



ARTEMIS JOINT UNDERTAKING

Guide to Financial Issues

Version 2
05/03/2009

(ARTEMIS-ED-11/09)

Disclaimer

This guide is aimed at assisting beneficiaries. It is provided for information purposes only and its contents are not intended to replace consultation of any applicable legal sources or the necessary advice of a legal expert, where appropriate. Neither the Joint Undertaking nor the Commission or any person acting on its behalf can be held responsible for the use made of these guidance notes.

Foreword

The ARTEMIS Joint Undertaking Model Grant Agreement was approved by the Governing Board of the Joint Undertaking on 3 June 2008 and updated on 18 December 2008. It is applicable to actions funded under the ARTEMIS Joint Undertaking Calls for Proposals. It consists of a core text and several annexes. There is also a list of special clauses to be introduced in the grant agreement where necessary.

The purpose of this guide is to help beneficiaries to understand and interpret the financial provisions of the Model Grant Agreement (GA) that they are signing. To this end, the enclosed text tries to avoid (to the best possible extent) the use of legal references, technical vocabulary and legal jargon, and seeks to provide the reader with practical advice.

It is important to note that beneficiaries from ARTEMIS Member States¹ can sign or accede to the Joint Undertaking's grant agreement only after the successful conclusion of a corresponding national grant agreement. A distinction is therefore made across the document between beneficiaries having concluded this national grant agreement (NGA) and beneficiaries that are not subject to this condition, as the contractual provisions differ considerably.

The structure of this guide mirrors the financial provisions of the GA, by essentially following the index and structure of that document. Accordingly, it should be used as a tool to clarify the provisions of the GA, and should be read in connection with it. Each article in the GA with financial implications is explained in this Guide, and examples are included where appropriate. The intention is not only to explain, but also, by following the same structure, to help the reader to locate where he/she may find the answer to his/her question.

Whenever new rules are drafted and a new structure is put into place, new problems arise. For this reason, this Guide has been conceived as an evolving document which, it is intended, will be updated regularly to reflect new questions and feedback from its users and the knowledge gained through practice.

On this point however it is important to remember that the only scope of the Guide is to provide interpretation on the legal texts (and in particular the GA), and that it cannot derogate from them.

These guidelines do not reflect an official position of the ARTEMIS Joint Undertaking (JU); only the provisions of the signed grant agreement are binding.

Finally, this guide should be considered as one more of the guides available to any future beneficiary of the ARTEMIS JU calls for proposals, and which can be found at the following web address: <http://www.artemis.eu>.

¹ Also applicable to beneficiaries from other countries having signed an administrative agreement with the Joint Undertaking.

TABLE OF CONTENTS

INTRODUCTION TO THE ARTEMIS JU GRANT AGREEMENT AND STRUCTURE	5
ARTEMIS JU GRANT AGREEMENT – CORE.....	7
Article 5 of GA – Maximum Joint Undertaking's financial contribution	7
The Joint Undertaking's Financial Contribution	7
Article 5.2 of GA – Financial content of the Technical Annex	8
Articles 5.3 and 5.4 of GA – Bank accounts.....	8
Article 6 – Pre-financing.....	9
Concept and calculation of the pre-financing (+ Article III.5 of GA + Article IV.2 of GA).....	9
Article 7 of GA – Special clauses	10
ANNEX II of GA - GENERAL CONDITIONS APPLICABLE TO ALL BENEFICIARIES	11
PART "A": IMPLEMENTATION OF THE PROJECT	11
SECTION 1: GENERAL PRINCIPLES.....	11
Article II.2 of GA – Organisation of the consortium and role of coordinator	11
SECTION 3: IMPLEMENTATION	11
Article II.5 of GA – Suspension of the project	11
PART "B": FINANCIAL PROVISIONS	12
SECTION 2: RECOVERY	12
Article II.12 of GA – Reimbursement and recovery	12
SECTION 3: CONTROLS AND SANCTIONS.....	13
Article II.13 of GA – Financial audits and controls.....	13
Article II.14 of GA – Technical audits and reviews	14
Article II.15 of GA – Liquidated damages.....	15
Article II.16 of GA – Financial penalties.....	16
ANNEXES III and IV of GA– SPECIFIC CONDITIONS APPLICABLE PER TYPE OF BENEFICIARY	17
ANNEX III of GA: SPECIFIC CONDITIONS FOR BENEFICIARIES NOT HAVING CONCLUDED A CORRESPONDING NATIONAL GRANT AGREEMENT.....	18
PART "A": IMPLEMENTATION OF THE PROJECT	18
SECTION 2: REPORTING AND PAYMENTS	18
Article III.3 of GA – Reports and deliverables	18
Article III.4 of GA – Approval of reports and deliverables, time-limit for payments	21
Article III.5 of GA – Payment modalities	21
Article III.5.4 – Conversion rates.....	22
SECTION 3: IMPLEMENTATION	23
Article III.6 of GA – Subcontracting	23
Article III.6.2 – Tasks which can be subcontracted and conditions.....	24
Article III.6.3 – Minor tasks.....	26
PART "B": FINANCIAL PROVISIONS	27
SECTION 1: GENERAL FINANCIAL PROVISIONS	27
Article III.7 of GA – Eligible costs.....	27
Article III.7.2 of the GA – Costs of third parties – Costs of resources made available and costs of third parties carrying out part of the work	30
Article III.8.3 of GA – Non-eligible costs	36

Article III.8 of GA – Identification of direct and indirect costs..... 37

Article III.9 of GA – Receipts of the project..... 43

Article III.10 of GA – Joint Undertaking's financial contribution 45

Article III.11 of GA – Interest yielded by the pre-financing provided by the Joint Undertaking..... 46

ANNEX IV of GA. SPECIFIC CONDITIONS FOR BENEFICIARIES HAVING CONCLUDED A CORRESPONDING NATIONAL GRANT AGREEMENT..... 48

Article IV.2 of GA – Payment modalities..... 48

Article IV.3 of GA – Subcontracting 49

Article IV.4 of GA – Eligible costs..... 50

Article IV.5 of GA – Joint Undertaking's financial contribution..... 50

INTRODUCTION TO THE ARTEMIS JU GRANT AGREEMENT AND STRUCTURE

The JU Grant Agreement (GA) allows beneficiaries to receive the Community funding provided through the Joint Undertaking. It also provides a legal frame ensuring the overall technical coherence of the project, in particular defining the role of the coordinator (for technical/non-financial tasks) and a single technical reporting and monitoring process performed by the Joint Undertaking. For beneficiaries with a corresponding national grant agreement (NGA), it allows to make single administrative requests (cost claims) for obtaining the reimbursement of national and/or Community funding.

The structure of the model GA is the following:

- Core grant agreement
- Annex I: Technical Annex
- Annex II: General Conditions applicable to all beneficiaries
- Annex III: General Conditions applicable to beneficiaries not having concluded a corresponding national grant agreement
- Annex IV: General conditions applicable to beneficiaries having concluded a corresponding national grant agreement
- Annex V: Form A1 – Declaration by the coordinator having concluded a corresponding national grant agreement
- Annex VI: Form A2- Accession of beneficiaries not having concluded a corresponding national grant agreement
- Annex VII: Form A3 – Accession of beneficiaries having concluded a corresponding national grant agreement
- Annex VIII: Form B – Request for accession of a new beneficiary to the grant agreement
- Annex IX: Form C- Financial statement (only for beneficiaries not having concluded a corresponding national grant agreement)
- Annex X: Form D – Terms of reference for the certificate on the financial statements (only for beneficiaries not having concluded a corresponding national grant agreement)

Note however that for any particular beneficiary, the actual GA will be much simpler as not all Annexes of the model GA apply.

Examples of GA:

Beneficiary A (coordinator) with a corresponding NGA:

- *Core agreement*
- *Technical Annex (Annex I)*
- *General Conditions - (Annexes II and IV)*
- *Declaration by the coordinator (Annex V: Form A1)*

Beneficiary B with a corresponding NGA:

- *Core agreement*
- *Technical Annex (Annex I)*
- *General Conditions - (Annexes II and IV)*
- *Accession form to the contract (Annex VII: Form A3)*

Beneficiary C without a corresponding NGA:

- *Core agreement*
- *Technical Annex (Annex I)*
- *General Conditions - (Annexes II and III)*
- *Accession form to the contract (Annex VI: Form A2)*

ARTEMIS JU GRANT AGREEMENT – CORE

Article 5 of GA – Maximum Joint Undertaking's financial contribution

The Joint Undertaking's Financial Contribution

The maximum Joint Undertaking's financial contribution per beneficiary which appears in this article cannot be exceeded. Even if the eligible costs of the beneficiary happen to be higher than planned, no additional funding from the Joint Undertaking is possible.

The Joint Undertaking's financial contribution includes:

- a) Pre-financing payments (Article 6 of GA). For beneficiaries with a corresponding national grant agreement (NGA), pre-financing by the Joint Undertaking is paid after eventual pre-financing payments made by the respective national funding authority (NFA)².
- b) Interim payments following each reporting period, if foreseen in the GA. For beneficiaries with a corresponding national grant agreement (NGA), interim payments follow the acceptance of the costs and, where appropriate, the payment by the NFA.
- c) The final payment plus any adjustment needed.

For the calculation of the final Joint Undertaking's financial contribution, any interest generated by the pre-financing as well as any receipts of the Project received by the beneficiaries have to be taken into account in accordance, in the case of beneficiaries without a corresponding NGA, with the provisions of article III.9 or, in the case of beneficiaries with a corresponding NGA, with the provisions of the latter and the relevant certification submitted to the Joint Undertaking by the respective NFAs³.

The information on maximum rates of contribution can be found in Article II.11 of the GA.

Example:

***Beneficiary A without a corresponding NGA:
Maximum JU contribution: EUR 300,000; Duration: 3 years
(Please refer to Articles 6 and III.5 of GA)***

² The payment of pre-financing by the JU will take place:

- In case the JU has received the notification of the payment of the pre-financing by the respective NFA before the entry into force of the JU GA: within 45 days following the entry into force of the JU grant agreement or within 45 days following the receipt of the accession form of the said beneficiary whichever comes later;
- In case the JU has received the notification of payment of the pre-financing by the respective NFA after the entry into force of the JU GA: within 30 days following the receipt by the JU of the notification of the payment of the pre-financing by the respective NFA or within 30 days following the receipt of the accession form of the said beneficiary whichever comes later.

³ For information on interest yielded by pre-financing, see Article III.11 and Article IV.6. For receipts, see Article II.11 of the GA.

*Retention of 20% (see Article III.5 of GA): EUR 300,000 * 20%: EUR 60,000*

Pre-financing (for calculation of pre-financing, see Article 6 of GA): (EUR 300,000 160%)/3 years: EUR 160,000*

Amount of JU contribution accepted in the 1st reporting period: EUR 70,000
1st Interim payment: EUR 70,000

Amount of JU contribution accepted in the 2nd reporting period: EUR 80,000
2nd Interim payment (due to 20% retention, see Article III.5 of GA): EUR 10,000

Amount of JU contribution accepted in the last reporting period 1,500,000
Final payment: EUR (300,000 - (160,000 + 70,000 + 10,000)): EUR 60,000

Article 5.2 of GA – Financial content of the Technical Annex

As the breakdown table included in the Technical Annex (to form Annex I of the GA) is an estimate, beneficiaries are allowed to transfer budget only between their own activities without the need for an amendment of the GA. However, a condition for this is that the work is carried out as foreseen in the Technical Annex. The coordinator should verify this on a case-by-case basis, but in practical terms, coordinators (and beneficiaries via the coordinator) are encouraged, **to check this** (i.e. by e-mail) with the project Officer in the Joint Undertaking for transfers with a potential impact on the Technical Annex. This e-mail (or other written) communication would avoid disagreement on the interpretation of this condition later.

