



EU Grants and Tenders

Rules on Legal Entity Validation, LEAR appointment and Financial Capacity Assessment

Version 1.0
6 January 2018



IMPORTANT NOTICE

This document sets out the rules for **legal entity validation, LEAR appointment and financial capacity assessment** in the context of applications for EU grants, tenders and prizes.

The **legal entity validation, LEAR appointment and the preparation of the financial capacity assessment** will be done centrally by the REA Validation Services (for REA itself and other EU bodies).

HISTORY OF CHANGES

Version	Publication Date	Change
1.0	06.02.2018	▪ Initial version

TABLE OF CONTENTS

I. RULES ON LEGAL ENTITY VALIDATION	4
1. Criteria and conditions	4
1.1 Legal entity and legal data	4
1.2 Special legal statuses	5
2. Documents to submit.....	8
2.1 General requirements and principles.....	8
2.2 List of documents.....	9
2.3 Incomplete or contradictory information.....	11
3. Validation and effective date	11
3. Modification of validations	11
3.1 Validation updates.....	12
3.2 Corrections of initial validation	12
4. Ex-post verifications carried out by the EU — Irregularities and/or false declarations	12
II. RULES ON LEAR APPOINTMENT	13
1. LEAR appointment	13
1.1 General requirements and principles.....	13
1.2 List of documents.....	14
1.3 LEAR replacement	17
2. Ex-post verifications carried out by the EU — Irregularities and/or false declarations.....	17
III. RULES ON FINANCIAL CAPACITY ASSESSMENT	18
1. Financial Capacity Assessment: Criteria and conditions	18
2. Documents to submit.....	18
2.1. General requirements and principles.....	18
2.2 List of documents.....	19
2.3 Incomplete or contradictory information.....	21
3. Duration of validity and renewal	22
4. Modification of the assessment.....	22
5. Ex-post verifications carried out by the EU — Irregularities and/or false declarations	22

I. RULES ON LEGAL ENTITY VALIDATION

1. Criteria and conditions

The EU Financial Regulation requires that all recipients of EU funds must be validated. Legal entity validation comprises two distinct actions: (a) the verification that you exist as legal entity and that your legal data is correct (legal form, address, etc.) and (b) the verification of certain special legal statuses that are used in EU funding programmes.

These checks are done during the selection procedure; you will be contacted by the Validation Services.

1.1 Legal entity and legal data

A 'legal entity' is any natural or legal person created and recognised as such under national law or international law. It must have a legal personality and, acting in its own name, be able to exercise rights and be subject to obligations.

Legal personality means in practice that the entity is entitled to act on its own account and in its own name, without the intervention of any parent (or other) organization.

Specific cases

❖ **Natural persons** are by default considered as being legal entities. However, we may exceptionally refuse validation for persons that cannot legally enter into contracts with the EU (*e.g. under age*) — if justified on a case by case basis.

❖ **Branches** are not regarded as legal entity as they do not have an independent legal personality distinct from that of their mother-company. The fact that they are registered in national official registers is not sufficient to consider them as a legal entity. The mother-company is considered as being the legal entity instead.

❖ Entities set-up within — or under — a parent organisation (such as **departments/centers/offices**) and not provided with their own legal personality (despite having their administration or budgetary autonomy, VAT number/fiscal code/number of registration) cannot be regarded as a legal entity and are considered as belonging to their parent-organisation.

Exception: entities without legal personality

By way of exception, certain 'entities without legal personality' may be nevertheless eligible for EU grants if they meet the conditions set out in Article 131(2) of the EU Financial Regulation No [966/2012](#) and Article 198 of the Rules of Application Regulation No [1268/2012](#):

- their representatives have the capacity to undertake legal obligations on behalf of the entity
- the entity has the financial and operational capacity equivalent to that of a legal person.

This exception aims mainly at associations, i.e. stable entities, with common structures (secretariat, etc.) that have their own activities, but which just miss the formal legal personality.


Concerning the first condition, the entity must provide proof (legal documents) of its representatives' capacity to undertake legal obligations on its behalf. Be aware that when, on the contrary, the obligations are assumed on behalf of the representative

itself (or the owner(s) of the entity), the condition is not met.

Concerning the second condition, the entity is required to prove the following elements:

- existence of a patrimony/asset/capital separated and different from those of its members/owners
- rules ensuring that creditors can rely on this patrimony/asset/capital and that, in case of liquidation/insolvency, creditors are reimbursed in advance (prior to the repartition of the patrimony/asset/capital between the owners/members).

Both conditions must be fulfilled and proved by supporting documents.

