



## **EU Funding & Tenders**

# **Rules for Legal Entity Validation, LEAR Appointment and Financial Capacity Assessment**

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**IMPORTANT NOTICE**

This document sets out the rules for **legal entity validation, LEAR appointment and the preparation of the financial capacity assessment** in the context of applications for EU grants, tenders and prizes managed through the EU Funding & Tenders Portal.

This will be done by the Central Validation Service within the European Research Executive Agency for all EU services using the Portal.

The Central Validation Service is also in charge of the Portal [Participant Register](#).

**Help**

In case of doubt, please refer to the EN version (original).

If you need help, please contact the [RES Participant Validation Helpdesk](#).

<b>HISTORY OF CHANGES</b>		
<b>Version</b>	<b>Publication Date</b>	<b>Change</b>
<a href="#">1.0</a>	06.02.2018	<ul style="list-style-type: none"> <li>▪ Initial version</li> </ul>
<a href="#">2.0</a>	06.11.2018	<ul style="list-style-type: none"> <li>▪ Self-declaration on validity of the accounts added.</li> <li>▪ Changes to explanations for NGOs and research organisation status.</li> <li>▪ New rules for LEAR appointment (requirement to be employed by the participant).</li> <li>▪ Language regime for financial supporting documents.</li> <li>▪ Update to the new Financial Regulation and EU Funding and Tenders Portal.</li> </ul>
<a href="#">3.0</a>	24.08.2020	<ul style="list-style-type: none"> <li>▪ Update guidance in the 'Important Notice' box.</li> <li>▪ Update to the new policy on protection of individuals with regard to the processing of personal data by the European Union institutions.</li> <li>▪ Clarifications on the notion of 'foreign companies', 'private law bodies with a public service mission'.</li> <li>▪ Update to the fines and sanctions in case of irregularities or false declarations.</li> <li>▪ Enlargement of the notion of 'State services' that are part of the administration of the State.</li> <li>▪ New rules in accordance with the SME Recommendation (e.g. the 'two year rule').</li> <li>▪ Adoption of a unique and corporate definition of 'International organisation'.</li> <li>▪ Clarification of the role of LEAR for natural person.</li> <li>▪ Clarification of rules of entities covered by a guarantor and financial documents for a natural person.</li> </ul>
<a href="#">4.0</a>	01.01.2022	<ul style="list-style-type: none"> <li>▪ Language disclaimer.</li> <li>▪ Update to new MFF (2021-2027).</li> <li>▪ Clarification of specialised entities set up by international organisations (with/without legal personality);</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Exception for the validation of Common Foreign Security Policy missions set up by the Council of the European Union;</li> <li>▪ New special legal status for mid-capitalisation enterprises (mid-cap);</li> <li>▪ New subtype legal statuses for international organisations, namely 'International European Research Organisations for Horizon Europe' (HE IERO) and 'International Organisations of European Interest for Digital Europe' (DEP IOEI);</li> <li>▪ Update to definition of 'research organisation'</li> <li>▪ Update to self-declaration of 'secondary or higher education establishment'</li> <li>▪ New section on ownership control assessment</li> </ul>
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## I. INTRODUCTION

The [EU Financial Regulation \(2018/1046\)](#)<sup>1</sup> requires that all recipients of EU funds ('participants') must be validated and that they have sufficient financial and operational capacity to carry out the action.

While the operational capacity is checked as part of the evaluation procedure by the evaluation committee, legal entity validation and financial capacity check are carried out by the Central Validation Service afterwards.

Participants will be contacted and asked to submit the necessary information and supporting documents.

All data and documents will be treated as confidential.

Personal data will moreover be handled in accordance with EU Regulation [2018/1725](#)<sup>2</sup> to ensure compliance with the principles of transparency, proportionality, impartiality and legality.

## II. RULES ON LEGAL ENTITY VALIDATION

Legal entity validation comprises two distinct actions: (a) the verification that the participant exists as legal entity and that participant's legal data is correct (legal form, address, etc.) and (b) the verification of certain special legal statuses that are used in EU funding programmes.