An amendment to the GA will be necessary in all cases where the budget transfer arises from a significant change in the Technical Annex. 'Significant change' refers to a change that affects the technical work as foreseen in the Technical Annex, including the subcontracting of a task that was initially meant to be carried out by a beneficiary. In case of doubt, it is recommended to consult the responsible project Officer within the Joint Undertaking.

In any case, the maximum Joint Undertaking's financial contribution as mentioned in Article 5 cannot be increased.

Articles 5.3 and 5.4 of GA – Bank accounts

It is recommended that the bank accounts included in the GA be used exclusively for handling the project funds; the reason is that, in order to fulfil their obligations, beneficiaries must at any moment be able to identify dates and amounts related to any payment received or made under the GA.

For example, this requirement is necessary for the identification of the interest that has to be recovered (or offset), or for proving that there has in fact been no interest. The requirement is also important for audit and control purposes (i.e. to enable a reconciliation of accounting records with the actual use of funds).

In any case, if an existing account/sub-account is used, the accounting methods of the beneficiaries must make it possible to comply with the above mentioned requirements.

Article 6 – Pre-financing

Concept and calculation of the pre-financing (+ Article III.5 of GA + Article IV.2 of GA)

In order to receive the pre-financing payment, each beneficiary should have signed and returned Form A2 or A3 as appropriate (accession form).

The pre-financing remains the property of the Joint Undertaking until the final payment.

The purpose of this pre-financing is to make it possible for the beneficiaries to have a positive cash-flow during (most of) the project, and, in the case of beneficiaries without a corresponding national grant agreement, this amount is intended to provide the beneficiary with a float in between periods. The amount of the pre-financing cannot exceed 80% of the maximum Joint Undertaking's financial contribution.

- In the case of beneficiaries with a corresponding NGA, the pre-financing to be paid by the Joint Undertaking shall be defined on the basis of eventual pre-financing payments made by the NFA. Nevertheless, pre-financing may never represent over 80% of the JU financial contribution.

Example:

– The NFA pays a beneficiary the 25% of the estimated maximum national contribution as national pre-financing. The JU in this case will make a payment of the 25% of the estimated JU total contribution to this beneficiary as JU pre-financing.

- In the case of beneficiaries without a corresponding NGA, the pre-financing to be paid by the Joint Undertaking will be defined during the negotiations, but as an indicative general rule, for projects with duration of more than two reporting periods, it should be equivalent to 160% of the average JU funding per period. However, the amount of the pre-financing may change in cases where the specific circumstances of the individual project require it. Pre-financing will be received by the beneficiaries at the beginning of the project and in general within 45 days from the entry into force of the grant agreement.

For projects with one or two reporting periods, the amount of the pre-financing would be 60-80% of the total JU contribution, unless the specific circumstances of the project require otherwise (e.g. very large initial capital investment, etc.). In any case, pre-financing is limited by the 20% retention of the total JU contribution, which will always be kept by the Joint Undertaking until the date of the last payment.

Article 7 of GA – Special clauses

Special clause 5 please refer to Article III.7 of GA (only for beneficiaries without a corresponding NGA).

ANNEX II of GA - GENERAL CONDITIONS APPLICABLE TO ALL BENEFICIARIES

PART "A": IMPLEMENTATION OF THE PROJECT

SECTION 1: GENERAL PRINCIPLES

Article II.2 of GA – Organisation of the consortium and role of coordinator

There is always only one project coordinator who is responsible for the tasks defined in Article II.2.3 of the GA and who represents the Consortium vis-à-vis the Joint Undertaking regarding non-financial/technical issues in connection to the grant agreement.

Can these coordination tasks be performed by other beneficiaries/third parties?

The tasks attributed by the GA to the coordinator in the above-mentioned Article **cannot be subcontracted or outsourced to a third party**. The role of coordinator of the GA is defined by these tasks defined in Article II.2.3 of GA. Furthermore, these tasks may not be carried out by other beneficiaries.

Can part of the management tasks be performed by other beneficiaries?

Coordination tasks include tasks beyond those of coordination of the project, and those tasks can be performed by beneficiaries other than the coordinator.

Can there be a scientific coordinator other than the Coordinator?

The coordinator is the partner carrying out the tasks mentioned in Article II.2.3. On the other hand, tasks related to the coordination of the project that are not listed in the above Article (e.g. scientific coordination of the project) could be carried out by another beneficiary.

It is possible that such a beneficiary in charge of the task of scientific coordination may be internally (i.e. within the Consortium) identified as a "scientific coordinator". However, in the relationship with the Joint Undertaking the "scientific coordinator" is only another beneficiary of the GA. It will not be considered as the project coordinator.

SECTION 3: IMPLEMENTATION

Article II.5 of GA – Suspension of the project

Under the conditions mentioned in Article II.5 of the GA, the Joint Undertaking may suspend the whole project or parts of the project. Suspending a project has the effect of interrupting the execution of a project in order to fix specific problems or to re-establish an operational status.

Once the reasons for the suspension are no longer present, the project can – upon the receipt of written confirmation by the Joint Undertaking – continue from the stage reached before the suspension.

During the period of suspension, no costs can be charged for carrying out any part of the project that has been suspended.

When a beneficiary has concluded a corresponding national grant agreement, any costs that may be charged by this beneficiary to the project for carrying out any part of the project that has been suspended may not be reimbursed by the Joint Undertaking.

If the suspension leads to a termination of the GA, no further costs can be charged to the project except for costs described in Article II.21 of GA.

PART "B": FINANCIAL PROVISIONS

SECTION 2: RECOVERY

Article II.12 of GA – Reimbursement and recovery

Any amount unduly paid by the Joint Undertaking to a beneficiary shall be reimbursed to the Joint Undertaking according to the terms and date specified by it (Article II.12.1).

1. During the duration of the project

If, following a written request from the Joint Undertaking, a beneficiary does not reimburse any requested amount within 30 days after receipt of the request, the Joint Undertaking may recover the amount due from that beneficiary by any appropriate means, including invoking any guarantees.

The sum due shall bear interest at the rate applied at the European Central Bank for its main refinancing operations in EUR, plus three and a half points (3,5%). The reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date of payment, as published in the C series of the Official Journal of the European Union. Interest on late payment shall cover the period between the date set for payment, exclusive and the date on which the Joint Undertaking receives full payment of the amount owed in full, inclusive.

2. After termination or completion of any grant agreement

If an amount due to the Joint Undertaking has to be recovered, after the end of the project (at the final payment or as a result of an audit), the Joint Undertaking shall issue against this beneficiary a recovery order to its benefit. If payment has not been made by the due date, the amount may be recovered by offsetting against any sums (excluding pre-financing) due by the Joint Undertaking to the beneficiary.

In any case, bank charges occasioned by the recovery of the sums owed to the Joint Undertaking shall be borne solely by the beneficiary.

SECTION 3: CONTROLS AND SANCTIONS

Article II.13 of GA – Financial audits and controls

1. Purpose of the audit

The Joint Undertaking may, at any time during the implementation of the project, and up to five years after the end of the project, arrange for financial audits to be carried out.

The audits may cover:

- financial aspects
- systemic aspects
- other aspects such as accounting and management principles.

2. Audits may be carried out by:

- The Joint Undertaking itself or under the responsibility of the respective States having concluded an administrative arrangement with the JU⁴/ national funding authorities, on its behalf (including external auditors appointed)
- The Commission (its own departments – including OLAF – or by any of its duly authorised representatives (including external auditors appointed)).
- The European Court of Auditors (by its own departments or by any of its duly authorised representatives).

3. Beneficiaries' rights and obligations

In order to permit a complete, true and fair verification that the project and the grant are (have been) properly managed and performed, beneficiaries are required to:

– keep the originals, or in exceptional cases, where the national legislation accepts or contemplates this possibility, duly authenticated copies – including electronic copies – of all documents relating to the grant agreement for five years from the end of the project,

– ensure that the Joint Undertaking's services, the respective NFAs and/or any external body(ies) authorised by it, have on-the-spot access at all reasonable times, notably to the beneficiary's offices where the project is being carried out, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the project. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form,

– make available directly to the Joint Undertaking, the respective NFAs and any external body(ies) authorised all the detailed data that they may request,

– ensure that the rights of the Joint Undertaking, the NFAs, the Commission services including OLAF and the European Court of Auditors to carry out audits include the right to carry out any such audit or control on any third party whose costs are reimbursed in full or in part by the JU contribution, on the same terms and conditions.

4. Reports

⁴ States having concluded an administrative arrangement with the JU: ARTEMIS Member States + any other EU Member State or FP7 Associated Country that has concluded an administrative arrangement with the JU in order to facilitate the implementation of projects.

In the case of audits carried out by the Joint Undertaking, a provisional report shall be drawn up on the basis of the findings made during the financial audit and sent to the beneficiary audited.

The beneficiary may make observations within one month of receiving the report. The Joint Undertaking may decide not to take into account observations or documents sent after that.

The final report shall be sent within two months of expiry of this deadline.

On the basis of the conclusions of the audit, the Joint Undertaking may issue recovery orders and apply sanctions including liquidated damages.

Article II.14 of GA – Technical audits and reviews

1. Purpose of the audit

The Joint Undertaking may, at any time during the implementation of the project, and up to five years after the end of the project, arrange for technical audits or reviews to be carried out.

The technical audit may cover:

- Scientific aspects;
- Technological aspects;
- Other aspects relating to the proper execution of the project and the grant agreement, including compliance with fundamental ethical principles

The technical audit or review shall assess:

- the degree of fulfilment of the project work plan for the relevant period and of the related deliverables,
- the continued relevance of the objectives and breakthrough potential with respect to the scientific and industrial state of the art,
- the resources planned and utilised in relation to the achieved progress, in a manner consistent with the principles of economy, efficiency and effectiveness,
- the management procedures and methods of the project,
- the beneficiary's contributions and integration within the project,
- the expected potential impact in economic, competition and social terms, and the beneficiaries' plan for the use and dissemination of Foreground.

2. Auditors

In carrying out technical audits and reviews the Joint Undertaking may be assisted by external experts.

3. Beneficiaries' rights and obligations

- The Joint Undertaking shall – prior to the audit/review task – communicate the identity of the appointed experts. The beneficiary shall have the right to refuse the participation of a particular external expert on grounds of commercial confidentiality.
- Audits and reviews may be carried out remotely at the expert's home or place of work or involve sessions with project representatives either at the Joint Undertaking's premises or at the premises of beneficiaries.
- The Joint Undertaking or the expert should have access to the locations and premises where the work is being carried out, and to any document concerning the work.
- The beneficiary shall make available directly to the Joint Undertaking all information and data that may be requested by it or by the external expert with a view to verifying that the project is being/has been properly implemented in accordance with the GA.

4. Reports

A report shall be drawn up on the outcome of the audits and reviews and sent to the beneficiary concerned, as well as to the relevant ARTEMIS Member States for their information.

The beneficiary may make observations within one month of receiving the report. The Joint Undertaking may decide not to take into account observations or documents sent after that deadline.

On the basis of the experts' formal recommendations the Joint Undertaking will inform the coordinator and the relevant ARTEMIS Member States of its decision:

- to accept or reject the deliverables;
- to allow the project to continue without modification of the Technical Annex or with minor modifications;
- to consider that the project can only continue with major modifications;
- to initiate the termination of the grant agreement or of the participation of any beneficiary according to Article II.20 of GA;
- to issue a recovery order regarding all or part of the payments made by the Joint Undertaking and to apply any applicable sanction or initiate judiciary procedures.

Article II.15 of GA – Liquidated damages

The Joint Undertaking is entitled to claim liquidated damages from a beneficiary who is found to have overstated expenditure and who has consequently received an unjustified financial contribution from the Joint Undertaking. Liquidated damages will be applied systematically by the Joint Undertaking in case of overstatement. Overstatement may result from errors, misunderstanding or misinterpretation of the provisions of the GA. Overstatement is a factual finding and the intention to overstate is irrelevant.

