility criteria as for beneficiaries apply)
- Do not sign the grant agreement
- Beneficiaries retain sole responsibility for carrying out the action and for compliance with the grant agreement
- Beneficiaries shall ensure that the EC/Agency/OLAF and CoA can exercise their rights under Art. II.27 (checks, audits and evaluation)
- Provisions on liability for damages, conflict of interest, confidentiality, visibility of Union funding, award of contracts and sub-contracting apply

Articles 7, 8 and II.21 MGA
# Payment arrangements

- Specified in the Call for proposals
- Complex vs. simple actions

<table>
<thead>
<tr>
<th>Complex actions</th>
<th>Simple actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions selected under the multi-annual programme (MAP) (\text{[exceptionally, AP actions with higher complexity]})</td>
<td>Actions selected under the annual programme (AP) (\text{[exceptionally, MAP actions with low complexity]})</td>
</tr>
<tr>
<td>Pre-financing divided into several payments</td>
<td>Single pre-financing</td>
</tr>
<tr>
<td>Interim payments at least every 2 reporting periods</td>
<td>No interim payment</td>
</tr>
<tr>
<td>Balance payment upon completion of the action</td>
<td>Balance payment upon completion of the action</td>
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</table>
Eligibility of costs

Eligible costs are costs actually incurred by the beneficiary(ies), affiliated entities and implementing bodies (where designated in the grant agreement), which comply with the general eligibility criteria as laid down in Article II.19 MGA.

Examples of ineligible costs: return on capital, costs of land and building acquisition (except for Cohesion actions), indirect costs (overheads)...

Costs 'incurred' for contracts for goods, works or services = when the goods, works or services (including studies) are supplied, delivered or provided.

Equipment purchase costs are eligible, subject to compliance with additional criteria.

Articles II.19, II.20 and II.21 MGA
Certification by Member State(s)

- ASRs + final report and financial statement
- Member State in which the beneficiary is established
- Exceptionally and upon request of the beneficiary: Member State where the Action is implemented (Annex I GA)
- For third countries and entities established outside the EU: NO certification by Member State(s) nor by the third country authorities
Procurements

• Award to tender offering best value for money or, as appropriate, the lowest price

• Contracting authorities/ entities within the meaning of EU Directives (2004/17 and 2004/18 or the new 2014 Directives in force after 18 April 2016) shall follow applicable national / EU public procurement rules

• For beneficiaries other than contracting authorities/ entities, sound financial management

• Beneficiaries retain sole responsibility for carrying out the action in line with the grant agreement

• Non-compliance will lead to rejection of costs or reduction of support
Budget transfers

• Adjustments between budget categories of each beneficiary are allowed without this being considered an amendment, provided that the action is implemented as described in Annex I.

The same applies to transfers of amounts between beneficiaries where a coordinator is designated.

• However, amendments are always required i.a. for transfers of amounts between beneficiaries where no coordinator is designated.
Amendments

- Shall not have the purpose or the effect of making changes which would call into question the award of the grant
- Amendments should be an exception and will only be accepted in duly justified and substantiated cases
- Request for amendments must be submitted by specific letter at the latest 3 months before the action completion date
- Requests submitted by the coordinator / the beneficiaries

Article II.12 MGA
Suspension, termination, reduction of the financial aid

- **Beneficiaries** may suspend the action in exceptional circumstances (e.g. force majeure) or terminate the action in duly justified cases.

- **The Agency** may suspend or terminate the financial aid, for instance:
  - In case of breach of contractual obligations
  - Following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action
  - In case of non-compliance with EU law, e.g. on environmental protection, etc

- **The Agency** may reduce the financial aid for poor, partial or late implementation, or breach of contractual obligations
Contradictory procedure

- With the coordinator/ beneficiary(ies)
- Right to submit observations
- If the procedure is stopped, formal notification is made
Evaluations, checks and audits

- May be initiated by the Commission or the Agency during the action implementation and **up to 5 years after the balance payment is made**

- European Court of Auditors/ OLAF have the same rights as Commission/ Agency for the purpose of audits and investigations

- **Duty to keep documents until expiry of the 5 years period**

- Audits:
  - Obligation to provide information upon request
  - On-the-spot visits may be carried out
  - May lead to recovery of amounts already paid

Article II.27 MGA
Key practical issues...

At early stage

- Coordinator and its tasks (power of attorney, sole recipient of payments)
- Authorised representative(s)

When receiving the draft GA for comments

- Check beneficiaries' details (GA + Annex IV)
- Start collecting the signed mandates as soon as possible – don't wait for the receipt of the version for signature!

⚠️ Number of originals and NO modifications!
Key practical issues...

*Before sending back the signed GA to the Agency*

- All required signatures have been collected
- Number of originals (including Annex IV)!
- No modifications!
- Member State(s) to be informed (if different from those which supported the proposal)
Thank you for your attention!

Disclaimer

This presentation is for information only and does not provide an exhaustive list of contractual obligations of beneficiaries nor of the mechanisms in place for monitoring the co-financed actions. It has no legal value and shall not bind on either the INEA or the Commission under any circumstances. Only signed grant agreements are authentic. They shall prevail on any different information.

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