Ownership control assessment Tutorial

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Q&As via Sli.do: For remote participants

EDF Info Days 2023
June 28 - June 29, 2023 | Brussels, Belgium

INFO DAYS 2023
28 - 29 JUNE
INFORMATION DAY AND NETWORKING EVENT

DAY 1
9.30 AM - 6.00 PM (CEST)

PASSCODE: EDF-2023
PASSCODE: EDF-2023

Q&As via Sli.do: For participants in the room

ASK A QUESTION

UPVOTE A QUESTION
Agenda
Ownership Control assessment (OCA)

- Legal basis
- OCA eligibility conditions
- OCA process
- Definition of control
- Ownership and control analysis
- At which level must control be assessed
- Declaration of ownership and control
- Key messages
- Reference documents
1. Regulation (EU) 2021/697 establishing EDF, Art.9, restricting participation to all actions to:
   - participants that are not subject to direct or indirect control by non-eligible countries/entities/nationals

2. Guidance for Participation in Digital Europe Programme (DEP), Horizon Europe (HE) and European Defence Fund (EDF) restricted calls.


OCA will be done for all entities except for:
   i. Entities validated as public bodies, considered to be controlled by their country.
   ii. Entities which self-declare to be controlled by ineligible country/entity/national.
OCA eligibility conditions

- **EU-control derogation**: participants subject to control by ineligible country/entity/national may still participate as long as they fulfil certain conditions, ascertained in a form of a guarantee approved by the Member State in which they are established.

- **Ownership control eligibility conditions** must be fulfilled not only at proposal submission and grant signature, but **throughout the entire action duration**.

- **Any changes** in the control ownership status that occur during the project **must be immediately notified by the coordinator** to the granting authority **together with an updated declaration** of ownership control.

- **New participants** joining the action later on must meet as well the ownership control eligibility conditions.
OCA process

- **Subject to ownership control assessment**
  Eligibility criteria for all participants in a project selected for funding
  *e.g. beneficiaries, affiliated entities, subcontractors and associated partners*

- **Registration in the Participant Register** *(e.g. obtaining a PIC number)*
  Required by all participants at the time of the application

- **Self-assessment** *(“Declaration of ownership and control”)*
  Must be annexed to the application form and filled in by all participants in the proposal
  Validated public bodies exempted from submitting declarations

- **Supporting documents**
  Must be submitted upon request of CVS through My Task notification in the Participant Register
Organisations have to register in the Participant Register and obtain a PIC (Participant Identification Code).

Based on supporting documents through My Task notification.

DG DEFIS

Communication with CVS only via Participant Register.
OCA process
How to register in the Participant Register
(at proposal stage)

Participant Register

If you want to participate in a call for proposals or in a call for tenders with eSubmission, your organisation needs to be registered and have a 9-digit Participant Identification Code (PIC). Please quote your PIC in all correspondence with the Commission.

The register contains all participants of EU programmes.

Is your organisation already registered?
PIC search

Please check whether your organisation has already been registered. If so, no need to register it again.

Register your organisation

To register your organisation or as a natural person, you need to login into the Portal or, if you are a new user, create your account.

Check what information you need to register in the Online Manual - and keep it to hand during the registration procedure. To start registration, click on the button below.

Search for a registered organisation

New registration
OCA process
How to register in the Participant Register
(at proposal stage)

Identification (duplicate check)
(e.g. Legal name, VAT number)

Organisation data

Legal information

Authorised users
(e.g. Name, e-mail address of the self-registrant and the back-up)

Registration completed

New Participant Identification Code (PIC) in a “declared” status

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OCA process
Requests in Participant Register

Exchange messages with the Central Validation Service.

* Ownership and Control - Request for documents

Dear Participant, We are contacting...

Ownership control

02/09/2022

View
OCA process
Requests in Participant Register

Task Centre

Filter results
2 tasks found

Filter
Selected criteria
Search: 885167584

Request for ownership control supporting documents
PIC: 885167584
Created on: 02/09/2022, 05:17:39 PM
OCA process
Lost access to the PIC account

- **Lost access to a non-valid PIC**
  - In case the self-registrant left the organisation and no one has access to the non-valid PIC, a new PIC needs to be created and the CVS has to be informed via the messaging section of the new PIC account.

- **Lost access to a valid PIC**
  - If the LEAR is not available anymore and there are no Account Administrators, a new LEAR needs to be appointed via LEAR recovery procedure:

  [https://ec.europa.eu/research/participants/urf/lear-recovery/request/](https://ec.europa.eu/research/participants/urf/lear-recovery/request/)
**Definition of control**

**EU Guidance**

Participation in DEP, HE, EDF and CEF-DIG restricted calls

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**DEFINITION of control**

The possibility to exercise **decisive influence** directly or indirectly through one or more intermediate entities, ‘de jure’ or ‘de facto’ on strategic business decisions (such as appointment and removal of senior management, budget, investments and business plans, market-specific decisions, etc)

The fact that no influence is actually exercised is not relevant, as long as the possibility exists.