1. Calculation of liquidated damages

The amount of liquidated damages is calculated according to the following formula:

$$\text{Liquidated damages} = \text{unjustified JU financial contribution} \times (\text{overstated amount} / \text{total JU financial contribution claimed})$$

In addition, the calculation of any liquidated damages only takes into consideration the beneficiary's claim for the JU contribution for that reporting period or the period relating to the beneficiary's claim to the respective NFA in case of a beneficiary with a corresponding NGA. It is not calculated in relation to the entire JU contribution.

Example:

The eligible costs declared by a beneficiary amount to EUR 1,000,000 (for a project funded at a 16.7%⁵ ratio of ARTEMIS JU contribution) and the JU contribution claimed for that period was EUR 167,000.

During an audit, it was found to have overstated costs for an amount of EUR 200,000 and to consequently have received an unjustified financial contribution from the Joint Undertaking of EUR 33,400.

⁵ The JU funding percentage is decided on an annual basis by the ARTEMIS Public Authorities Board and published in the Call. For the ARTEMIS Call 2008, it is 16.7%.

*The amount of liquidated damages the Joint Undertaking is entitled to claim is:
 EUR 33,400 x (EUR 200,000 / EUR 167,000) = EUR 40,000*

2. Modalities

If applied, liquidated damages are due in addition to the recovery of the unjustified financial contribution from the beneficiary.

Example:

If liquidated damages are applied to the beneficiary mentioned in point 1, that beneficiary will have to reimburse to the Joint Undertaking the total amount of:

- *Unjustified financial contribution (a): EUR 33,400*
- *Liquidated damages (b): EUR 40,000*
- *Total amount (a) + (b): EUR 73,400*

In order to respect the contradictory principle, the beneficiary shall be given a written notice period of 30 calendar days to provide the Joint Undertaking with its observations (Article II.15.3 of GA).

The procedure for payment of liquidated damages is the same as the one concerning the reimbursement of unjustified financial contribution including the provisions relating to default interest in case of late payment.

Article II.16 of GA – Financial penalties

In addition to liquidated damages, any beneficiary found to have seriously failed to meet its obligations under the GA shall be liable to financial penalties of:

- between 2% and 10% of the value of the JU contribution received by that beneficiary;
- between 4% and 20% of the value of the JU contribution received by that beneficiary in the event of a repeated offence in the five years following the first infringement.

Example:

It is determined that a beneficiary has seriously failed to meet its obligations under the GA. This beneficiary has received a JU financial contribution of EUR 700,000.

According to the audit's findings, it is the first serious failure of this beneficiary's in actions supported by the Joint Undertaking in the last five years.

This beneficiary may be subject to additional financial penalties of between EUR 14,000 and EUR 70,000= 2%-10% of EUR 700,000.

This is in addition to the recovery of the amount overpaid (unjustified financial contribution) and the liquidated damages for overcharging.

The provision also applies to beneficiaries who have been guilty of making false declarations.

In both cases, the beneficiary can present its observations before the Joint Undertaking imposes any financial penalty.

ANNEXES III and IV of GA– SPECIFIC CONDITIONS APPLICABLE PER TYPE OF BENEFICIARY

It is important to note that most beneficiaries⁶ can accede to the Joint Undertaking's grant agreement only after the successful conclusion of a corresponding national grant agreement. A distinction is therefore made in the GA between beneficiaries having concluded this NGA (Annex IV) and beneficiaries that are not subject to this condition (Annex III). The financial provisions in the GA are different according to this distinction, as we can see in the following summary table:

Annex III - Specific Conditions applicable to beneficiaries not having concluded a corresponding national grant agreement	Annex IV - Specific Conditions applicable to beneficiaries having concluded a corresponding national grant agreement
<ul style="list-style-type: none"> - PART A – Implementation of the budget <ul style="list-style-type: none"> - Section 1 – General principles <ul style="list-style-type: none"> - Article III.2. Specific performance obligations of the beneficiary - Section 2 – Reporting and payments <ul style="list-style-type: none"> - Article III.3. Reports and deliverables - Article III.4. Approval of reports and deliverables, time-limit for payments - Article III.5. Payment modalities - Section 3 – Implementation <ul style="list-style-type: none"> - Article III.6. Subcontracting - PART B – Financial provisions <ul style="list-style-type: none"> - Article III.7. Eligible costs - Article III.8. Identification for direct and indirect costs <ul style="list-style-type: none"> - Article III.9. Receipts of the project - Article III.10. The JU's financial contribution - Article III.11. Interest yielded by pre-financing provided by the JU 	<ul style="list-style-type: none"> - Article IV.1. Specific performance obligations of the beneficiary - Article IV.2. Payment modalities - Article IV.3. Subcontracting - Article IV.4. Eligible costs - Article IV.5. The JU's financial contribution - Article IV.6. Interest yielded by pre-financing provided by the JU

Please consult the appropriate sections in this Guide (Annex III or Annex IV) depending on what type of beneficiary you are.

⁶ All beneficiaries from ARTEMIS Member States. Also applicable to beneficiaries from other countries having concluded an administrative arrangement with the Joint Undertaking.

ANNEX III of GA: SPECIFIC CONDITIONS FOR BENEFICIARIES NOT HAVING CONCLUDED A CORRESPONDING NATIONAL GRANT AGREEMENT

PART "A": IMPLEMENTATION OF THE PROJECT

SECTION 2: REPORTING AND PAYMENTS

Article III.3 of GA – Reports and deliverables

Article III.3.2 of GA – Certificate on the financial statements

This certificate must be submitted following the templates provided in Annex X (Form D) of the GA. Those models are compulsory.

If the auditor feels however, that one or several of the questions do not correspond to the reality of the accounting system that he is describing, he should explain this divergence in detail in the form and claim that this as an exception. In this case, the Joint Undertaking will consider the explanation based upon the facts provided by the auditor, and decide on its validity.

Submission of certificate on the financial statements

Certificates on the Financial Statements (CFS) are not required for beneficiaries with costs incurred in relation to the project but without Joint Undertaking contribution (in this case this circumstance will be mentioned in special clause 4 to be included in Article 7).

A Certificate on CFS is mandatory for every claim (interim or final) in the form of reimbursement of costs whenever the amount of the JU contribution is equal or superior to EUR 325,000 when cumulated with all previous payments for which a CFS has not been submitted. Once a CFS is submitted, the threshold of EUR 325,000 applies again for subsequent JU contributions but the count starts from 0. Bear in mind that although the threshold is established on the basis of the JU contribution, the CFS must certify all eligible costs.

Example 1:

Claim No.	Eligible Costs	JU contribution @16.7% ⁷	Cumulative amount for which a CFS has not been submitted	CFS required	
1	EUR 1,137,725	EUR 190,000	EUR 190,000	NO	
2	EUR 1,227,545	EUR 205,000	EUR 395,000	YES	(1)
3	EUR 1,497,006	EUR 250,000	EUR 250,000	NO	
4	EUR 1,047,904	EUR 175,000	EUR 425,000	YES	(2)
5	EUR 1,796,407	EUR 300,000	EUR 300,000	NO	(3)

(1) Cumulative JU contribution = EUR 190,000 + EUR 205,000 = EUR 395,000. A CFS has to be provided because cumulative amount > 325,000. After the submission of CFS, the calculation of the cumulative amount re-starts from 0 for period 3.

It is important to remember that the CFS has to cover the eligible costs for the two periods (EUR 1,137,725 + EUR 1,227,545 = EUR 2,365,270), and not just the JU contribution

(2) Cumulative JU contribution = EUR 250,000 + EUR 175,000 = EUR 425,000. A CFS has to be provided because the cumulative amount > 325,000. After the submission of the CFS, the calculation of the cumulative amount re-starts from 0 for period 5.

The CFS has to cover the eligible costs for the periods 3 and 4 (EUR 1,497,006 + EUR 1,047,904 = EUR 2,544,910)

(3) JU contribution for period 5 = EUR 300,000 < EUR 325,000 therefore no need for CFS for the last reporting period

Example 2:

Claim No.	Eligible Costs	JU Contribution @16.7%	Cumulative amount for which a CFS has not been submitted	CFS required	
1	EUR 1,047,904	EUR 175,000	EUR 175,000	NO	
2	EUR 898,204	EUR 150,000	EUR 325,000	YES	(1)
3	EUR 898,204	EUR 150,000	EUR 150,000	NO	(2)

Therefore:

(1) A certificate has to be submitted (since EUR 175,000 + EUR 150,000 = EUR 325,000). The certificate should include all eligible costs not yet certified: EUR 1,047,904 + 898,204 = 1,946,108

(2) No need for a certificate for the EUR 300,000 because JU contribution = EUR 150,000 < EUR 325,000

⁷ The JU funding percentage is decided on an annual basis by the ARTEMIS Public Authorities Board and published in the Call.

Example 3: Projects with JU contribution < EUR 325,000

<i>Claim No.</i>	<i>Eligible Costs</i>	<i>JU contribution @16.7%</i>	<i>Cumulative amount for which a CFS has not been submitted</i>	<i>CFS required</i>	
<i>1</i>	<i>EUR 598,802</i>	<i>EUR 100,000</i>	<i>EUR 100,000</i>	<i>NO</i>	
<i>2</i>	<i>EUR 748,503</i>	<i>EUR 125,000</i>	<i>EUR 225,000</i>	<i>NO</i>	
<i>3</i>	<i>EUR 449,102</i>	<i>EUR 75,000</i>	<i>EUR 300,000</i>	<i>NO</i>	<i>(1)</i>

(1) No need for a certificate for the EUR 1,796,407 because JU contribution = EUR 300,000 < EUR 325,000.

Article III.4 of GA – Approval of reports and deliverables, time-limit for payments

Article III.4.1 – Approval of reports and deliverables at the end of each reporting period

At the end of each reporting period, the Joint Undertaking shall evaluate project reports and deliverables and disburse to each beneficiary the corresponding payments within **105** days of their receipt, unless the time-limit, the payment or the project has been suspended.

The suspension of the time-limit, of the payment or of the project by the Joint Undertaking may not be considered as late payment.

Article III.5 of GA – Payment modalities

The following types of payments are foreseen:

Article III.5.1.a) – Pre-financing at the start of the project

For more details concerning pre-financing, please refer to Article 6. It is important to remember that the interest generated by the pre-financing will be deducted from the JU contribution (see Article III.11 of GA). The interest generated on the amount of pre-financing will be offset against the subsequent payment.

Example:

Maximum JU contribution to the project: EUR 3,000,000

Pre-financing: EUR 1,600,000

Funding accepted for the 1st reporting period: EUR 1,000,000

Interest generate (by the pre-financing of EUR 1,600,000) = EUR 20,000

Interim payment following the 1st reporting period: EUR 1,000,000 – EUR 20,000 = EUR 980,000

Article III.5.1.b) – Interim payments following the approval of periodic reports

After approval of the periodic reports interim payments will follow and will be calculated on the basis of the accepted eligible costs and the corresponding reimbursement rate. The amounts paid for interim payments will correspond to the accepted JU contribution. However, the total amount of interim payments + pre-financing will be limited to 80% of the maximum JU contribution⁸. This may imply, as mentioned in the examples below that in some cases payment for the interim periods may be reduced in order to respect this limit.

Article III.5.1.c) – Final payment following the approval of final report

The final payment will be transferred after the approval of the final reports and consists of the difference between the calculated JU contribution (on the basis of the eligible costs) minus the amounts already paid.

The total payment is however limited to the maximum JU contribution as defined in Article 5 of GA. If the total amount already paid would prove to be higher than the JU contribution accepted, the Joint Undertaking will recover the difference.

⁸ See article III.5.2 of the ARTEMIS JU model Grant agreement.