 This exception only applies for participation in EU grants; entities without legal personality can NOT participate in EU tenders.

Other exceptions

The following entities may exceptionally also be regarded as a legal entity, without having an independent legal personality:

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

Departments/directorates/units/offices set up within a Ministry are considered as being part of the same Ministry and cannot be considered as being an independent legal entity, unless their independent legal personality is recognized by national law.

1.2 Special legal statuses

In addition, the validation covers the following special legal statuses which are used in certain EU funding programmes:

- private or public body
- non-profit organisation
- small or medium sized enterprise (SME)
- international organisation
- international organisation of European interest
- research organisation
- secondary or higher education establishment.

A legal entity may be categorised in more than one of these legal statuses (*i.e. non-profit, public body, research organisation, international organisation, etc.*).

The practical relevance of these statuses (and what happens if they change) is established at level of the different funding programmes (and sometimes even at call-level).

Private body

'Private body' means any legal entity established under private law which has a legal personality distinct from that of its founders/owners/members and which can exercise rights and be subject to obligations.

Specific cases

❖ **Self-employed persons** (meaning persons who perform an activity independently and with their own means, *as an example: craftsmen, liberal professions, industrial and commercial professions*) are regarded as 'natural persons', not as 'private bodies'; the business/profession/activity they perform is not provided with an independent legal personality different from that of the person.

Public body

'Public body' means any legal entity established as a public body by national law or an international organisation.

'Established as a public body by national law' means:

- incorporated as a public body in the act of creation or recognised as a public body by national law and
- governed by public law.

Both conditions must be fulfilled.

Criteria such as:

- the mission or activity in the general interest (public service mission)
- the fact that the ownership of the shares belongs to a public body (even if the public ownership reaches up to the 100% of the share capital)
- the public financing
- the state supervision and control

do NOT constitute sufficient evidence in order to qualify an entity as a public body as long as the above conditions are not met.

Public bodies may act and be subject to private law for some or most of their activities, provided that, concerning their existence and their functioning, they are subject to the public law.

Specific cases

❖ A legal entity incorporated under private law/private legal form is NOT considered to be a public body even if owned by the State/other public bodies and/or pursuing a public service mission.

Non-profit organisation

'Non-profit organisation' means a legal entity that is by its legal form non-profit-making or has a legal or statutory obligation not to distribute profits to its shareholders or members.

Profits have to be reinvested in the same activity of the entity (or in research activities).

Decisions on (not) distributing profits made by the managing board, associates,

stakeholders, members or representatives and/or practices adopted by the entity to not distribute profits and/or the absence of profits achieved are not sufficient proof of the non-profit nature. The obligation has to be stipulated by law and/or inserted in the act of establishment/articles of association/ statutes, etc.

The fact that the owner(s)/founder(s) of the entity is (are) non-profit and that the profits would be allocated to non-profit entity(ies) is equally irrelevant.

Specific cases

- ❖ Public bodies are regarded as non-profit organisations by default.
- ❖ The classification as NGO is not sufficient to consider an entity as a non-profit-organisation as, in most of the countries, it does not correspond to a recognized legal form. In order to attribute non-profit status to a NGO, it is necessary that the entity meets the non-profit requirements (concerning NGO special status, see below 'Other categories').

Small or Medium Sized Enterprise (SME)

'Small or medium sized enterprise (SME)' means a micro, small or medium-sized enterprise as defined in Recommendation No [2003/361/EC](#), i.e.:

- engaged in an economic activity, irrespective of its legal form (including, in particular, self- employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity)
- employing 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.

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 on the market. Thus, in general, any activity consisting in offering goods or services on a given market is an economic activity.

The following will NOT be considered economic activities:

- activities which do not entail some sort of pecuniary offset or
- activities for which there is no given/direct market or
- activities for which the income generated is not distinct from the personal income of the entity's members or shareholders.

Specific cases

- ❖ Newly established enterprises (so-called start-up companies) not having closed accounts on annual basis or companies without economic activity (but expecting to enter soon into the market) may also qualify as SMEs as long as they are able to provide a 'bona fide estimate' (in the form of a 'business plan') covering the period necessary for the entity to generate turnover.
- ❖ Enterprises without turnover whose activity implies a long time-to market are allowed to demonstrate that they are engaged in an economic activity by showing the investments made and the likely expected return.

International organization (IO)

'International organisation' means an intergovernmental organisation (other than the EU) with legal personality under international public law (including specialised agencies set up by international organisations).

International organisation of European Interest (IOEI)

'International organisation of European interest' means an international organisation, with a majority of members that are EU Member States or associated countries, and whose main objective is promoting scientific and technological cooperation in Europe.