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**ASSESSMENT**

At the level of the **ultimate owners and all intermediate layers** (in case of indirect control)

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**ULTIMATE OWNERS**

Except in the case of **public bodies**, are always the natural persons

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**ELEMENTS TO TAKE INTO ACCOUNT**

Ownership structure and specific rights, corporate governance, commercial links conferring control, financial links conferring control, other sources of control
Ownership and control analysis

- Identification of all **direct and indirect shareholders** up to the **ultimate owners**

- Identification of body(ies) empowered to take **strategic decisions** i.e. **general assembly of shareholders** and/or **supervisory board/board of directors**, etc.

- Analysis of rules for **appointment/election/removal** of governing bodies as well as their actual composition (e.g. to identify if any shareholder is entitled to nominate a board representative and/or has majority seats in the board)

- Analysis of **quorums and majority required** for adoption of strategic decisions to establish if:
  - any shareholder can take strategic decisions either by having the required majorities to approve such decisions or to block such decisions through veto or other specific rights even if he cannot impose such decisions on his own, etc.

- Analysis of possible influence on strategic decisions through **commercial links**, **financial links** or other means, etc.
Ownership and control analysis

1. If all (100%) direct/indirect shareholders are EU nationals and/or EU public bodies =>

2. If all (100%) direct/indirect shareholders are non-EU nationals and/or non-EU public bodies =>

3. If direct shareholders include EU/non-EU nationals and/or (EU/non-EU) legal entities:
   a. If control by EU national(s) or EU public body (ies) established based on governance of your organization =>
   b. If control by non-EU national(s) or non-EU public body(ies) based on governance of your organization =>
   c. If control by EU/non-EU legal entity established based on governance => further analysis on the controlling legal entity’s ownership and governance is required until ultimate level of ownership and control => declaration “control/no control” depending on the outcome;

4. Geographical mapping up to the ultimate owners is important to identify the presence/control by non-EU shareholders.
At which level must the control be assessed?

- Needs to be assessed at the level of the **ultimate owners**
- Ultimate owners are always **natural persons** (except in cases of public entities) who ultimately control the entity
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Company established outside the EU
Company established in the EU
Ultimate owner non-EU national
Ultimate owner EU national

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# Declaration of ownership and control (DoC)

The DoC should include the below information for your organisation and its direct and indirect controlling shareholders.

## Elements for assessment

<table>
<thead>
<tr>
<th>Ownership structure</th>
<th>Corporate governance</th>
<th>Commercial or financial links</th>
</tr>
</thead>
<tbody>
<tr>
<td>- identification of all shareholders with percentage of shares/voting rights</td>
<td>- rights attached to the shares detained; specific veto rights</td>
<td>- Economic or financial dependence on third-country direct or indirect shareholder</td>
</tr>
<tr>
<td>- information on their country of establishment (if legal entities) or nationality (if natural persons)</td>
<td>- decision-making bodies, their composition; the decision-making procedures and quorums required</td>
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</tbody>
</table>

## Information in DoC

- Graph visualising the complete ownership structure up to ultimate owners
- Documentary evidence demonstrating all direct and indirect shareholders e.g. commercial registry extracts: shareholders/members/partners registers shareholders agreements etc. with the exact allotment of shares/voting rights
- Documents evidencing nationality of ultimate owners
- Articles of association, Statutes, shareholders agreement, MoU among shareholders;
- Rules of decision-making procedures;
- Report/minutes of shareholders meetings, together with the attendance list identifying the present/represented shareholders and their respective votes
- Information on contractual relationships (cooperation agreements /contracts/ arrangements) which can give control
- Information on financial relationships (financing agreements/loans/financial guarantees etc.) which can give control

## Supporting documents/information

to be provided upon request from the Central Validation Service
Tips – Key Messages

Get familiar with the control definition in the Guidance for restricted calls.

Ownership control is assessed at all levels up to ultimate owners - identify all direct and indirect shareholders.

Extra attention to shareholders with right to nominate/appoint board members and/or having consent, pre-approval, veto rights on strategic decisions.

Nationality of board members is not decisive while the nationality of ultimate owners is.

Minority shareholders may sometimes have the possibility to control even if not imposing decisions alone but through veto/blocking rights.
Strategic decision may require approval of two or more EU and non-EU shareholders. This is a case of joint control i.e. control by ineligible country/entity/national is present.

In case of doubt, always consult your legal adviser before submitting your declaration of ownership control.

Be prepared to provide the correct supporting documents at CVS request in a timely manner.

Confidentiality treatment – all documents and information treated with confidentiality and in compliance with the EU Data Protection Regulation 2018/1725.

Communicate immediately to the GA any changes (direct or indirect) that could impact the ownership control requirements together with an updated declaration of ownership and control.
Ownership/Control assessment
Reference documents

- Guidance on ownership control restrictions for applicants: Guidance on restricted calls
- Online Manual, IT How to, IT and RES Helpdesk and specific FAQs on the Funding and Tenders Portal: https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/support/support
- Legal notice on the Funding and Tenders Portal (terms and conditions, data protection): https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/support/legalnotice
Q&A Time!

- Scan the QR code
- Enter your name & event passcode
- Ask a question!

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ASK A QUESTION

UPVOTE A QUESTION

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QUESTIONS?

MANY THANKS FOR YOUR ATTENTION