Example 1:**Beneficiary A****Project duration: 3 years****Maximum JU contribution: EUR 3,000,000****Ceiling: EUR 2,400,000 (20% retention)**

				Cumulative payments
<i>Period 0</i>		<i>Pre-financing</i>	<i>EUR 1,600,000</i>	<i>EUR 1,600,000</i>
<i>Period1</i>	<i>Accepted Funding: EUR 700,000</i>	<i>Interim payment P1</i>	<i>EUR 700,000</i>	<i>EUR 2,300,000</i>
<i>Period2</i>	<i>Accepted Funding: EUR 800,000</i>	<i>Interim payment P2</i>	<i>EUR 100,000</i>	<i>EUR 2,400,000 to respect ceiling</i>
<i>Period3</i>	<i>Accepted Funding: EUR 1,500,000</i>	<i>Final Payment</i>	<i>EUR 600,000</i>	<i>EUR 3,000,000 maximum</i>

Article III.5.4 – Conversion rates

Costs shall be reported in EUR. Beneficiaries with accounts in currencies other than EUR shall report in EUR on the basis of the exchange rate that would have applied either:

- on the date that the actual costs were incurred or
- on the basis of the rate applicable on the first day of the month following the end of the reporting period.

For both options, the daily exchange rates are fixed by the European Central Bank (ECB) and may be obtained at the following internet address: <http://www.ecb.int/stats/eurofxref/> or, for the rate of the first day of the month following the reporting period, in the relevant OJ of the European Union⁹.

For the days where no daily exchange rates have been published, (for instance Saturday, Sunday and New Year's Day) you should take the rate on the next day of publication.

The use of other sources for exchange rates (other than the ECB) is admissible only where no other solution is possible (i.e. when ECB does not include the daily exchange rates for a particular currency). Beneficiaries with accounts in EUR shall convert costs incurred in other currencies according to their usual accounting practice.

⁹ <http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>

SECTION 3: IMPLEMENTATION

Article III.6 of GA – Subcontracting

Article III.6.1 – Definitions

The general rule is that beneficiaries shall implement the project and shall have the necessary resources to that end. However, it is accepted that, when the GA provides for it accordingly, and as an exception certain parts of the work may be subcontracted.

A subcontractor is a type of third party, i.e. a legal entity which is not a beneficiary of the GA, and is not a signatory to it. It appears in the project because one of the beneficiaries appeals to its services to carry out part of the work, usually for specialised jobs that it cannot carry out itself or because it is more efficient to use the services of a specialised organisation (e.g. setting up a website for the project).

The subcontractor is defined by certain characteristics:

- The agreement is based on "business conditions"; this means that the subcontractor charges a price, which usually includes a profit for the subcontractor. This makes it different from other third parties' contributions where the third party charges only for the costs of the activity.
- The subcontractor works without the direct supervision of the beneficiary and is not hierarchically subordinate to the beneficiary (unlike an employee). The working place of the subcontractor, its accounting rules and internal organisation are also different.
- The subcontractor carries out parts of the work itself, whereas other third parties (with some exceptions) only make available their resources to a beneficiary usually on the basis of a previous agreement and in order to support a beneficiary by providing resources.
- The subcontractor's motivation is pecuniary, not the research work itself. It is a third party whose interest in the project is only the profit that the commercial transaction will bring. A subcontractor is paid in full for its contribution made to a project by the beneficiary with whom it has a subcontract. As a consequence subcontractors do not have any IPR rights on the foreground of the project.
- The responsibility vis-à-vis the JU for the work subcontracted lies fully with the beneficiary. The work that a subcontractor carries out under the project belongs to the beneficiary in the GA. A subcontractor has no rights or obligations vis-à-vis the Joint Undertaking or the other beneficiaries, as it is a third party. However, the beneficiary must ensure that the subcontractor can be audited by the JU, the Commission or the Court of Auditors.

The provisions of article III.6 of the GA also apply to external auditors who certify financial statements.

Accordingly, subcontracting between beneficiaries in the same GA is not to be accepted.

All participants by definition contribute to and are interested in the project, and where one participant needs the services of another in order to perform its part of the work, it is the second participant who should declare and charge the costs for that work. In the Project Agreement they may define provisions to cover those costs not reimbursed by the JU.

Article III.6.2 – Tasks which can be subcontracted and conditions

Subcontracting may concern only certain parts of the project, as the implementation of the project lies with the participants. Therefore, the subcontracted parts should in principle not be "core" parts of the project work. In cases where it is proposed to subcontract substantial/core parts of the work, this question should be carefully discussed with and approved by the Joint Undertaking and those tasks identified in the Technical Annex. Usually in such cases, the intended subcontractor could instead become a beneficiary, or the consortium should find another beneficiary able to perform that part of the work.

What is a "core" part of the work?

Usually subcontracts **do not concern the research work itself**, but tasks or activities needed in order to carry out the research, auxiliary to the main object of the project. Subcontracts may involve large amounts of money, even though they have nothing to do with the core parts of the project. Their purpose might be just to facilitate/make possible the research work.

Examples:

- *Company "A" needs to dig a 300-metre deep trench in order to make some experiments. A subcontract to find an organisation with the adequate equipment is required. This may consume 50% of the total project cost - however it is justified.*

- *Company "B" needs to collect data and interrogate databases in different countries in order to decide on the best place to install a pilot plant. A company specialised in electronic data collection is subcontracted for that task.*

Coordination tasks of the coordinator such as the review of reports and others tasks mentioned under Article II.2.3 to GA cannot be subcontracted. Other project management activities could be subcontracted under the conditions established for subcontracting.

As mentioned above, the beneficiary remains responsible for all its rights and obligations under the GA, including the tasks carried out by a subcontractor. The beneficiary must ensure that the intellectual property that may be generated by a subcontractor reverts to the beneficiary so that it can meet its obligations towards the other beneficiaries in the GA.

Any bilateral agreement between subcontractor and beneficiary should include this, as well as the respect of the obligations mentioned in Articles II.7, II.8, II.9, II.10 and II.13 of the GA which concern, among others, obligations related to information and communication of data, and financial audits and controls.

Details to be included in the Technical Annex and selection of subcontractors

The need for a subcontract must be detailed and justified in the Technical Annex, following the principles mentioned above and taking into account the specific characteristics of the project.

It is **the work (the tasks)** to be performed by a subcontractor that has to be identified in the Technical Annex. The identity of the subcontractors does not need to be indicated in the Technical Annex. However, if the identity of the subcontractor is indicated, the beneficiaries are nevertheless bound to demonstrate that the selection of the subcontractor complied with the principles described below.

The description of the tasks to be subcontracted should include a financial estimation of the costs. It is also important to have regard to the procedure to be used for the selection of the subcontractor, which should be proportionate to the size of the subcontract.

Article III.6.2 of GA requires beneficiaries to ensure that transparent bidding procedures are used before selecting a subcontractor.

"Any *subcontract*, the costs of which are to be claimed as an eligible cost, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment."

The procedure to be applied for the award of subcontracts depends on the status of the beneficiary, i.e. if the beneficiary is a public or a private entity:

Public entities may follow the procurement principles established by their national authorities. For subcontracts exceeding certain amounts, the directive on public procurement of services applies and the publication of a call for tenders is mandatory.

However, they should in any case comply with the terms of the GA.

Example:

In a project, a beneficiary (university) subcontracts task X for an amount of EUR 50,000.

If this amount is below the threshold set by its national public rules (i.e. EUR 100,000), then the subcontract should comply at least with the conditions set out in the GA, even if the national rules do not set out any specific requirement.

Private legal entities should follow the rules that they usually apply for the selection of procurement contracts, respecting in any case the terms of the GA. The publication of a call for tenders is normally not necessary for private legal entities, but they must at least require submission of several quotes (usually a minimum of three), unless they have an established framework contract for the provision of those services. There should be a proportional relationship between the size in work and cost of the tasks to be subcontracted on the one hand and the degree of publicity and formality of the selection process on the other.

The **procedure must ensure conditions of transparency and equal treatment**. At the request of the Joint Undertaking and especially in the event of an audit, beneficiaries must be able to demonstrate that they have respected the conditions of transparency and equal treatment.

Beneficiaries must be able to prove that:

- the criteria and conditions of submission and selection are clear and identical for any legal entity;
- there is no conflict of interest in the selection;

- the selection must be based on the best value for money given the quality of the service proposed (best price-quality ratio). It is not necessary to select the lowest price, though price is an essential aspect;
- the criteria defining "quality" must be clear and coherent according to the purpose of the task to subcontract, in order to provide a good analysis of the ratio price/quality.

Framework Contracts

Many companies have framework contracts with a third party to carry out routine or repetitive tasks. They have been established before the beginning of the project, and are the usual practice of the beneficiaries for a given type of task. These framework contracts can be used to carry out tasks necessary for implementing the JU project provided they have been established on the basis of the principles of best value for money and transparency mentioned above.

Article III.6.3 – Minor tasks

Minor tasks correspond to minor services, which are not project tasks identified as such in the Technical Annex but are needed for implementation of the project (quite different from, for instance, analysing samples or building a pilot plant).

They do not have to be specifically identified in the Technical Annex, as by definition their importance is minor (the amounts involved are also normally small). However, the selection procedure mentioned above also applies to these subcontracts.

The criteria to decide whether a subcontract concerns minor tasks are qualitative and not quantitative:

Examples:

- *Organisation of the rooms and catering for a meeting*
- *Printing of material, leaflets, etc.*

Subcontracting costs are direct costs. They have to be identified by beneficiaries in the financial statement form (Form C, Annex IX to GA).

PART "B": FINANCIAL PROVISIONS

SECTION 1: GENERAL FINANCIAL PROVISIONS

Article III.7 of GA – Eligible costs

Principle

Maximum grant is based on an estimation of eligible costs prepared by the partners and negotiated with the Joint Undertaking (see Article 5 of GA).

Estimation of eligible costs of the beneficiary's participation in the implementation of the project must be shown in detail in the provisional budget included in the Grant Preparation Forms (GPF) and subsequently in the Technical Annex.

In order to be considered for reimbursement, costs incurred by the beneficiaries in the course of the project, must satisfy the eligibility criteria laid down by the GA. It must be stressed that subject to these criteria, it is always the Joint Undertaking which takes the final decision on the nature and amount of the costs to be considered eligible, either when analysing proposals for the establishment of the estimated budget to be annexed to the GA or when examining financial statements for the purposes of determining the JU contribution.

Article III.7.1 – Eligibility criteria

To be considered eligible costs must be:

– actual (Article III.7.1.a) of GA

Costs must be actually incurred (actual costs). That means that they must be real and not estimated, budgeted or imputed.

Where actual costs are not available at the time of establishment of the certificate on the financial statements, the closest possible estimate can be declared as actual if this is in conformity with the accounting principles of the beneficiary. This must be mentioned in the financial statement. Any necessary adjustments to these claims must be reported in the financial statement for the subsequent reporting period.

For the last period the costs should be submitted based on the information available at the moment of preparing the financial statement.

– incurred by the beneficiary (Article III.7.1.b) of GA

Supporting documents proving the payment of the costs by the beneficiaries must be kept for all costs and for up to five years after the end of the project.

– incurred during the duration of the project, with the exception of costs relating to final reports and audit certificates (Article III.7.1.c) of GA

Only costs generated during the lifetime of the project can be eligible; as a result the period during which the project starts determines the period of eligibility of the corresponding costs (Article 3 of the GA – Duration and start date of the project).

The GA foresees an exception for costs incurred in relation to final reports and reports corresponding to the last period as well as certificates on the financial statements when requested at the last period and final reviews if applicable. These costs may be incurred

during the period of up to 60 days after the end of the project or the date of termination, whichever is earlier.

It may be that some costs have not been paid when the request for the final payment is sent, in particular because the beneficiary is waiting for the final payment of the grant in order to be able to pay this expenditure. This situation is acceptable if it is certain that a debt exists (invoice or equivalent) for services or goods actually supplied during the lifetime of the project and the final cost is known; the Joint Undertaking is entitled to check whether payment was actually made by asking for supporting documents to be produced when the payment has been made or during an *ex post* audit carried out later.