### 1. Criteria and conditions

#### 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.

#### *Specific cases*

❖ **Natural persons** are by default considered as being legal entities. However, the Central Validation Service 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. It will therefore be the mother-company that will be considered as the legal entity. The same applies to branches established in a different country.

❖ The same applies to **foreign companies** (company establishments which are

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<sup>1</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>2</sup> 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).

registered with a special status in the official register, e.g. '*société de droit étranger*'). They will not be regarded as the legal entity, but their mother-company will (the one registered in the country of incorporation).

❖ 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 197(2)(c) of the [EU Financial Regulation](#):

- their representatives have the capacity to undertake legal obligations on behalf of the entity and
- the entity offers equivalent guarantees for the protection of the EU financial interests as a legal person, in particular equivalent financial and operational capacity.


This exception aims at private entities, i.e. associations or similar stable entities, etc., with common structures (*secretariat, management board, assembly, 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 be validated, without having legal personality:

- **Ministries**, executive services which are part of the public administration of a (central or federated) State and directly linked to the government and other services which are part of the legislative and judicial administration, in accordance with the officially published organisation of the State
- **specialised entities** set up by international organisations, but without legal personality
- the **assimilated international organisations** referred to in Article 156(2) of the [EU Financial Regulation](#)

- the **EU Joint Research Centre (JRC)**
- the **Common Foreign Security Policy missions (CFSP)** set up by the Council of the European Union.

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 under national law.

## 1.2 Special legal statuses

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

- private entity or public body
- non-profit or for profit organisation
- small or medium sized enterprise (SME)
- middle-capitalisation enterprise (mid-cap)
- non-governmental organisation (NGO)
- civil society organisation
- international organisation (IO)
- 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).

Moreover, not all of these statuses are systematically checked and validated by the Central Validation Service against supporting documents. Some of them are simple self-declarations or self-assessments (with or without supporting documents), which means that the participants are solely responsible for their correctness. The Central Validation Service may carry out at any time checks on any of the self-declared or self-assessed statutes against supporting documents (and to ask for clarifications).

 In case of false declarations, the EU services 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 future EU funding (grants/tenders, prizes, contribution agreements, etc.; see [Articles 135 to 145 of the EU Financial Regulation](#))
- inform the European Anti-Fraud Office (OLAF).

### **Private entity**

'Private entity' 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.

This status is systematically checked and validated by the Central Validation Service.

#### *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 entities'; 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.

This status is systematically checked and validated by the Central Validation Service.

#### *Specific cases*

❖ **Private law bodies with a public service mission<sup>3</sup>** — 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.

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<sup>3</sup> Article 62(1)(c)(vi) of EU Financial Regulation.



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.

Whether the owners/founders of the entity are non-profit (or for profit) and if the profits would be allocated to non-profit (or for profit) entities is equally irrelevant.

This status is systematically checked and validated by the Central Validation Service.

#### *Specific cases*

❖ **Public bodies** are regarded as non-profit organisations by default.

❖ The classification as 'non-governmental organisation (NGO)' is not relevant for the non-profit status, since in most countries NGO is not a recognized legal form. By contrast, non-profit status is a prerequisite for the self-declaration as NGO (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 EU Recommendation [2003/361](#), 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) and
- ceilings: 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 (directly or indirectly) 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 (directly or indirectly) some sort of pecuniary offset or
- activities for which there is no given/direct (or indirect) market or
- activities for which the income generated is not distinct from the personal income of the entity's members or shareholders.

This status is self-declared. For calls where the SME status has an impact on eligibility or funding (*higher funding rate, etc.*), participants have to go through a self-assessment wizard.

**Two-year rule** — In accordance with Article 4.2 of Recommendation 2003/361/EC, the SME status depends on the ceilings for *two* consecutive accounting periods. This works both ways: headcount and turnover must stay below the ceilings for two accounting periods to obtain the SME status; conversely, the status will be lost if they rise above the ceilings for two consecutive periods.

⚠ Since the SME self-assessment looks at the information for only one accounting period (the last one), the SME self-assessment result may be flawed. Participants that were below the ceiling the year before, must contact the Central Validation Service in order to **request a formal validation**. This validation will then take into account the two accounting periods.