Research organisation

'Research organisation' means a legal entity that is established as a non-profit organisation and whose main objective is carrying out research or technological development.

Research organisations are legal entities that meet the following cumulative conditions:

- they are established as non-profit organisations as described above
- they carry out research or technological development as one of their main objectives.

The following are NOT considered research activities:

- supporting, financing research activities carried out by other entities
- disseminating knowledge
- promoting, managing or coordinating research activities.

Secondary or higher education establishment

'Secondary or higher education establishment' means a legal entity that is recognised as such by its national education system and is able to deliver diplomas recognised by the State.

It can be a public or a private body.

The national accreditation as a secondary/higher education establishment is not sufficient to consider the entity as a public body. The public body status can be recognized only if the relevant conditions are fulfilled (*see above*).

Other categories

Entities have the possibility to make a self-declaration about some additional categories, such as 'NGO', 'Civil Society Organisation', etc.

These categories are NOT validated against supporting documents. They are simple self-declarations; you will not be required to provide any supporting documents.

2. Documents to submit

2.1 General requirements and principles

The validation process of a legal entity is based on legal and official supporting documents that have to be provided. Documents are considered as official when they

are delivered by official national authorities. Supporting documents can NOT be replaced by self-declarations or by sworn or solemn statements before a judicial or administrative authorities, notaries or public officers.

As a general rule, all documents must be submitted (as scanned versions) via the electronic exchange system (i.e. upload in the Participant Register).

Documents are accepted in any of the EU official languages. Participants *may* however be requested to submit an English free (unofficial) translation to facilitate the validation process.

Documents in other languages may be accepted if accompanied by a free translation in English. In case of any doubt, a certified/legal/official translation in English may be requested.

Free translations should always be accompanied by the copies of original official documents.

The participant assumes the full responsibility for the content of the documents and the accuracy of the translation. If it makes false declarations (or manipulates the translation intentionally), we may:

- withdraw and correct the validated status
- terminate on-going grants and contracts (and recover any undue amounts)
- impose financial penalties or administrative sanctions, including exclusion from all future EU funding (grants/tenders, prizes, expert contracts, etc.)
- inform the European Anti-Fraud Office (OLAF).

2.2 List of documents

The participants will be asked to submit the following documents:

1. Signed **legal entity identification form**¹ :
 - Natural Person Form: in English
 - Private Legal Entity Form: in English
 - Public Legal Entity Form: in English.
2. **Official VAT document** or — if the entity is not registered for VAT — the proof of VAT exemption, not older than 6 months.

If the participant also applies for a special legal status, the following additional documents have to be submitted:

Status	Documents to be submitted
Private body (including SME)	Registration extract (not older than 6 months).

¹ Available http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm at

Public body	Copy of the act, law, decree or decision that established the organisation as a public body (or, if this doesn't exist, any other official legal document that proves this).
Non-profit organisation	<p>Copy of an official document attesting that the organisation has a legal or statutory obligation not to distribute profits to shareholders or individual members.</p> <p>❖ The certificate of tax exemption may only constitute an indication of the non-profit status and has to be assessed together with other elements.</p>
Research organisation	Copy of an official document attesting that one of the main objectives of the participant is carrying out research or technological development.
Secondary or higher education establishment	Copy of an official document attesting that the organisation is recognised such as 'secondary or higher education establishment' by the national education system and is entitled to deliver diplomas recognized by the State.
Small or medium sized enterprise (SME) (in addition to the documents for private bodies)	<p>The following documents have to be provided for the participant and for linked and partner entities:</p> <ol style="list-style-type: none"> 3. balance sheet, 4. profit and loss accounts, 5. staff head count expressed in annual working units, <p>all related to the last closed accounting period.</p> <p>❖ For newly established enterprises (<i>e.g. start-up companies</i>) that have not yet closed accounts: a self-declaration, including a bona fide estimate (in the form of a business plan) for the entire period (financial years) necessary for the entity to generate turnover.</p> <p>❖ For enterprises without turnover whose activity implies a long time-to market:</p> <ol style="list-style-type: none"> 6. balance sheet, profit and loss accounts and staff head count expressed in annual working units related to the last closed accounting period; 7. a self-declaration, including a bona fide estimate (in the form of a business plan) for the entire period (financial years) necessary to generate turnover, including a declaration of the investment made and the likely expected return (to demonstrate that, despite the lack of turnover, the enterprise is engaged in an economic activity) <p>Sworn or solemn statements before a judicial or administrative authority, notary or public officer are not acceptable proof of your SME status.</p>
International organisation International organisation of European interest	Copy of the relevant international treaty creating the organisation under international public law.
Natural person	Copy (legible) of valid identity card or passport.
Entities without legal personality	<p>- Copy of an official document attesting that the representatives of the entity have the capacity to undertake legal obligations on its behalf.</p> <p>- Copy of an official document attesting that the entity has the same operational and financial viability as that of a legal entity: i.e.</p> <ul style="list-style-type: none"> • a document showing patrimony/asset/capital that is separated and different from those of the members/owners of the entity, and • a copy of the rules providing that creditors can rely on this patrimony/asset/capital and — in case of