Costs related to the drafting of the Project agreement are not eligible, since the Project agreement is deemed to have been concluded by the time of the signature of the GA, in other words it must be finalized before (Article 1 of the GA)

Can depreciation costs for equipment used for the project but bought before the start of the project be eligible?

If the equipment has not yet been fully depreciated according to the usual accounting practices of the beneficiary, then the remaining depreciation (according to the amount of use, in percentage and time) can be eligible under the project.

Example:

Equipment bought in January 2007, with a depreciation period of 48 months according to the beneficiary accounting practices. If a GA is signed in January 2009 (when 24 months of depreciation have already passed), and the equipment is used for this GA, the beneficiary can declare the depreciation costs incurred under the project for the remaining 24 months.

Costs related to preparing and submitting the proposal can never be charged to the project.

– determined according to the usual accounting and management principles and practices of the beneficiary identifiable and verifiable (Article III.7.1.d) of GA

Costs must be determined according to the applicable accounting rules of the country where the beneficiary is established and "according to the usual accounting and management principles and practices of the beneficiary". However, this principle must be considered together with the other eligibility criteria and therefore cannot be invoked in order to deviate from other provisions of the GA.

Example: VAT could be considered as a cost by the accounting of a beneficiary, but this cannot be used to claim it as an eligible cost with an ARTEMIS JU project, as VAT is not an eligible cost (Article III.7.3 of the GA)

This also means that beneficiaries do not have the possibility to create specific accounting principles for the projects. If in their usual accounting principles a particular cost is always considered as an indirect cost they have to consider it also as an indirect cost in the project.

Costs which cannot be justified are, as a matter of principle, to be considered not eligible.

The grant agreement states that "*the beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents*".

The purpose of this provision is to give some assurance about the source of the costs and receipts declared, which must come directly from the beneficiary's accounts and be backed up by appropriate supporting documents. However, as a flat rate is used for the funding of

indirect costs (see Article III.8.2 of GA), by definition these indirect costs do not need to be backed up by accounting documents.

More explanations on the justification and recording of costs are given in Article III.8 of GA.

– used for the sole purpose of achieving the objectives of the project and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness (Article III.7.1.e) of GA)

These costs must be essential for the performance of the project and would not be incurred if the project did not take place. The concept of correctly matching estimated costs and expected achievements is a fundamental criterion: the beneficiary must be able to justify the resources used to attain the objectives set. The JU grant must not be diverted to finance other projects.

The principles of economy, efficiency and effectiveness: refers to the standard of “good housekeeping” in spending public money effectively.

Economy can be understood as minimising the costs of resources used for an activity (input), having regard to the appropriate quality and can be linked to efficiency, which is the relationship between the outputs, in terms of resources used to produce them.

Effectiveness is concerned with measuring the extent to which the objectives have been achieved and the relationship between the intended impact and the actual impact of an activity. Cost effectiveness means the relationship between project costs and outcomes, expressed as costs per unit of outcome achieved.

Costs must be reasonable and comply with the principles of sound financial management, with the objectives of the project and with the formal aspects of the reporting of this expenditure, including the follow-up of the budget in terms of budget allocation and schedule of the cost.

– recorded in the accounts of the beneficiary and, in the case of any contribution from third parties, recorded in the accounts of the third parties (Article III.7.1.f) of GA)

– have been indicated in the estimated overall budget annexed to the GA – Technical Annex (Article III.7.1.g) of GA)

When the maximum JU financial contribution is determined, the eligible costs will appear in the estimated budget. It is possible, without a supplementary agreement, to authorise certain transfers of costs between eligible cost items of each beneficiary in the estimated budget within the overall amount of eligible costs, in the conditions mentioned in Article 5.2 of the GA.

Costs like personnel, durable equipment, travel and subsistence, subcontracting, consumables, etc. may be considered as eligible costs, provided they meet the definition of eligible costs in the GA and are incurred in the context of the project (see examples in Article III.8 of the GA).

Article III.7.2 of the GA – Costs of third parties – Costs of resources made available and costs of third parties carrying out part of the work

What is a third party?

A third party is, by definition, any legal entity which does not sign the GA. A subcontractor is a type of third party, but not the only one. As the implementation of the project is the responsibility of the beneficiaries (who **do sign** the GA), beneficiaries should have the capacity to carry out the work themselves. Therefore the rule is that the costs eligible in a project must be incurred by the beneficiaries (the signatories to the GA).

However, in some circumstances the GA accepts some third parties whose costs may be eligible.

Should a beneficiary wish to recur to the assistance of a third party in an ongoing project, this has to be discussed with the project Officer, and if approved and in conformity with the rules, the third party contribution and resources have to be detailed in the Technical Annex.

A third party may contribute to the project in two possible ways:

- A) making available its resources to a beneficiary (in order for the beneficiary to be able to carry out part of the work)**
- B) by carrying out part of the work itself**

Costs incurred by third parties may be eligible under certain conditions:

- The third party, the tasks to be performed, an estimation of the costs and the resources allocated to the project **must be identified during the negotiations and mentioned in the Technical Annex** (and in some cases in a special clause in the GA).
- In the case of **third parties carrying out part of the work** which are not subcontractors, the beneficiaries will be entitled to charge their costs only in the cases covered by the special clause below. It is essential therefore to discuss these cases during the negotiations, and if they are accepted, to include the relevant special clause in the grant agreement.

In all cases, **the beneficiary retains sole responsibility for the work** of the third party and has to make sure that the third party complies with the provisions of the GA.

Also in these cases (third party contributions) it is important to verify whether this contribution falls under the category of receipts (see Article III.9 of the GA). These contributions should also comply with the eligibility conditions of Article III.7 of the GA.

A. THIRD PARTIES MAKING THEIR RESOURCES AVAILABLE TO A BENEFICIARY

This refers to the case when one or some of the resources used by the beneficiary belong to a third party; in other words, the third party does not carry out any part of the work, it just lends resources to the beneficiary. These resources are directly used by the beneficiary, and usually work is performed in its premises.

The costs of the resources of a third party charged to the project by a beneficiary must always be the actual costs incurred by the third party. In this case the use of flat rates by the third party is not allowed.

– **Free of charge (there is no reimbursement by the beneficiary to the third party)**

This is the case where a third party makes available some of its resources to a beneficiary, which does not reimburse the cost to the third party, but which charges the costs of the third party as an eligible cost of the project.

Its costs will be declared by the beneficiary in its Form C, included in the CFS of the beneficiary when required (as a cost and, if that is the case, as a receipt) **but must be recorded in the accounts of the third party** (which can be audited if required).

The need for the costs to be accurately recorded in the accounts of the third party comes from the fact that such costs are not present in the accounts of the beneficiary (because they are free of charge).

It is important to remember that this covers only the case of a third party making some of its resources available to a beneficiary. It does not concern those third parties carrying out part of the work themselves, which is discussed below under point B.

Example: Researcher from one organisation seconded to work in another Research organisation or in a university.

– **Beneficiary reimburses the third party**

This is not considered a third party contribution as in this case the reimbursement of the third party for these costs will be a cost for the beneficiary, who in turn will be able to claim it as an eligible cost.

By definition then, these costs will appear in the accounts of the beneficiary, and therefore they will be considered as costs incurred by the beneficiary and not as costs incurred by a third party.

In these cases, there is a prior agreement that defines the frame in which these resources are made available and the reimbursement to the third party covers only costs, and there will not be a profit for the third party.

In any case, the details and the reasons for it should be indicated in the Technical Annex.

Here it is also important to remember that this covers only the case of a third party making some of its resources available to a beneficiary, not the case where the third party carries out part of the work.

Like any other cost, these costs must comply with the conditions of Article III.7 of the GA.

Example:

A legal entity makes available to a beneficiary the use of an installation or specialized piece of infrastructure which the beneficiary needs in order to perform a project task. There are two possibilities here:

- The third party charges the costs and is reimbursed by the beneficiary. This is a cost for the beneficiary and not considered as a reimbursement of a third party cost. Details and the reason for the use of the third party should appear in the Technical Annex.

- The third party does not charge the beneficiary for this activity; it is not reimbursed by it. If the beneficiary wants to include the cost of the third party as an eligible cost of the project, then the conditions mentioned above for "free of charge" contributions apply.

Equally, the third party, the work, an estimation of the costs and the resources used should appear in the Technical Annex.

– **Special cases:**

1) *Foundations, spin-off companies, etc., created in order to manage the administrative tasks of the beneficiary*

This is typically the case of a legal entity created or controlled by a beneficiary which is in charge of the financial administration of the beneficiary; this beneficiary (usually public bodies like Universities/Ministries) has a prior agreement with a spin-off company or a separate company/non-profit foundation, by means of which the latter handles the financial and administrative aspects of the beneficiary's involvement in research projects, including all issues relating to the employment and payment of additional personnel, purchase of equipment and consumables, etc..

In most of these cases, the aim to improve and rationalise administrative and financial management has led the Universities/Ministries to establish such contracts, which are usually agreements lasting over long periods and established well before the JU project exists.

Consequently, this third party often has no resources of its own. The personnel hired for the project by the spin-off/foundation works on the premises of the University (beneficiary) and under its responsibility.

In this case it is the university which should be the beneficiary, and not the foundation, as the foundation does not have the resources to carry out the work.

As in the other cases of third parties' contributions, the third party and the tasks have to be identified in the Technical Annex.

The agreement is not specific to the project, but it is a general agreement for the management of the GA with the Joint Undertaking (and/or other entities), and the costs are reimbursed either directly by the beneficiary or by the coordinator on behalf of the beneficiary. The costs will therefore not be considered as receipts.

In some cases the agreement between the beneficiary and the third party also foresees the handling of JU financial payments by the third party. Therefore, the beneficiary pays the JU contribution directly to the third party.

In these cases, the important issue is that the work of the third party is not carried out without reimbursement, and there is a reimbursement of costs but directly from the beneficiary.

Thus, the costs will not be considered as receipts. Here the costs of the third party will be charged by the beneficiary in its Form C, but they are recorded in the accounts of the third party (otherwise they would not be eligible). As these resources are used in the premises of the beneficiary, the flat rate for the calculation of the indirect costs can be applied to these costs.

All reports, financial statements, etc., should be presented in the name of the beneficiary. If a CFS is required, it must certify and cover both the contributions of the beneficiary and those of the third party.

Example: *Eligible Costs of a University which is a beneficiary in a project:*

- *Costs of personnel (usually permanent) paid by the university: EUR 100,000*

- *Costs of personnel paid by the foundation and working in the premises of the university: EUR 80,000*

- *Equipment bought by the foundation used on the premises of the beneficiary: EUR 20,000*

- *Costs of administrative personnel of the foundation working in the premises of the foundation: EUR 2,500 (actual costs, including EUR 2,000 for direct and EUR 400 for indirect costs)*

Total costs declared by the university =

Total direct costs (including those of the foundation) = (EUR 100,000 + EUR 80,000 + EUR 20,000 + EUR 2,000)=EUR 202,000

Indirect costs= calculated on the basis of the direct costs used in the premises of the university+ real indirect costs of the foundation: flat rate of 20% of EUR 200,000=EUR 40,000 +400

Total eligible costs: EUR 202,000+EUR 40,000+400=EUR 240,400

Total JU funding received by the University = 16.7%¹⁰ of EUR 240,400

2) *The case of resources (professors/equipment) working for, or used by a university but whose salaries/costs are paid by the Government.*

In this case the resources made available by the third party (the Government) to the beneficiary can be assimilated to the "own resources" of the beneficiary, and can therefore be charged to the project without being considered a receipt. The reason is that the beneficiary is free to use these resources at will. Like other contributions from third parties, these resources should be identified in the Technical Annex. Their cost will be declared by the beneficiary in its own Form C, and they should be recorded in the accounts of the third party and available for auditing if required.