The two-year rule will however not apply for changes due to a merger or acquisition. Enterprises that are subject to a change in ownership need to be assessed on the basis of their shareholder structure at the time of the transaction. If the aggregated headcount and financial data of the new structure exceed the SME ceilings, the SME status is lost immediately from the date of the transaction<sup>4</sup>.

Participants whose SME status **changes** after registration must update their data in the Participant Register. This is important not only for eligibility checks in grant applications, but also for statistical purposes.

#### *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.

#### **Middle-capitalisation enterprise (Mid-cap)**

'Middle-capitalisation enterprise' means an enterprise that is:

- not a micro-, small- or medium-sized enterprise (SME) under EU Recommendation [2003/361](#), and
- employing up to 3 000 persons (expressed in 'annual working units' as defined in Article 5 of EU Recommendation 2003/361).

This status is self-declared. For calls where the mid-cap status has an impact on eligibility or funding (*higher funding rate, etc.*), participants have to go through the SME self-assessment wizard to make sure that they do not fall under the definition of SME, and then to self-declare that the number of employees does not exceed 3 000 persons.

#### **Non-governmental organisation (NGO)**

'Non-governmental organisations' are organisations which are independent of government involvement.

This status is self-declared. Self-declarations will be accepted only by private entities, which have been validated as 'non-profit organisations'.

#### **Civil society organisation**

'Civil society organisations' are organisations from the 'third sector' of society, distinct from government and business.

This status is self-declared. Self-declarations will be accepted only by private entities,

<sup>4</sup> See Recital 9 of Recommendation No. 2003/361/EC and the [User Guide to the SME Definition](#) (p. 14).

which have been validated as 'non-profit organisations'.

### **International organisation (IO)**

'International organisation' means an intergovernmental organisation (other than the EU) with legal personality under international public law (including specialised agencies — with or without legal personality — set up by international organisations and referred to in Article 156(1) of the EU Financial Regulation).

This status is systematically checked and validated by the Central Validation Service.

For some EU funding programmes there are moreover specific subtypes of international organisations, subject to a self-declaration:

- 'international organisations of European interest for H2020 (H2020 IOEI)', i.e. international organisations with a majority of members that are EU Member States or H2020 associated countries and whose main objective is promoting scientific and technological cooperation in Europe
- 'international European research organisations for Horizon Europe (HE IERO)', i.e. international organisations with a majority of members that are EU Member States or Horizon Europe associated countries and whose main objective is promoting scientific and technological cooperation in Europe
- 'international organisations of European interest for Digital Europe (DEP IOEI)', i.e. international organisations with a majority of members that are EU Member States or whose headquarters are in an EU Member State.

The H2020 IOEI subtype status is systematically checked and validated by the Central Validation Service; the HE IERO and DEP IOEI subtype statuses are self-declared. In the future, for calls where the HE IERO and DEP IOEI statuses have an impact on eligibility or funding, participants will also be asked to go through a self-assessment wizard.

#### *Specific case*

❖ Entities set up as distinct bodies by an international organisation with a special mission, which do not have explicit legal personality can be validated with legal personality if they meet any of the following criteria:

- they have treaty-making capacity or
- they have capacity to act at international level independently from the organisation that set them up (i.e. capacity to undertake legal obligations).

If such entities do not meet one of the above criteria, they can exceptionally be validated as without legal personality (*see section 1.1 above*).

### **Research organisation**

'Research organisation' means a legal entity that:

- is established as non-profit organisation as described above, and
- carries out research and/or technological development as its main objective.

The following are NOT considered research activities:

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

Only entities that have research and/or development as main objective can qualify as

research organisations. In contrast, entities that have research and/or development as ancillary activities (even if regular and substantial, *e.g. in museums or hospitals*) do not qualify as 'research organisations'.

This status is self-declared.

### **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 body or a private entity. 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*).

This status is self-declared.

## **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 EU Funding & Tenders Portal 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), the EU services 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 future EU funding (grants/tenders, prizes, contribution agreements, etc.; see *Articles 135 to 145 of the [EU Financial Regulation](#)*)
- 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**<sup>5</sup> :

- 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.