	liquidation/insolvency — are reimbursed before the patrimony/asset/capital is divided between the owners/members.
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Other categories such as 'NGO', 'Civil Society Organisation', etc. (*see above*) are NOT validated; you are not required to provide any supporting documents for the validation.

2.3 Incomplete or contradictory information

The Validation Services may use any publicly available information to clarify questions about the data or information you provided.

You may be required to explain or provide missing information within a reasonable time, if:

- our findings do not match your declarations
- the documents submitted are outdated (*e.g. VAT document or extract of registration more than 6 months old*)
- the provided information is illegible, incomplete, incorrect or unclear.

 If you do not provide appropriate documents or clarifications in time, we have the right to refuse the validation (or finalise it on the basis of the information and documents submitted).

3. Validation and effective date

On the basis of the submitted information and documents, the participant will be validated with the effective date of entry into force of the legal act establishing its constitution or incorporation (unless the terms of the act stipulate another date).

That date will 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 in 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.

When there is no act of constitution or incorporation, the participant will be considered to exist since a default date.

The effective date for the special SME status will be the account closure date of the accounting period on which the assessment is based in accordance with Article 4(2) of the Annex of Recommendation [2003/361/EC](#). For newly established enterprises whose accounts have not yet been closed, the effective date is the date of their creation.

The effective date of other special legal statuses is the date in which the specific status enters into force. This date may be the same as its effective date of existence (or may differ, if the specific status has been acquired later on).

4. Modification of validations

Requests for modification of a validation will only be accepted if submitted by the participant's LEAR (*see below*). If no LEAR is nominated yet, it must first finish the

nomination process, and then submit the change request.

4.1 Validation updates

The validation will be updated in case of a change in the participant's legal situation (*identity/legal form, name, address, status, etc.*).

Such changes must be communicated by the LEAR and accompanied by the relevant supporting documents.

The 'effective date of the change' will be the date on which the act establishing the change enters into force (unless the terms of the act stipulate another date).

For SME's, the effective date is the closure date of the accounting period on which the change of status is based.

The practical consequences of these changes depend on each funding programme.

4.2 Corrections of initial validation

If it turns out to be wrong (through an audit, ex-post check, investigation or other means), the validation will be corrected. The modification will be registered with effect back to the effective date of the initial validation.

If the error is attributable to the Validation Services, the retroactive effect may exceptionally be waived, if duly justified and in line with the principles of sound financial management and proportionality.

If the error was the fault of the participant (including unintentional misrepresentation of facts), its participation in on-going grants/contract may be terminated and undue amounts paid may be recovered. Moreover, it may be fined and excluded from future EU funding/contracts and the European Anti-Fraud Office (OLAF) may be informed.

5. Ex-post verifications carried out by the EU – Irregularities and/or false declarations

The EU reserves the right to carry out — at any moment — checks, reviews, audits or investigations.

If we find out that you did not meet the criteria for legal entity or a special legal status and that you made false declarations, the modification of the validation will be registered with effect back to the effective date of the initial validation.

If in the meantime you already received EU funding/contracts, your participation may be terminated and undue amounts paid will be recovered.


In case of irregularities or false declarations, you may moreover be fined and excluded from all future EU funding/contracts (financial penalties or administrative sanctions; see *Articles 106 and 107 of the Financial Regulation No [966/2012](#)*).

In addition, we may inform the European Anti-Fraud Office (OLAF).

II. RULES ON LEAR APPOINTMENT

1. LEAR appointment

After validation, the participant will be requested to appoint a Legal Entity Appointed Representative (LEAR) and to consent to the use of the electronic exchange system.

 The appointment of the LEAR is mandatory for all validated participants. Without LEAR it is not possible to obtain the grant/tender.

1.1 General requirements and principles

Role of the LEAR

The LEAR is the person which is officially nominated by the participant to take care of the key data in the Participant Register (*legal and financial data, certain access rights in the electronic exchange system, etc.*).