This does not apply to cases where these resources/staff have been specifically seconded to the beneficiary in order to work in a specific project. In this case the costs are eligible but the rules for receipts apply.

Specific "ad-hoc" agreement between a beneficiary and a third party to cooperate in a project. (example: the use of an installation or the secondment to a beneficiary of a professor from another entity which is not a beneficiary)

In this case, if the third party is not working on the project and only lending resources, the general rules for third parties making available resources may apply. **If on the other hand the third party not only makes resources available but also carries out work**, then the third party should sign the GA and become a beneficiary; under certain conditions this kind of agreement might be treated as a subcontract, and should then follow the related rules.

3) The case of an "interim" or temporary work agency that makes available staff to a beneficiary: this is not a third party contribution because the beneficiary pays the agency for the use of those resources. That use has a price charged to the beneficiary, who will declare it according to its usual accounting practices.

B. THIRD PARTIES CARRYING OUT PART OF THE WORK

Exceptionally here the third party performs itself certain tasks of the project, even if it does not sign the GA. The third party **carries out part of the work directly** and is responsible for this vis-à-vis the beneficiary, (although the beneficiary remains responsible vis-à-vis the Joint Undertaking for the work).

Two different cases may appear:

– **The case of subcontractors:** the costs of the subcontract are part of the direct costs of the beneficiary and are registered in the accounts of the beneficiaries. The price of the subcontract is an eligible cost for the beneficiary, which like other costs must comply with the general

¹⁰ The JU funding percentage is decided on an annual basis by the ARTEMIS Public Authorities Board and published in the Call.

eligibility criteria mentioned in Article III.7 of GA. **The specific conditions of subcontracting are explained in Article III.6 of GA, which describes this case extensively.**

– The case of entities covered by *special clause 5*: Only in the cases mentioned in the clause, may other third parties **carry out** (under certain conditions) part of the work for a beneficiary. For this to be possible, they have to be identified in the GA via a special clause. **It is essential** to identify these cases during the negotiations in order to add the special clause to allow for the reimbursement of the third parties' costs.

Apart from subcontractors, (which follow their own rules as explained in Article III.6 of GA) **only third parties covered by the clause are entitled to carry out work in the project and to charge costs for it.**

Who are the third parties (other than subcontractors) who can carry out work under the project if covered by the relevant special clause in the GA?

The GA (via Special Clause no 5 to be included in Article 7) refers to third parties linked to a beneficiary. **The term "linked" refers to an established formal relationship between a third party and the beneficiary, defined by the following characteristics:**

- This relationship by nature is broad and **is not limited to the GA, or specifically created for the work in the GA.**

– Accordingly, its duration goes beyond the duration of the project and usually predates and outlasts the GA.

– It has a formal external recognition, sometimes in the framework of a legal structure (for example, the relationship between an association and its members), sometimes in the absence of legal personality, through the sharing of common infrastructures and resources (joint laboratory), separate from those of the legal entities composing them, or common ownership (affiliates, holding companies).

"Ad hoc" collaboration agreements between legal entities to carry out work in the project are therefore not covered by this clause; in these cases both legal entities should be beneficiaries (with the limited exception of subcontracting in the cases where the rules allow it, as mentioned above).

Cases specifically covered by the Special clause:

– **Joint Research Units (JRU):** these are research laboratories/infrastructures created and owned by two or more different legal entities in order to carry out research. They do not have a legal personality different from that of its members, but form a single research unit where staff and resources from the different members are put together to the benefit of all. Though lacking legal personality, they exist physically, with premises, equipment, and resources individual to them and distinct from "owner" entities. A member of the JRU is the beneficiary and any other member of the JRU contributing to the project and who is not a beneficiary of the GA has to be identified in the clause. The JRU has to meet the following conditions:

- a) scientific and economic unity
- b) last a certain length of time
- c) recognised by a public authority

– **European Economic Interest Grouping (EEIG):** an EEIG is a legal entity created under the rules of **Council Regulation (EEC) No 2137/85 of 25 July 1985**, composed of at least two legal entities from different Member States.

– **Affiliates:** an affiliated entity means any legal entity that is under the direct or indirect control of the beneficiary, or under the same direct or indirect control as the beneficiary. Therefore it covers not only the case of parent companies or holdings and their affiliates, but also the case of affiliates between themselves.

– **Groupings:** The clause is used here either for associations, federations, or other legal entities composed of members (in this case, the Grouping is the beneficiary and the members contributing to the project should be listed).

In the case of groupings without legal personality they will be treated as JRU if they meet the conditions mentioned above for Joint Research Units. Therefore structures, agreements or units without legal personality created specifically by different legal entities for their participation in the GA are not considered groupings and their costs are not covered under the terms of this special clause.

Which conditions have to be fulfilled by these third parties in order to carry out work and charge costs under the project?

– They have to be identified in special clause No 5 and their name, tasks and resources have to be described in the Technical Annex.

– Their costs have to comply with the rules and the principles mentioned in Articles III.7 to III.9 of GA, in the same way as the beneficiaries, and must be recorded in their accounts. In other words, the rules relating to eligibility of costs, identification of direct and indirect costs and upper funding limits apply. Equally those concerning controls and audits of Article II.13 and Article II.14 of GA.

– Each third party fills in its costs in an individual Form C and, where necessary, shall provide its individual certificate on financial statements independently from those of the beneficiary. The beneficiary will submit both forms and a summary report integrating both the costs of the beneficiary and those of the third party(ies).

Example:

University "X" has created a joint research unit with university "Y". University "X" is a beneficiary in the GA, and performs the work via the joint research unit co-owned with "Y". Therefore, "Y" is here the third party linked to "X".

- "X" fills in Form C with its own costs only: EUR 100 as direct costs and EUR 20 as indirect costs.

- "Y", as a third party linked to "X", carries out part of the work attributed by the GA to "X".

It fills in Form C with its own costs only: EUR 100 as direct costs and EUR 20 as a flat rate

The financial report presented by "X" (the beneficiary) will include both Forms C, and a summary financial report adding up costs from "X" + "Y"; the costs and funding claimed will be calculated as follows

Eligible costs for "X": EUR 120; funding for "X": % of EUR 120

Eligible costs for "Y": EUR 120; funding for "Y": % of EUR 120

TOTAL COSTS declared by "X": EUR 240

TOTAL JU contribution claimed by "X": 16.7 %¹¹ of EUR 240

¹¹ The JU funding percentage is decided on an annual basis by the ARTEMIS Public Authorities Board and published in the Call.

Article III.8.3 of GA – Non-eligible costs

Certain costs are, specifically excluded from the eligible costs. The list of these costs mentioned in the grant agreement must be regarded as a minimum reference list and must be fully complied with.

The standard model provides that the following costs are not eligible:

a) Identifiable indirect taxes including value added tax

In general, the beneficiary is entitled to charge to the project only the net value of the invoice, provided that all eligibility criteria are met. Identifiable VAT is not eligible. As mentioned above, indirect taxes will be allowed when not identifiable. This may be for example the case with foreign invoices where the price indicated is gross without identifying the tax. In any case, the beneficiary should be able to justify this in the event of an audit.

The particular case of airport taxes

In general, airport taxes are not real taxes in the sense of tax law but a fee for a service delivered by a public or semi-public body in charge of a (public) service, such as airports (independent of the fact that that some airports might have a private legal form). In this case the airport taxes imposed by these authorities may be considered a fee and therefore eligible because they are neither a duty nor an indirect tax. Usually the invoice makes reference to "service charge", "charge" etc...If the invoice, however, only mentions "airport taxes", the beneficiary should use other means to prove that the so called "airport tax" is not a tax.

*Examples: Fuel surcharge, insurance surcharge, etc. are eligible costs;
Air passenger duty is not an eligible cost (see below)*

b) Duties : mean the amount assessed on an imported or (less often) exported item, nearly equivalent to taxes, embracing all taxation or charges levied on persons or things [or the tax imposed on the importation, exportation, or consumption of goods],

c) Interest owed,

d) Provisions for possible future losses or charges,

e) Exchange losses, cost related to return on capital,

f) Costs declared or incurred, or reimbursed in respect of another *Community project*, (avoiding double funding),

g) Debt and debt service charges, excessive or reckless expenditure: Excessive should be understood as paying significantly more for products, services or personnel than the prevailing market rates, resulting in an avoidable financial loss to the project. Reckless means failing to exercise care in the selection of products, services or personnel resulting in an avoidable financial loss to the project.

Article III.8 of GA – Identification of direct and indirect costs

Distinction between direct and indirect costs

The reimbursement of beneficiaries shall be based on their eligible direct and indirect costs. Depending on the characteristics of the operation in question, it is possible that some costs can be considered either direct costs or indirect costs, but no cost can be taken into account twice as a direct cost and an indirect cost.

1. Direct costs

Direct costs are all those eligible costs which can be attributed directly to the project and are identified by the beneficiary as such, in accordance with its accounting principles and its usual internal rules.

The following direct costs may be considered eligible (this list is not exhaustive):

(a) The cost of personnel assigned to the project

- The personnel must be directly hired by the beneficiary in accordance with its national legislation.
- The personnel must work under the sole technical supervision and responsibility of the beneficiary.
- As there is no distinction between cost models, any beneficiary may include in its personnel costs "permanent employees", who have permanent working contracts with the beneficiary or "temporary employees", who have temporary working contracts with the beneficiary.
- Personnel costs should reflect the total remuneration: salaries plus social security charges (holiday pay, pension contribution, health insurance, etc.) and other statutory costs included in the remuneration.
- Personnel must be remunerated in accordance with the normal practices of the beneficiary.

Only the costs of the actual hours worked by the persons directly carrying out work under the project may be charged. Working time is the total number of hours worked, excluding holidays, personal time, sick leave, or other allowances.

Only the hours worked on the project can be charged. Working time to be charged must be recorded throughout the duration of the project by any reasonable means (e.g. timesheets).

Employees have to record their time on a daily, weekly, or monthly basis using a paper or a computer-based system. The time-records have to be authorised by the project manager or other superior.

Where it is the usual practice of the beneficiary to consider certain types of personnel costs (such as administrative or support personnel) as indirect costs, the costs of this personnel cannot be charged as direct eligible costs, but only as indirect costs.

If you decide to use timesheets to record working hours (please note that they are not compulsory – **any other reliable way of measuring of working time may be applied**) then they should meet at least the basic requirements indicated below:

- full name of beneficiary as indicated in the GA;
- full name of the employee directly contributing to RTD project;
- title of RTD project as indicated in the GA;
- project account number should be indicated;
- time period concerned (for instance on daily, weekly, monthly basis) according to the beneficiary's normal practice;
- amount of hours claimed on the RTD project. All hours claimed must be able to be verified in a reliable manner;
- full name and a signature of a supervisor (person in charge of the project).

The complete time recording system should enable reconciliation of total hours in cases where personnel work on several projects during the same period. It is important to remember that an effective time-recording system (a system which certifies the reality of the hours worked) is a requisite for the eligibility of the costs. A contract, as a document signed before the work is actually performed, would not be sufficient.

Also, there must be some system allowing the beneficiary to indicate the activity to which the hours have been attributed. It is worth mentioning that the above elements are the basic ones, thus there are no obstacles to running the timesheets in a more detailed way.

Example of a time-sheet template which may be of use:

	<i>Name</i>		<i>Week</i>		<i>January 2009</i>		
	<i>Sunday</i>	<i>Monday</i>	<i>Tuesday</i>	<i>Wednesday</i>	<i>Thursday</i>	<i>Friday</i>	<i>Saturday</i>
<i>R&D Activities</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>06</i>	<i>07</i>
<i>Project X</i>							
<i>Project Y</i>							
<i>Project Z</i>							
<i>Absences</i>							
<i>Annual leave</i>							
<i>Special leave</i>							
<i>Illness</i>							
<i>Total Absences:</i>							
<i>Total Time:</i>							
<i>Signed:</i>							
<i>Approved:</i>							

A simple estimation of hours worked is not sufficient. Productive hours must be calculated according to the beneficiary's normal practices. Productive hours per year should exclude annual leave, public holidays, training and sick leave.

