

# Recht, Finanzen und Internationales EU-Referententreffen 2022, Dresden

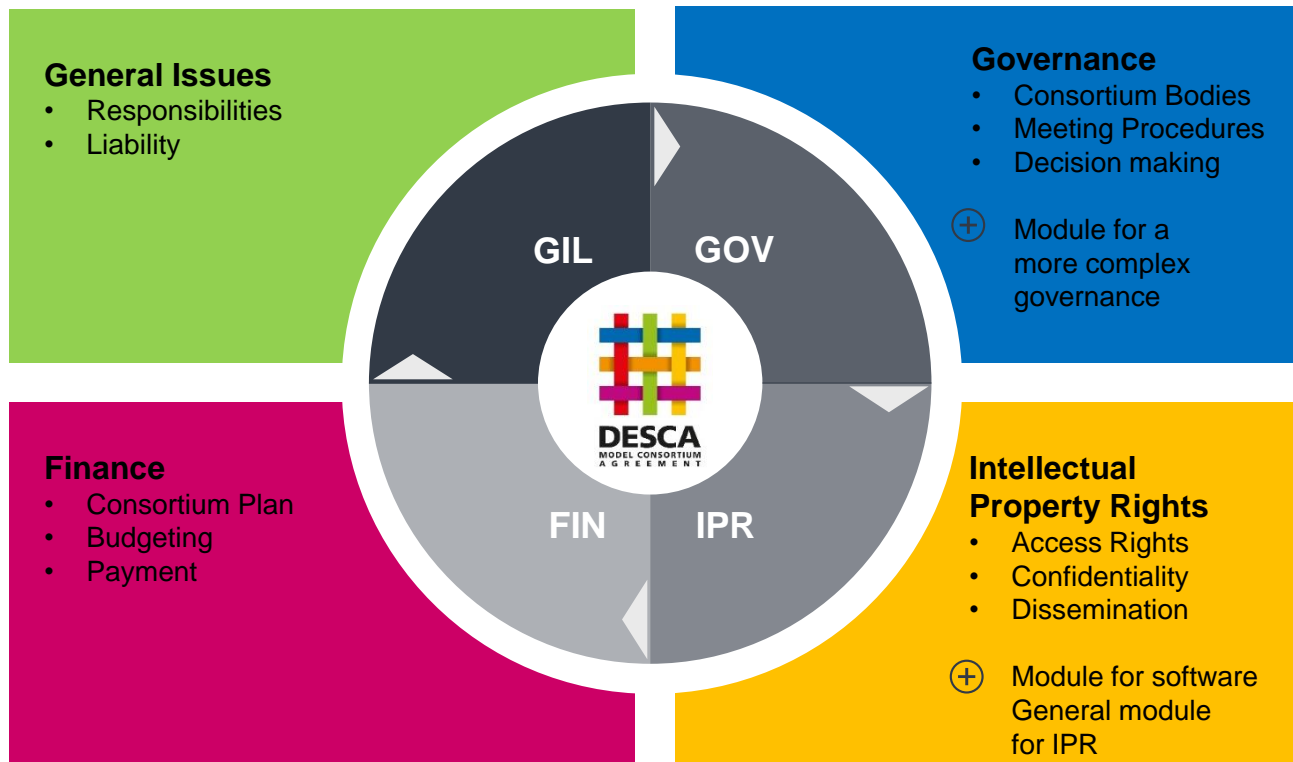
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## DESCA