The LEAR enjoys a qualified access to the electronic exchange system and has to ensure that the participant's legal information is up-to-date. S/he must immediately inform of any change to the legal data or legal status/category and must provide supporting documents and information requested.

In addition, the LEAR must enter and update the names of the:

- legal representatives and signatories for the organisation. These are people who are able to commit the organisation legally by signing grant agreements and contracts and authorising amendments to them
- persons that may sign cost statements on behalf of the organisation.

For a detailed description of the LEAR rights and responsibilities, see the LEAR appointment letter and Roles and Duties

Position of the LEAR

The LEAR is an administrative function that may be held by the participant's legal representative (i.e. a person duly authorised to act on behalf of the organisation and to commit it vis-à-vis third parties) or another key person appointed by the legal representative.

Whilst we recommend that the LEAR is someone employed in the organisation (most commonly in the central administrative services of the entity), employment is not an absolute condition. Please keep however in mind that the Participant Register is designed as a single entry point for all future EU funding and tenders and that this functionality requires certain stability in the LEAR role (who will remain our key contact for any communications that concern the organization level).

Each participant can only appoint one LEAR. However, different participants may appoint the same person as LEAR.

Timing of the LEAR appointment

The process for appointment of the LEAR can run in parallel to the validation of the legal entity, but can only be finalised once the participant is validated.

LEAR appointment is not a condition for the submission of a tender/proposal, but it must be completed before the signature of the grant agreement/contract.

1.2 List of documents

For LEAR validation, the scanned version of the following documents has to be uploaded in the SEDIA Register:

1. the [LEAR appointment letter](#) (including the LEAR roles & duties; generated as a single document; completed, dated and signed by the legal representative and the LEAR)
2. the [Declaration of consent](#) to the [Participant Portal Terms & Conditions](#) (completed, dated and signed by the legal representative)
3. copies of an official, valid proof of identity (ID-card, passport, with photo and signature) of:
 - the legal representative and
 - the appointed representative (LEAR)
4. document(s) proving that the legal representative(s) appointing the LEAR is/are empowered as such, which must:
 - clearly indicate the role/function within the organisation as legal representative
 - identify and appoint this person (by indicating his/her personal data) for that role.

The originals of the LEAR appointment letter and the declaration of consent must be kept in the premises, to be available for checks, review, audits or investigations that can be required by the EU at any time.

Upon receipt of the above-listed documents and once the participant has been validated, the appointment of the LEAR will be finalized in the Participant Register.

For a detailed description of the LEAR appointment process, see the [Online Manual](#) and the [Participant Portal Terms & Conditions](#).

Proof of identity

'Identity documents' are those issued by national authorities and recognized by national law as valid proof of identity. Identity documents can NOT be replaced by any other means of proof. The EU cannot waive to this requirement under any circumstances.

Examples of identity documents normally accepted are ID cards and passports. Driving license is also accepted as long as it is considered as a proof of identity under the national law.

Identity documents must be valid at the time of the LEARs appointment (not expired).

An integral copy of the document has to be provided. Identity documents in which some parts/elements (including the photo) have been deleted/erased/covered with black marker cannot be accepted.

Specific cases

- ❖ Service cards and badges issued by the participant, even if a public body, cannot replace identity documents and cannot be accepted as means of ID proof.
- ❖ Print-outs from the ID electronic chip cannot be accepted either.

Signatures

The LEAR documents can be signed only by persons who are legal representatives of the participant (one person only).

The names of both legal representative and LEAR indicated in the LEAR documents must coincide with those indicated in the respective official documents of identity.

LEAR documents signed by using acronyms/nick names/etc. which do not correspond with the names indicated in the identity documents will not be accepted.

Specific cases

❖ When the joint signature of more than one person is required to legally engage the entity (*by law, act of establishment, statutes, internal rules, etc.*), this must be ensured by an internal process (*e.g. on paper*) guaranteeing that the single signature on the EU documents is made only *after* all the internal requirements are fulfilled. Compliance with these internal requirements is under the full responsibility of the participant.

Documents proving the empowerment of the legal representative

The participant is required to provide the supporting documents necessary to identify:

- the role/function of legal representative within the organisation
- the name and appointment of the specific person (by indicating his/her personal data) for that role.

This evidence may be found in one single document (in case the official appointment also specifies the powers/tasks related to the appointment) or may need two different documents: the official appointment and the organisational document (*such as act of establishment, statutes, articles of association, etc.*) in which the powers/tasks related to the role are identified.