A figure of 210 working days- year could be considered representative in most cases

For example:

Total days in a year 365

Weekends -104

Annual holidays -21
 Statutory holidays -15
 Illness/Others -15
 Workable days in a year 210

The above will vary depending on the personnel category, industry sector, unions, contracts and national legislation which should all be taken into account.

Productive hours have to be clearly justified and should match the underlying time records. If hours actually spent in productive tasks (as supported by time records) exceed the standard productive hours, the first shall be used for the calculation of the personnel costs, unless overtime is paid.

Particular cases:

– Teleworking: may be accepted if there is a system that allows the identification of the productive hours worked for the project.

– Overtime: may be accepted if there is a system that allows the identification of the productive hours worked for the project and is in conformity with the usual practices of the beneficiary.

– Sick leave: cannot be included in the working time.

Parental leave of personnel assigned to the action: the amount of this allowance may be an eligible cost, in proportion to the time dedicated to the project, provided that parental leave is mandatory under national law (*e.g. statutory maternity pay*). Costs for the advertising to recruit a new person are not eligible but, if it is necessary for the project to replace the person, the costs of the new person will be eligible under the normal requirements.

– Benefits in kind (company car, vouchers, etc.): may be accepted only if they are justified and in conformity with the usual practices of the beneficiary. Like all costs, they should fulfil the conditions of Article III.7.1 of GA.

– Redundancy costs are not eligible.

– PhD costs: eligible if they fulfil the conditions of Article III.7.1 of the GA.

– For public bodies, the costs of public officials paid directly from central government or local government budgets may also be considered as eligible costs if the other provisions of Article III.7 of GA are fulfilled. For more explanations concerning the case of personnel (resources) made available by third parties to a beneficiary, please see "special cases" under Article III.7.2 of the GA.

– The particular case of consultants:

Consultants are natural (physical) persons, working for one or more beneficiaries in a JU project. They may be either self-employed or working for a third party.

There are three possible ways of classifying the costs of consultants (in any event costs will ONLY be eligible if they fulfil the conditions listed in Article III.7 of GA):

1) They can be considered as personnel costs; regardless of whether the intra-muros consultants are self-employed or employed by a third party, if the following cumulative criteria are fulfilled:

- The beneficiary has a contract to engage a physical person to work for it and some of that work involves tasks to be carried out under the JU project,
- The physical person must work under the instructions of the beneficiary (i.e. the work is decided, designed and supervised by the beneficiary),
- The physical person must work in the premises of the beneficiary (except in the case of teleworking agreed between both parties),
- The result of the work belongs to the beneficiary,
- The costs of employing the consultant are not significantly different from the personnel costs of employees of the same category working under labour law contract for the beneficiary,
- Travel and subsistence costs related to such consultants' participation in project meetings or other travel relating to the project would have to be paid directly by the beneficiary in order to be eligible.

2) Costs related to consultants can be considered as subcontracting costs if the beneficiary has to enter into a subcontract to hire these consultants to perform part of the work to be carried out under the project and the conditions set out in the Grant Agreement, in particular if the provisions of Article III.6 of GA relating to subcontracting are fulfilled. In these cases, the beneficiary's control over the work to be performed by the subcontractor is determined by the nature of the subcontract. The subcontractor does not usually work on the premises of the beneficiary and the terms of the work are not so closely carried out under the direct instruction of the beneficiary.

3) The last possibility is that the consultant participates in the project as a beneficiary (either as a physical person or possibly as an SME, if it meets the definition).

– The particular case of physical persons: their legal status could be assimilated to that of an SME, if they comply with the requirements set by Commission Recommendation 2003/361/EC in the version of 6 May 2003. Their costs are eligible if they fulfil the conditions of Article III.7 of GA.

– Eligibility of costs relating to personnel costs of owners of SME:

Two possible cases may arise here: either the owner receives a salary from the SME, in which case the salary is an eligible cost, or the owner does not receive a salary for its work for the SME, and therefore no record of its personnel costs can be found in the accounts of the company.

(b) Travel and subsistence allowances for staff taking part in the project

– As a general rule, actual travel and related subsistence costs relating to the project may be considered as direct eligible costs, providing they comply with the beneficiary's usual practices and are adequately recorded, like any other cost.

Example:

Beneficiary A declares the flight costs of a project meeting for a member of its staff travelling in business class:

- If the usual practice of the beneficiary is to pay for business class tickets for staff of the same category, then the cost of the business class ticket will be eligible under the GA

- *If the usual practice of the beneficiary is to pay for economy class tickets for staff of the same category, then the cost of the business class ticket will not be eligible under the GA*

– If such costs are reimbursed on the basis of a lump sum/or *per diem* payment, it is the lump sum/or per diem and not the actual costs that are considered to be eligible costs.

– Where it is the usual practice of the beneficiary to consider these costs as indirect costs, they cannot be charged as direct eligible costs, but only as indirect costs.

(c) The purchase cost of durable equipment

– Only equipment purchased for the purposes of carrying out the action can be charged as direct costs. To be considered as eligible, a cost must be determined according to the beneficiary's usual accounting practice and each beneficiary must apply its usual depreciation system for durable equipment. Depreciation is charged in each relevant periodic report. Depreciated costs of equipment can never exceed the purchase price of the equipment.

– Depreciation costs for equipment used for the project but bought before the start of the project are eligible under the conditions mentioned in Article III.7.1 of GA above.

– Only the portion of the equipment used on the project may be charged. The amount of use (percentage used and time) must be auditable.

Cost for equipment can include all those costs necessary for the asset to be in working condition for its intended use (site preparation, delivery and handling, installation, etc.)

– **Subcontracting vs. durable equipment/consumables:** sometimes the purchase of equipment or consumables is associated with the provision of a service. Depending on the nature of the services provided, they may be considered subcontracts or part of the equipment purchase. If the service is part of the "package" of equipment purchase then it will be considered to be part of the equipment purchase. It may also depend on the consideration of these costs in the accounts of the beneficiary.

– Financial leasing with the option to buy durable equipment shall be charged, in accordance with the beneficiaries' own accounting practices. However, in order to comply with the principle of sound financial management, the cost claimed for durable equipment which is leased with an option to buy cannot exceed the costs that would have been incurred if the equipment had been purchased and depreciated under normal practices.

- Operational leasing (renting): in this case, there is no possibility to buy the equipment. There is no depreciation involved (as the item is still the property of the leasing firm) but the costs are eligible if this follows the beneficiary's normal practices and does not exceed the costs of purchase of the equipment.

In both cases, if the beneficiary does not use the equipment solely for the purposes of the project, only a proportionate part of the "working time" (i.e. that part used for the project) may be charged.

– Where it is the usual practice of the beneficiary to consider durable equipment costs (of some of them) as indirect costs; those costs cannot be charged as direct costs, but as indirect costs.

(d) The costs of consumables and supplies provided they are identifiable and assigned to the project:

– Any consumables necessary for the implementation of the project may be considered as direct eligible costs.

– Where it is the usual practice of the beneficiary to consider consumable costs (or some of them) as indirect costs, those costs cannot be charged as direct costs, but as indirect costs.

– Consumables are only eligible costs under the project if bought after the start date of the project.

(e) Subcontracting

The costs of subcontracting are a direct eligible cost. The definition of subcontracting is given in Article III.6 of GA.

(f) Certificate on the financial statements

Costs incurred for the certificates on the financial statements constitute eligible direct costs. Nevertheless, if the beneficiary decides to submit a certificate voluntarily or if the CFS is not required by the GA, the costs of the CFS will not be eligible, since these costs are not considered as necessary.

2. Indirect costs

Indirect costs are all those eligible costs which cannot be identified by the beneficiary as being directly attributed to the project, but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project.

Indirect costs, also called overheads, are all the structural and support costs of an administrative, technical and logistical nature which are cross-cutting for the operation of the beneficiary body's various activities and cannot therefore be attributed in full to the project.

The nature of an indirect cost is such that it is not possible, or at least not feasible, to measure directly how much of the cost is attributable to a single cost objective.

Example:

Overheads comprise costs connected with infrastructures and the general operation of the organisation such as hiring or depreciation of buildings and plant, water/gas/electricity, maintenance, insurance, supplies and petty office equipment, communication and connection

costs, postage, etc. and costs connected with horizontal services such as administrative and financial management, human resources, training, legal advice, documentation, etc..

Indirect costs must be in accordance with the normal accounting practices of the beneficiary and should be extracted from or reconciled with the official accounts.

When the accounting system of the beneficiary includes overhead costs which are not eligible under the GA, these costs must be removed when submitting financial reports.

Method of calculation of indirect costs:

According to Article III.8.2 of GA indirect costs incurred in carrying out the project are eligible for a flat-rate funding of 20% of the total direct eligible costs (minus subcontracting and third party costs not incurred on the premises of the beneficiary).

An exception to the above paragraph is that in the GA there is Special clause no 3 that foresees the possibility for certain beneficiaries to have an overheads flat rate of less than 20%.

The base of calculation is the total direct eligible costs of the beneficiary, excluding the costs for subcontracting and the costs of resources made available by third parties that are not used on the premises of the beneficiary. In both cases, the overheads (electricity, supply, etc.) are not incurred by the beneficiary but by the subcontractor or the third party.

Example: calculation of indirect costs:

Personnel 1,000,000

Subcontracting 100,000

Researcher from a third university who works in his university 20,000

Researcher from a third university who works in the premises of the beneficiary 15,000

Travel cost 5,000

Equipment 50,000

Total of direct costs 1,190,000

Calculation of indirect costs:

*1,190,000 – 100,000 (subcontracting) -20,000 (researcher who does not work in the premises of the beneficiary) = 1,070,000 * 0,2¹² = 214,000 €*

Article III.9 of GA – Receipts of the project

The JU financial contribution may not have the purpose or effect of producing a profit for the beneficiaries. For this reason, the total requested JU funding plus receipts cannot exceed the total eligible costs.

If Total JU contribution + receipts ≤ total eligible costs = No reduction of JU contribution.

Profit must be assessed at the level of the beneficiary.

¹² For this example it is assumed a 20% flat rate for the calculation of indirect costs.

As a consequence, since the JU financial contribution is calculated, among other criteria, on the basis of a provisional budget and according to the maximum reimbursement rate of eligible costs, this provisional budget must be composed of estimated eligible costs as well as of **estimated receipts** (if they can be estimated in advance).

Three kinds of receipts must be taken into consideration:

- Financial transfers or their equivalent to the beneficiary from third parties;
- Contributions in kind from third parties
- Income generated by the project.

a) In the first two cases (financial transfers or contributions in kind), there are two cumulative conditions to be fulfilled in order to consider these endowments as receipts of the project, as foreseen in Article III.9 of Annex II (General Conditions) to GA :

- If the contribution made by a third party is **allocated to the beneficiary specifically for use on the project**, the resources must be declared as receipts of the project in the beneficiary's Financial Statement (Form C). However, if the use of these contributions is at the discretion of the beneficiary they may be considered as eligible costs of the project but are not to be considered as receipts.

Example:

A university professor whose costs are charged by the university in the GA, but whose salary is paid by the Ministry. This contribution in kind from a third party (the Ministry) is not to be considered a receipt, unless the professor has been specifically detached by the Ministry to the university to work for the project in question. In other words, if the University is free to decide the allocation of the professor's work, then his/her contribution is assimilated to an "own resource" of the university, and it is not a receipt.

In any case where contributions from third parties are used by the beneficiary for the project, the latter is required to inform the third party of this use, in accordance with the national legislation or practice in force.

b) Any income generated by the project itself, including the sale of assets bought for the project (limited to the initial cost of purchase) is considered as a receipt of the project (e.g. admission fee to a conference carried out by the consortium, sale of the proceedings of such a conference, sale of equipment bought for the project, etc.).