For the special legal statuses, the following additional documents have to be submitted:

Status	Documents to be submitted
<b>Private entity</b> (including SME and mid-cap)	A valid registration extract (in any case, not older than 6 months).
<b>Public body</b>	Copy of the act, law, decree or decision that established the entity as a public body (or, if this doesn't exist, any other official legal document that proves this).
<b>Natural person</b>	Copy (legible) of valid identity card or passport.
<b>Entities without legal personality</b>	<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"> <li>• a document showing patrimony/asset/capital that is separated and different from those of the members/owners of the entity, and</li> <li>• 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.</li> </ul>
<b>Non-profit organisation</b>	<p>Copy of an official document attesting that the entity 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>
<b>Small or medium sized enterprise (SME) and mid-caps</b> (in addition to the documents for private entities)	<p>The following documents have to be provided for the participant and for its linked and partner entities:</p> <ol style="list-style-type: none"> <li>1. balance sheet,</li> <li>2. profit and loss accounts,</li> <li>3. staff head count expressed in annual working units,</li> <li>4. proof of the shareholders structure.</li> </ol> <p>The first three items are to be related to the last closed accounting period.</p> <p>❖ For newly established enterprises (<i>e.g. start-up companies</i>)</p>

<sup>5</sup> Available at [https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/forms-contracts\\_en](https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/forms-contracts_en)

	<p>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"> <li>1. balance sheet, profit and loss accounts and staff head count expressed in annual working units related to the last closed accounting period;</li> <li>2. 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)</li> </ol> <p>Sworn or solemn statements before a judicial or administrative authority, notary or public officer are not acceptable proof of the SME or the mid-cap status.</p>
<b>International organisation</b>	Copy of the relevant international treaty creating the organisation under international public law.
<b>Research organisation</b>	Copy of an official document attesting research or technological development as a the main objective of the entity .
<b>Secondary or higher education establishment</b>	Copy of an official document attesting that the entity is recognised as 'secondary or higher education establishment' by the national education system and is entitled to deliver diplomas recognized by the State.


For other categories such as NGO, Civil Society Organisation, etc. (*see above*) no supporting documents are needed.

### 2.3 Incomplete or contradictory information

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

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

- findings do not match their declarations
- the documents submitted are outdated (*e.g. VAT document or extract of registration no longer valid or more than 6 months old*)
- the provided information is illegible, incomplete, incorrect or unclear.

 If documents or clarifications are not provided in time, the Central Validation Service 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 standard default date.

The effective date for the SME and mid-cap status will be the accounts 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 SMEs and mid-caps, the effective date is the closure date of the accounting period on which the change of status is based. For cases of mergers and acquisitions that lead to the loss of the SME or mid-cap status, the effective date of change will be the date when the ownership structure changed.

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 Central Validation Service and its correction implies disadvantages for the participant, 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 (intentional or unintentional), its participation in on-going grants/contract may be terminated and undue amounts paid may be recovered. Moreover, the participant may be fined and excluded from future

EU funding (grants/tenders, prizes, contribution agreements, etc.; see *Articles 135 to 145 of the [EU Financial Regulation](#)*).

In addition, 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 services reserve the right to carry out — at any moment — checks, reviews, audits or investigations.

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

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


In case of irregularities or false declarations, participants may moreover be fined and excluded from future EU funding (grants/tenders, prizes, contribution agreements, etc.; see *Articles 135 to 146 of the [EU Financial Regulation](#)*).

In addition, the European Anti-Fraud Office (OLAF) may be informed.

## **III. RULES ON LEAR APPOINTMENT**

### **1. LEAR appointment: General requirements and principles**

After validation, the participant will be requested to appoint a Legal Entity Appointed Representative (LEAR) and to consent to the use of the EU Funding & Tenders Portal 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.

#### **Role of the LEAR**

The LEAR is the person that is officially nominated by the participant to take care of the key data in the Funding & Tenders Portal [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.