The documents proving the appointment are those normally required/accepted under national law. They may vary depending on the country, the legal form and status:

- law/decreet/official act/official gazette in case of public entities
- copy of the treaty in case of international organisation
- decision of assembly, official documents from the council of administration, executive committee or directors board, excerpts of the company registry in case of private entities.

A declaration of honour can be accepted only in exceptional, duly justified cases where none of the above exists.

Concerning the language of such documents and participant's responsibilities concerning translations, *see Section I.2.1.*

Specific cases

❖ **Natural persons** do not need to prove their empowerment to appoint and become a LEAR, but still need to send the supporting documents listed above. All documents would only be signed by the natural person. A copy of the ID documents of the natural person needs to be included.

❖ **Deputising persons** — generally empowered to act as legal representatives in case of temporary absence/impossibility of the legal representatives — are accepted as legal representatives, as long as a signed declaration on honour is provided,

indicating the reason of the temporary absence/impossibility.

❖ For **Ministries**, Ministers are normally considered legal representatives *by default* and there is no need to provide the legal documents proving their empowerment.

In addition to the Minister's role, the following roles/functions are considered as legal representative *by default* without any further verification:

- Deputy Minister
- State/General Secretary and their deputies
- Directors of certain specific horizontal sectors/departments/directions, namely 'legal', 'financial', 'European or international relationships'.

If the official act of appointment is not provided by the Ministry, the evidence may be taken from other appropriate sources (*e.g. the organigram published on the official internet-site of the Ministry*).

Except if otherwise provided in the applicable rules (law/decreed/act governing the organization of the ministry), other roles of 'Director'/'Head of Department'/'Head of Unit', etc. will be considered as having limited tasks and powers (relating only to the directorate/department/unit's policies) and, therefore, NOT entitled to represent and engage the Ministry as a whole.

For Ministers, the ID document can be exceptionally replaced by a badge or service card (issued by the Ministry). This exception applies only to the person of the 'Minister' and cannot be extended to other representatives (*such as State Secretaries, Deputy Ministers or Directors/Head of Departments*); they are not exempted from the obligation to provide an ID document.

❖ For **other state/governmental entities** at central/regional/local level, both the normal legal representatives (*e.g. the Director, the President, the Mayor, etc.*) and their 'deputies' will be recognized as legal representative *by default*, without the need to verify the specific terms of the deputising rules and without asking for a declaration on honour.

If the official act of appointment is not provided, the evidence may be taken from other appropriate sources (*e.g. the organigram published on the official internet-site*).

❖ For **universities**, the following roles/functions are recognised as legal representative *by default* without any further verification:

- Rector and Vice-Rector
- President and Vice-President
- Chancellor and Vice Chancellor.

In case of faculties with their own legal personality (and thus independently validated), the Dean and Vice-Dean can also act as legal representatives *by default*.

If the official act of appointment is not provided by the university/faculty, the evidence may also be taken from other appropriate sources (*e.g. the organigram published on the official internet-site of the university/faculty*).

❖ Persons tasked with the '**daily management**' can NOT be recognized as legal representatives since they are not entitled to engage and represent outside the ordinary business.

The 'daily management' ('gestion journalière') is commonly understood as comprising

those acts that, because of their minor importance or the need for a prompt solution, do not justify the intervention of the management bodies. It consists of ordinary business and execution of decisions and line of conduct traced by the management board.

❖ Similarly, persons empowered to engage and commit the participant only within certain financial limits (**'delegation with financial limits'**) cannot be accepted as legal representatives for the purposes of the LEAR appointment or the declaration of consent, since they are considered out of scope of the delegation.

1.3 LEAR replacement

The same documents are requested and the same procedure will be followed for the replacement of an already validated LEAR. There is no alternative procedure specifically designed for replacing LEARs.

2. Ex-post verifications carried out by the EU – Irregularities and/or false declarations

The EU reserves the right to carry out – at any moment – checks, reviews, audits or investigations.

If we find out that you did not respect the obligation to keep the original documents or committed other irregularities, appropriate measures will be taken.

If in the meantime you already received EU funding/entered in EU contracts, your participation in on-going grants/contracts may be terminated and undue amounts paid will be recovered.

In addition, if irregularities or false declarations, you may moreover be fined and excluded from all future EU funding/contracts (financial or administrative penalties; see *Articles 106 and 107 of the Financial Regulation No [966/2012](#)*).

In addition, we may inform the European Anti-Fraud Office (OLAF).

III. RULES ON FINANCIAL CAPACITY ASSESSMENT

1. Financial Capacity Assessment: Criteria and conditions

The EU Financial Regulation requires that participants in EU grants and tenders must have sufficient financial capacity to implement their project/tender.