By derogation to the above-mentioned principle, income generated in using the foreground resulting from the project is not considered as a receipt. The use of the foreground resulting from the project is often the main objective of any project supported by a JU financial contribution, and therefore considering it a receipt could penalise it.

In most cases, therefore, the receipts would not have an impact on the JU contribution, as long as their amount does not exceed the difference between the eligible costs of the project and the JU contribution provided:

Eligible costs: 100, JU contribution: 16.7¹³, receipts: 83.3 => no impact

Eligible costs: 100, JU contribution: 16.7, receipts: 20 => no impact

Eligible costs: 100, JU contribution: 16.7, receipts: 90 => the JU contribution will be reduced to 10

¹³ The JU funding percentage is decided on an annual basis by the ARTEMIS Public Authorities Board and published in the Call.

Receipts are to be taken into account at the moment of the final payment (see Article III.10.3 of GA).

Example:

Beneficiary X with total eligible costs in a project of: 2994

*JU contribution: $2994 * 16.7\% = 500$*

Receipts:

- National grant to the beneficiary for the work in the project: 200

- Support from industrial sponsor for the work in the project: 200

- Fees charged to participants in a seminar at the end of the project: 50

Total costs= 2994

Total receipts= 450

JU contribution = $500 + \text{total receipts (450)} = 950$ which is below the total costs of the beneficiary, therefore no change to the JU contribution

Contributions from one beneficiary to another within the same project are not considered as receipts. A receipt is a contribution from a third party to the project. Therefore, if one beneficiary funds another beneficiary in the same GA to help it carry out work, this will not be considered a receipt, as it is received from a beneficiary, and not from a third party.

Beneficiaries are required to include the receipts received in the financial statements (Form C) corresponding to the reporting period. They will be taken into account when calculating the final payment (i.e. after the end of the project) and then the potential reduction of the JU contribution may take place.

Article III.10 of GA – Joint Undertaking's financial contribution

1. Joint Undertaking's financial contribution in the form of reimbursement of eligible costs

Principles of calculation of the JU contribution:

- The JU contribution shall be based on the accepted costs of each beneficiary.
- The JU contribution cannot give rise to any profit for any beneficiary.
- For each beneficiary, the JU contribution cannot exceed the eligible costs minus the receipts for the project.
- The total amount of payments by the JU to each beneficiary shall not exceed in any circumstances the maximum amount of the JU contribution referred to in Article 5.

Example:

<i>Beneficiary n° 1</i>	<i>Activities Cost accepted (Direct + indirect) (EUR)</i>	<i>Cost reimbursed (EUR)</i>
<i>Total</i>	<i>748,503</i>	<i>125,000</i>
<i>Receipts</i>		<i>25,000</i>
<i>JU contribution</i>		<i>125,000*</i>

** If JU rate of 16.7%*

The JU contribution does not change as the addition of the JU contribution (EUR 125,000) + the receipts of the project (EUR 25,000) is less than the total cost of the project for the beneficiary (EUR 748,503).

2. Beneficiaries with cost incurred in relation to the project but not JU contribution (e.g. usually from third countries)

In the GA, there is a Special clause no 4 about the Beneficiaries with costs incurred in relation to the project but not JU contribution (e.g. usually from third countries). The costs incurred by these beneficiaries shall not be taken into consideration for determining the Joint Undertaking financial contribution and they need not submit the reports mentioned in Article III.3.2 and are not subject to financial audits and controls referred to in Article II.13.

Article III.11 of GA – Interest yielded by the pre-financing provided by the Joint Undertaking

Any amount of interest earned from pre-financing exceeding EUR 50,000¹⁴ by the entity receiving pre-financing must be taken into account in determining the final JU contribution.

When the amount of the pre-financing is less than this amount, there is no need to declare the interest generated by that pre-financing.

This means that as long as the pre-financing remains in the beneficiary's bank account any interest generated by it remains the property of the Joint Undertaking.

Besides:

– **The pre-financing will remain the property of the Joint Undertaking until the last payment.**

– **There is only one single pre-financing to each beneficiary per project, paid usually within 45 days following the entry into force of the GA. Therefore, the rules concerning interest apply only to that single pre-financing, and not to interim payments.**

The beneficiaries shall inform the Joint Undertaking of the amount of any interest yielded by the pre-financing it has received from the Joint Undertaking at each reporting period, when the pre-financing received for the project exceeds EUR 50,000.

The amount of interest declared by the beneficiary should be mentioned in its financial statements (Form C) and will be offset against the subsequent payment.

Example:

3-year project:

Beneficiary A without a corresponding national grant agreement receives a single pre-financing of EUR 1,600,000 for the whole duration of the project. At the end of the first reporting period the amount held by the beneficiary has earned interest of:

- EUR 11,200 for the EUR 1, 600,000.

At the end of the reporting period the beneficiary has to declare this amount of EUR 11,200 as interest yielded by the pre-financing in its financial statement (Form C). It will be deducted from the subsequent interim payment.

¹⁴ See Article 103 of the ARTEMIS financial rules.

The requirements concerning the bank account for the project can be found in the section dedicated to Article 5.3 and 5.4 in this Guide.

ANNEX IV of GA. SPECIFIC CONDITIONS FOR BENEFICIARIES HAVING CONCLUDED A CORRESPONDING NATIONAL GRANT AGREEMENT

Beneficiaries with a corresponding national grant agreement (NGA) shall, in general, follow the rules laid down in their NGA concerning financial issues. Regarding the JU contribution, they shall also respect the provisions set out in Annex IV of the JU grant agreement (GA).

Article IV.2 of GA – Payment modalities

In general, payments by the JU shall take place, subject to the provisions of Article II.4, within 30 days following reception by the JU of the certification on the acceptance of costs by the respective national funding authority (NFA) and, if applicable, on the corresponding payment to the beneficiary by the NFA according to the provisions of the NGA.

The following types of payments are foreseen:

Article IV.2.2.a) – Pre-financing at the start of the project

For more details concerning pre-financing, please refer to Articles 5 and 6 of the core grant agreement and the corresponding sections in this document.

Article IV.2.2.b) – Interim payments and final payment

The Joint Undertaking shall make interim payments and final payment of its financial contribution corresponding to a percentage¹⁵ of the eligible costs accepted by the respective NFA pursuant to the corresponding NGA¹⁶, taking into account any adjustment needed.

The total payment of the JU to a project is limited to the maximum JU contribution as defined in Article 5 of GA. If the total amount already paid would prove to be higher than the JU contribution accepted, the Joint Undertaking will recover the difference.

Article IV.2.1 and 3 – Interests on late payments and Conversion rates

Payments by the JU shall be made in EUR. On expiry of the time-limit for payments, the Joint Undertaking shall pay interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in EUR, plus three and a half points.

The reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union.

¹⁵ Normally the JU funding percentage published in the Call (e.g. 16.7% for Call 2008).

¹⁶ Acceptance of costs by the NFA may also be accompanied by a corresponding payment of national financial contribution in the terms specified in the NGA.

This provision shall not apply to beneficiaries that are public bodies of the Member States of the European Union.

Interest on late payment shall cover the period from the final date of the period for payment, exclusive, up to the date when the payment is debited to the Joint Undertaking's account, inclusive.

Any such interest payment is not considered as part of the Joint Undertaking's financial contribution.

Article IV.3 of GA – Subcontracting

Article IV.3.1 – Conditions for subcontracting

The general rule is that beneficiaries shall implement the project and shall have the necessary resources to that end. However, when the GA provides for it, it is accepted that certain parts of the work may be subcontracted.

Where under the terms and conditions laid down by the respective NFAs, the beneficiary enters into a subcontract to carry out parts of the tasks related to the project, it remains bound by its obligations to the Joint Undertaking and the other beneficiaries under the GA and retains sole responsibility for compliance with the provisions of this GA.

A subcontractor is not a beneficiary of the GA, and is not a signatory to it. It appears in the project because one of the beneficiaries appeals to its services to carry out part of the work, usually for specialised work that the beneficiary cannot carry out itself or because it is more efficient to use the services of a specialised organisation (e.g. for setting up a website for the project).

Subcontracting between beneficiaries in the same GA should be avoided. All participants by definition contribute to and are interested in the project, and where one participant needs the services of another in order to perform its part of the work, it is the second participant who should declare and charge the costs for that work. In the Project Agreement they may define provisions to cover those costs that are not reimbursed by the JU.

Article IV.3.2 – Tasks which can be subcontracted and conditions

Subcontracting may concern only certain parts of the project, as the implementation of the project lies with the participants. Therefore, the subcontracted parts should in principle not be "core" parts of the project work. In cases where it is proposed to subcontract substantial/core parts of the work, those tasks should be clearly identified in the Technical Annex and this question should be carefully discussed with and approved by the Joint Undertaking. Usually in such cases, the intended subcontractor could instead become a beneficiary, or the consortium should find another beneficiary able to perform that part of the work.

Coordination tasks of the coordinator such as the review of reports and others tasks mentioned under Article II.2.3 to GA cannot be subcontracted. Other project management activities could be subcontracted under the conditions established for subcontracting.

The beneficiary remains responsible for all its rights and obligations under the GA, including the tasks carried out by a subcontractor. The beneficiary must ensure that the intellectual property that may be generated by a subcontractor reverts to the beneficiary so that it can meet its obligations towards the other beneficiaries in the GA.

Any bilateral agreement between subcontractor and beneficiary should include this, as well as the respect of the obligations mentioned in Articles II.7, II.8, II.9, II.10 and II.13 of the GA which concern, among others, obligations related to information and communication of data, and financial audits and controls.

Details to be included in the Technical Annex and selection of subcontractors

The need for a subcontract must be detailed and justified in the Technical Annex, following the principles mentioned above and taking into account the specific characteristics of the project.

It is **the work (the tasks)** to be performed by a subcontractor that has to be identified in the Technical Annex. The identity of the subcontractors does not need to be indicated in the Technical Annex. However, if the identity of the subcontractor is indicated, the beneficiaries are nevertheless bound to demonstrate that the selection of the subcontractor complied with the principles laid down by the respective NFA.

Article IV.4 of GA – Eligible costs

Principle

The maximum JU grant is based on an estimation of eligible costs prepared by the partners and negotiated with the Joint Undertaking (see Article 5 of GA).

Eligible costs shall be determined by the respective NFAs and normally follow national rules. However, value added tax **is not an eligible cost** for Joint Undertaking's funding, even if it is eligible under national rules.

Article IV.5 of GA – Joint Undertaking's financial contribution

Joint Undertaking's financial contribution in the form of reimbursement of eligible costs

The principles of calculation of the JU contribution are:

- The JU contribution shall be calculated on the basis of the eligible costs of the beneficiaries as defined by the respective NFAs.
- The JU contribution cannot give rise to any profit for any beneficiary.
- For each beneficiary, the JU contribution cannot exceed the eligible costs minus their receipts for the project.

- The total amount of payments by the JU shall not exceed in any circumstances the maximum amount of the JU contribution referred to in Article 5.

Example:

	<i>Total eligible Cost accepted by NFA (EUR)</i>	<i>Cost reimbursed by NFA (EUR)</i>	<i>Other receipts</i>	<i>JU contribution</i>
<i>Beneficiary1</i>	<i>1,000,000</i>	<i>125,000</i>	<i>25,000¹⁷</i>	<i>167,000*</i>

* If rate of 16.7%

For Beneficiary 1 the JU contribution does not need to be modified as the addition of the JU contribution (EUR 167,000) + the national contribution (EUR 125,000) + the receipts of the project (EUR 25,000) is less than the total cost of the project for the beneficiary (EUR 1,000,000) and therefore does not give rise to any profit

It is important to remind that the Joint Undertaking may also reduce the grant initially provided in case of a reduction in eligible costs effected under the terms of the corresponding national grant agreement.

¹⁷ In any case, the amount of receipts will be certified to the JU by the National Funding Authorities.