The LEAR must be someone employed in the organisation (most commonly in the central administrative services of the entity), in order to ensure a maximum stability in the LEAR role and the continuity which is needed in order to guarantee the full functionality of the electronic exchange system.

For participants which are natural persons, the participant automatically also has the role of LEAR; it cannot be attributed to a different person.

Each participant can only appoint one LEAR.

The participant assumes the full responsibility for the choice of the person they appoint.

### **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.

## **2. List of documents**

For LEAR validation, the scanned version of the following documents has to be uploaded in the Participant 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 [EU Funding & Tenders Portal Terms and 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 services 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 [Funding & Tenders Portal Terms and 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 services cannot waive 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 in the LEAR documents must correspond to those indicated in their official identity documents. LEAR documents signed with acronyms/nick names/etc. that do not correspond to 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 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/decreed/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*

❖ Participants who are **natural persons** do not need to prove their empowerment, 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 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 of the legal documents proving their empowerment:

- 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 organisational chart published on the official internet-site of the Ministry*).

Except if otherwise provided in the applicable rules (law/decreed/act governing the organisation 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 organisational chart published on the official internet-site*).

❖ For **universities** and other **higher education establishments** (*e.g. colleges, institutes, etc.*), 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/higher education establishment/faculty, the evidence may also be taken from other appropriate sources (*e.g. the organisational chart 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 **limits** (including 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.

### 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.

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

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

If it is found out that participants did not respect the obligation to keep the original documents or committed other irregularities, appropriate measures will be taken.

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

In case of irregularities or false declarations, participants may moreover be fined and excluded from future EU funding (grants/tenders, prizes, contribution agreements, etc.; see *Articles 135 to 146 of the [EU Financial Regulation](#)*).

In addition, the European Anti-Fraud Office (OLAF) may be informed.

## IV. 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 (FCA) depend on the type of procedure (grant or procurement), the funding programme, the participant and on the grant amount (*e.g. no financial capacity assessment is needed for public bodies in grant procedures, Member State organisations, international organisations, persons in receipt of education support, persons most in need and in receipt of direct support; 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, like for example:

- indication of weak/insufficient 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 normally done during grant preparation/tender evaluation but may also be done during implementation. If the participants' financial capacity must be assessed, they will be contacted by the Central Validation Service.

 The role of the Central Validation Service is to prepare the financial capacity assessment (*e.g. to collect and to analyse the financial documents*). The final decision on the financial capacity will be taken later (and for each application/grant/contract separately) by the EU service in charge.

### 2. Documents to submit

#### 2.1 General requirements and principles

The financial assessment is based on documents submitted by the participant via the EU Funding & Tenders Portal Electronic Exchange System (i.e. upload in the [Participant Register](#)).

As a general rule, financial documents must be provided in their original language(s), as imposed by the legislation in the participant's country of registration. For documents in EU languages, participants may be requested to submit an English free (unofficial) translation to facilitate the assessment. For documents in non EU languages, a free translation in English is always mandatory and needs to be provided immediately together with the original documents. In case of doubt, a certified/legal translation in English may be requested. If the participants have original documents in an EU language which is not the official language of their country, they can nevertheless submit them, as they are (no need for a translation into the official language of the country). Some examples of such documents are: dated and signed annual management reports in English for a company listed on the stock exchange or

having international shareholders or for the purpose of consolidation within a foreign group; dated and signed extracts from national registers that use English, etc.

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), the EU services 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, 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 from sales of goods and services, 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 and other current assets, grants, 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 Central Validation Service 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 or self-declaration

Participants requesting an EU contribution for action grant of more than 750 000 EUR or more than 100 000 EUR for operating grant must provide:

- an audit report issued by an approved/certified external auditor if:
  - such a report is available or
  - a statutory audit is required under EU or national law

or

- a [self-declaration](#), signed by the legal representative of the entity, which certifies the validity of the accounts. No self-declaration is


needed for entities participating in tender procedures, for natural persons or entities without closed accounts.

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 self-declaration must be accompanied by legal documents proving the legal representative's identity and that they are entitled to sign on behalf of the participant.

These documents (audit report or self-declaration) should be provided together with the rest of the requested documents (profit and loss account, balance sheet, etc.).