The conditions for making a financial capacity assessment depend on the type of procedure (grant or procurement), funding programme, participant and on the grant amount (*e.g. special rules apply to Horizon 2020 because of the role of the Guarantee Fund; no financial capacity assessment is needed for public bodies, international organizations or persons receiving scholarships or aid for persons most in need; no assessment is needed for low value grants*).

In addition, the financial capacity may be assessed ad hoc if there are justified grounds to doubt it:

- indication of weak financial capacity from other sources
- involvement in cases of serious administrative errors or fraud
- pending legal procedures or judicial proceedings for serious administrative errors or fraud
- attachment order or recovery order for an outstanding amount issued by an EU body on which the payment is significantly overdue
- substantial findings in EU audits within the last 2 years that put in doubt the financial capacity.

The financial capacity is assessed on the basis of financial indicators. These indicators are adapted to the specific needs of each funding programme/tender.

The financial capacity assessment is done during grant preparation/tender evaluation. If your financial capacity must be assessed you will be contacted by the Validation Services.

 Please, note that the role of the Validation Services is to prepare the financial capacity assessment (e.g. to collect and to analyse the financial documents). The final decision on financial capacity will be taken later (and for each proposal/tender separately) by the service in charge of the grant/tender.

2. Documents to submit

2.1. General requirements and principles

The financial assessment is based on documents provided by the participant.

As a general rule, all documents must be submitted (as scanned versions) via the electronic exchange system (i.e. uploaded in the Participant Register).

Documents are accepted in any of the EU official languages. Participants *may* however be requested to submit an English free (unofficial) translation to facilitate the assessment.

Documents in other languages may be accepted if accompanied by a free translation in English. In case of any doubt, a certified/legal/official translation in English may be requested.

Free translations should always be accompanied by the copies of original official documents.

The participant assumes the full responsibility for the content of the documents and the accuracy of the translation. If it makes false declarations (or manipulates the translation intentionally), we may:

- withdraw or correct the financial assessment
- terminate on-going grants and contracts (and recover any undue amounts)
- impose financial penalties or administrative sanctions, including exclusion from future EU funding (grants/tenders, prizes, expert contracts, etc.)
- inform the European Anti-Fraud Office (OLAF).

2.2 List of documents

The participants will be asked to submit the following documents:


1. Profit and loss account — dated and signed by the management of the entity, clearly indicating the amounts of turnover, operating income, staff, depreciation, amortization costs, net operating result and interest expenses. If this information is not indicated in the profit and loss account or in the explanatory notes it must be provided in the form of a self-declaration, signed by the management.
2. Balance sheet — dated and signed by the management, clearly indicating the nature and the maturity (i.e. below or above one year) of receivables, provisions and debts. If this information is not indicated in the balance sheet or in the explanatory notes it must be provided in the form of a self-declaration, signed by the management.
3. Explanatory notes and/or annexes that form part of the above financial statements (if available).


The documents approved by the management should clearly specify the date of approval, as well as the name and the position of the approving individual(s). If this information is not clearly disclosed, the Validation Services will require further evidence that the financial documents are approved by the management.

Documents which are signed electronically will be accepted if there is sufficient evidence that the electronic signature belongs to a representative of the management.

4. External audit report

Participants requesting EU contribution for action grants above 750 000 EUR and operating grants above 100 000 EUR must provide an audit report issued by an approved/certified external auditor.


 This obligation is in force even if the participant is exempt from audit under national law.

 All other participants are invited to submit such an audit report on a voluntary basis.

The audit report must include:

- the clear mandate and scope of the audit
- the responsibilities of the management and the auditor

- the way in which the audit is carried out
- the auditor's opinion, including a reasonable assurance that the financial statements are free of material misstatement.

 The documents provided must cover the last two closed financial years. The most recent year must have been closed within the last 18 months.

Exceptions are allowed for:

- start-up companies without closed annual accounts which provide prospective data (business plan) for one year only
- recently created entities which have closed annual accounts for one year only. These entities will be assessed based on the documents for the sole closed financial year.

A single financial document containing comparative data of the annual accounts of both years under assessment will be accepted. The same applies to an external audit report covering the two financial years.

If some (or all) of the documents have already been provided for the financial years in question (i.e. uploaded in the Participant Register), you will not be requested to submit them again.

Specific cases

❖ **Subsidiaries** without own financial statements

Subsidiaries which do not prepare their own financial statements may provide the consolidated accounts and the audit report of the parent company/group they belong to only under the following cumulative conditions:

- (i) the entity is exempt under national law from statutory audits and
- (ii) only consolidated statements of the parent company/group the entity belongs to are available and
- (iii) the parent company assumes joint liability for all the debts of the entity.