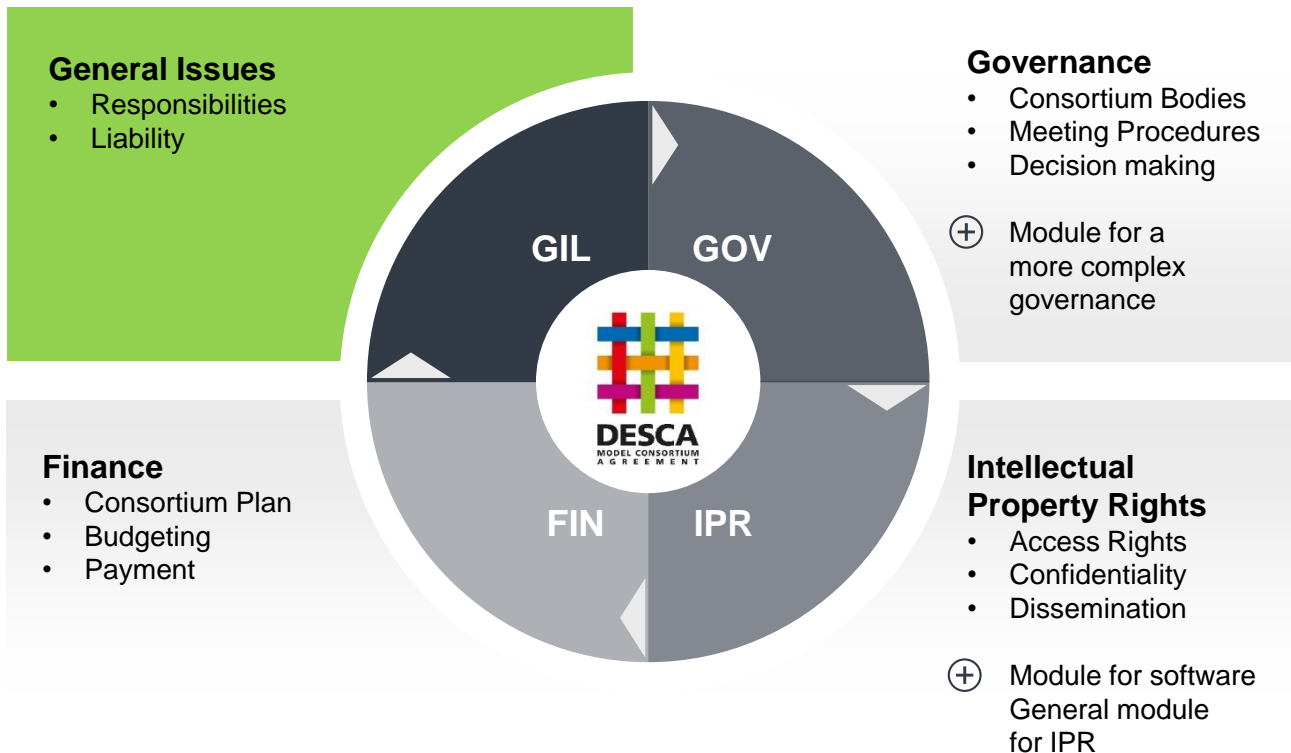
Changes of DESCA HE in comparison to DESCA H2020

Current Status of DRAFT DESCA HE AP

# DESCA HE – Core group subgroups



# DESCA update - General Issues and Liability (GIL)



# Updated terminology

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- Terminology aligned with new terminology of Horizon Europe
- “Affiliated Entities” are the former “ Linked Third Parties” (see MGA Article 2 Definitions)
- “Entities under the same control”: defined in MGA Annex 5 (p. 101)
- “Participants”: defined in MGA Article 2 Definitions
- “Other Participants” see MGA Article 9

## Section 4: Responsibilities of Parties

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- **4.4 Specific responsibilities regarding data protection**
  - New section added
  - Represents a minimum statement regarding GDPR
  - When necessary, a separate agreement concerning data processing, data sharing and/or joint controlling should be made

## Section 5: Liability towards each other

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- **5.2 Limitation of contractual liability**
  - Wording and structure adjusted
  - Options for different interests are provided as before; to be modified by each Consortium for each project
- **New Option 5.5: Export control**
  - An option for a new Section 5.5 has been added for consideration to be used for projects in which import or export control is relevant

## Section 11: Miscellaneous

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- **11.3 Formal and written notices**
  - Distinction between formal and written notices has been clarified
- **11.8 Settlement of disputes**
  - Court litigation added as a new option
- **Optional 11.9 regarding anti-corruption**
  - Optional text regarding anti-corruption added to the elucidation



# DESCA update – Governance (GOV)

## General Issues

- Responsibilities
- Liability

## Governance

- Consortium Bodies
- Meeting Procedures
- Decision making

⊕ Module for a more complex governance

## Finance

- Consortium Plan
- Budgeting
- Payment

## Intellectual Property Rights

- Access Rights
- Confidentiality
- Dissemination

⊕ Module for software  
General module for IPR



## Less complexity of structure, more details on decisions without a meeting

Minor changes in DESCA Horizon Europe as regards governance issues:

- Overall aim to make the text more user-friendly
- Less complex governance structure now set as default option
- More details on process for decisions without a meeting, requirement of explicit approval of 51 % of the parties (rather than the 2/3 majority of all parties required before) in order to have a more workable process

- **Use of the terms “Member” vs. “Party”:**
  - Approach: simplify wording, ensure consistency
  - Member: the person representing a Party in the General Assembly/Executive Board
  - Party: the legal entity participating in the project
  - As regards exercise of rights, focus on level of “Party”, not “Member”
- **E.g.: 6.3.4.1**

A Party ~~Member~~ which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision

# Option for easier signature of NDA with external experts



- **Optional 6.5 External Expert Advisory Board:**
  - New option, following Consultation Group suggestions: Explicit mandate for Coordinator to sign non-disclosure-agreement with the members of the External Expert Advisory Board on behalf of the consortium, NDA to be inserted as Annex