 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), the participant 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/self-declaration of the parent company/group they belong to 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, participants 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.

These 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](#)<sup>6</sup> (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 clear, the Central Validation Service may contact participants 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 signed declaration of 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 signed declaration of debts, which must contain all liabilities (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 in addition:

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

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<sup>6</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19–76).



- signed declaration of assets (fixed assets, short and long-term receivables).

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

Declarations on honour for both natural persons and entities with cash-based accounting may be accepted. However the Central Validation Service may request 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, provided that it is a full guarantee (i.e. 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.

⚠ Participants that would like to have the financial capacity of their guarantor assessed, must first contact the service in charge of their application for approval of the guarantee. In case of approval, the service in charge will request the Central Validation Service to proceed with the assessment of the guarantor.

### **2.3 Incomplete or contradictory information**

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

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

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

⚠ If documents or clarifications are not provided in time, the Central Validation Service has the right to refuse the assessment (or finalise it on the basis of the information and documents submitted).

⚠ If the financial documents do not contain information regarding the nature and the maturity of the current assets, provisions and liabilities, and such information is not provided, 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 Central Validation Service 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 Central Validation Service 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 services reserve the right to carry out – at any moment – checks, reviews, audits or investigations.

If it is found out that participants made false declarations their status will be changed.

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

In case of irregularities or false declarations, participants may moreover be fined and excluded from future EU funding (grants/tenders, prizes, contribution agreements, etc.; see Articles 135 to 145 of the [EU Financial Regulation](#)).

In addition, the European Anti-Fraud Office (OLAF) may be informed.

## **V. OTHER**

The Central Validation Service also performs certain other accessory tasks for the EU services managing grants and tenders that have been centralised at organisation level.

### **1. Ownership control assessment**

Certain EU funding programmes require that participants are not subject to ownership or control by countries or entities from countries that are not eligible to participate.

For this case, participants will have to provide an ownership control declaration (questionnaire) as part of their application. At a later stage and, if selected for funding, participants will be requested to upload the following official supporting documents, if available:

- for participants that are listed companies, subsidiaries or controlled by a listed company: report/minutes of the last three shareholders meetings
- commercial registry extracts, shareholders' book or a declaration signed by the legal representative of the organisation and any other relevant document containing clear mention of the shareholders and their percentage of interest/voting rights
- shareholders' agreement, memorandum of understanding among shareholders, statutes, articles of association or other relevant documents regarding the decision-making procedures within the legal entity, investment agreements between the shareholders, etc.
- graph describing the different ownership layers/chain of control until the ultimate owners
- documents establishing/describing the decision-making bodies, rules regarding election, appointment, nomination or tenure, and decision-making procedures (*e.g. articles of association, bylaws, reports on corporate governance, etc*)
- cooperation agreements with customers or suppliers, when they could confer control over the participant (*may be requested*)
- for shareholders/owners that provide financial contributions: supporting documents (*loans, by-laws, etc*) that justify the financial contribution;


documents showing the link between the shareholder/owner and the entity providing the financing (*maybe requested*)

- information about any other means, process or links that could ultimately confer control to a non-EU country or non-EU country entity
- if needed, copy of ID card(s) or passport(s) of the ultimate owner(s) (*maybe requested*).

These documents will be checked by the Central Validation Service for non-EU country/entity ownership or control (ownership control assessment; OCA).

In this context, 'control' will be defined as the possibility to exercise decisive influence 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.

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

 The role of the Central Validation Service is limited to identifying instances of possible non-EU-country/entity control (*e.g. to collect and to analyse the supporting documents*). The final decision will be taken by the EU service in charge of the grant/tender in accordance with the specific programme rules (granting authority/contracting authority). They will contact you, if needed, during grant preparation about the results.

The assessment will be carried out based on the ownership control declaration and supporting documents submitted later.

Changes in the ownership control status need to be communicated to the granting authority/contracting authority who will trigger a new assessment by the Central Validation Service, if needed.

For more information on the ownership control assessment procedure, see [the \*Guidance on participation in DEP, HE, EDF and CEF-DIG restricted calls\*](#).