In such cases you will be requested to provide additional documents to prove these conditions.

❖ **Parent** companies

Parent companies which are exempt under national law from publishing individual (i.e. non-consolidated) financial statements will be requested to provide a dated and signed by the management simplified summary of their non-consolidated profit and loss statement and balance sheet.

The simplified accounts must respect either the minimum reporting requirements set out in the national accounting law or Annexes III, IV, V and VI of EU Directive 2013/34 (for the balance sheet, aggregate information limited to the headings preceded by letters and roman numerals is sufficient).

If the provided financial information is not sufficiently explicit, the Validation Services may contact you for further clarifications.

❖ **Newly established** entities

Newly established entities that have not yet closed accounts must provide estimated financial data (i.e. a business plan or a similar document including financial

projections on current and non-current assets, own capital, current and non-current liabilities, turnover, operating and financial income and charges).

The financial data should correspond either to the minimum reporting requirements set out in the national accounting law or to Annexes III, IV, V and VI of EU Directive 2013/34 (for the balance sheet, aggregate information limited to the headings preceded by letters and roman numerals is sufficient).

❖ **Natural persons**

Natural persons are requested to provide:

- the income tax declaration
- a certified declaration of current patrimony, including:
 - fixed patrimony (*e.g. land, tenement, hereditament, medium/long-term time deposits (more than one year), stock options that cannot be exercised within one year*)
 - current patrimony (*e.g. available cash, savings, short-term time deposits (maximum of one year), stock-options that can be exercised within one year*)
- a list of certified debts, which must contain all debts (with dates and figures), broken down in short-term debts (of maximum one year) and medium/long-term debts (of more than one year).

❖ Entities operating **cash-based accounting**

If the financial statements do not contain a profit and loss account and a balance sheet but are limited to a cash flow statement, the following documents must be provided:

- bank statement(s) containing information on available cash, savings, short and long-term bank debts
- certified declaration of liabilities (short and long-term payables and other non-bank debts)
- certified declaration of assets (fixed assets, short and long-term receivables).

The certified declarations must be signed by the management of the entity.

Declarations on honor for both natural persons and entities with cash-based accounting may be accepted; however the Validation Services may have to come back to you for additional evidence if further clarifications are needed.

❖ Entities covered by a **guarantor**

Entities that are covered by a full financial guarantee of another legal entity (i.e. guarantor) may submit the financial data of the guarantor.


This is limited to cases where the guarantor has assumed full joint liability for *all* debts. Ad-hoc guarantees (covering, for instance, only the participation in EU projects) cannot be accepted.


2.3 Incomplete or contradictory information

The Validation Services may use any publicly available information to clarify questions about the data or information you provided.

You may be required to explain or provide missing information within a reasonable time, if:

- our findings do not match your declarations
- the documents submitted are outdated
- the provided information is illegible, incomplete, incorrect or unclear

 If you do not provide appropriate documents or clarifications in time, we have the right to refuse the assessment (or finalise it on the basis of the information and documents submitted).

 Please also note that if the financial documents do not contain information regarding the nature and the maturity of the current assets, provisions and liabilities, and you do not provide such information, the financial assessment will be completed by taking the most prudent approach, *e.g. by considering the maturity of the current assets to be after one year, and of the provisions and liabilities to be within one year.*

3. Duration of validity and renewal

The financial assessment is valid for 18 months after the closure date of the most recent assessed accounting period. If during this period the same participant applies for another grant or tender, the financial documents will not be requested again.

However, if there are justified grounds to doubt the financial capacity, a new assessment may be triggered even before the end of the 18 months.

4. Modification of the assessment

In case of disagreement with the assessment, the participant may contact the Validation Services by sending additional justifications via a 'Message' in the Participant Register. The subject of the message should be clearly labelled as related to financial assessment.

The Validation Services will carry out a re-assessment on the basis of the additional documents.

5. Ex-post verifications carried out by the EU – Irregularities and/or false declarations

The EU reserves the right to carry out — at any moment — checks, reviews, audits or investigations.

If we find out that you made false declarations your status will be changed.

If in the meantime you already received EU funding/contracts, your participation may be terminated and undue amounts paid will be recovered.

In case of irregularities or false declarations, you may moreover be fined and excluded from all future EU funding/contracts (financial penalties or administrative penalties; see *Articles 106 and 107 of the Financial Regulation No [966/2012](#)*).

In addition, we may inform the European Anti-Fraud Office (OLAF).