# DESCA update – Finance (FIN)

## General Issues

- Responsibilities
- Liability

## Governance

- Consortium Bodies
- Meeting Procedures
- Decision making

⊕ Module for a more complex governance

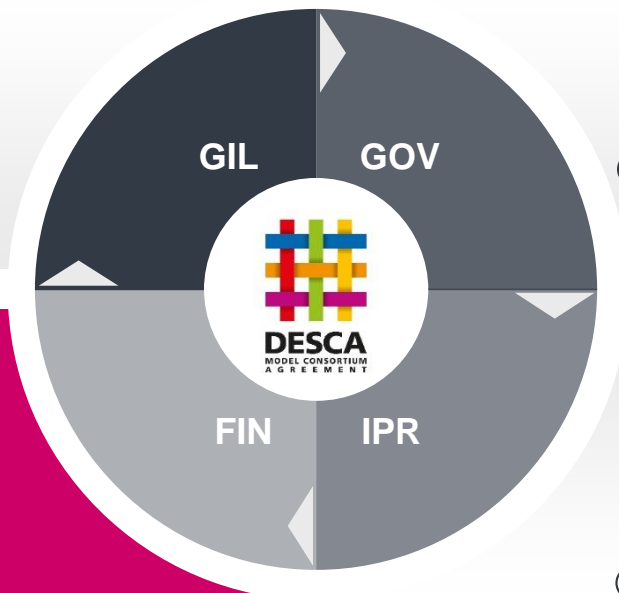
## Finance

- Consortium Plan
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## Section 7

### New excess payment clause 7.1.4

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#### **Reason:**

- For cases of overpayment in which the Mutual Insurance Mechanism does not intervene because the money is not due to the Granting Authority
- From the Commission's point of view, the distribution of funding among partners is an internal matter to be solved within the Consortium

#### **New clause:**

- Explicit contractual obligation to pay back money to the coordinator in case of overpayment
- Procedure to deal with cases of overpayment in which the Party is reluctant to pay back – The General Assembly decides on “Defaulting Party” status
- Aim: Fair distribution of financial risks, to bridge the budget gap until a refund takes place

## Section 7

### Further new elements

- **7.1.6 Termination of participation**
  - A Defaulting Party should bear costs occurring to the other Parties who perform the leaving Party's tasks. The General Assembly should decide on a procedure regarding any additional costs not covered by the Defaulting Party or the Mutual Insurance Mechanism
- **7.2.2 Payments**
  - The Coordinator is entitled to recover any payments paid to a Defaulting party except the costs already claimed by the Defaulting Party and accepted by the Granting Authority

## Section 7

### Guiding elucidations

- All Parties should provide their bank account data at signature of the CA and update it in case of changes (Section 7.1.1)
- The Consortium should decide how to deal with negative interest (Section 7.1.3)
- The Coordinator has to demonstrate that the payments were made in accordance with the Consortium Plan. It is good practice to reimburse amounts that will probably not be spent before the end of the project to allow for a timely redistribution and use of the budget (Section 7.1.4)
- Article 22.2 MGA covers the external liability of beneficiaries towards the Granting Authority in case of recoveries by the Granting Authority - not the internal liability among Parties within a Consortium (Section 7.1.6)
- The Coordinator has no obligation to advance any payments from his own resources (Section 7.2.2)



# DESCA update - Intellectual Property Rights (IPR)

## General Issues

- Responsibilities
- Liability

## Governance

- Consortium Bodies
- Meeting Procedures
- Decision making

⊕ Module for a more complex governance

## Finance

- Consortium Plan
- Budgeting
- Payment

## Intellectual Property Rights

- Access Rights
- Confidentiality
- Dissemination

⊕ Module for software  
General module for IPR



## Section 8: Results

- **8.2 Joint ownership**
  - Addition of *teaching activities* for the use of jointly owned Results
  - Elucidations address *non-commercial research* and aspects to be taken into account if the consortium wishes to define it
- **8.3.1 Transfer of own Results**
  - Now including jointly owned Results for clarification
- **8.4.2 Dissemination of own (including jointly owned) Results**
  - Addition of a new objection ground about Confidential Information in 8.4.2.2
  - Elucidations address the possibility of making a distinction between different forms of dissemination with different timeframes

## Section 9: Access Rights

- **9.4.1 Access Rights for Exploitation**
  - *Teaching purpose* added in Access Rights to Results for internal research in 9.4.1
  - Clarification on Access Rights to Background in the elucidations (9.4.2), to the effect that exploitation can be any activity outside of Implementation of the Action, including research on behalf of a third party, linked to the EC Model Grant Agreement
- **9.5 Access Rights for Entities under the same control and related Attachment 4**
  - Terminology clarification in the elucidations regarding entities under the same control
- **Module IPR SC on Software**
  - Insertion of an option for cases in which software is introduced under controlled license terms

DESCA AP Version is designed for projects in which Associated Partners have a major role and have been taken on board by all beneficiaries of the consortium. The Beneficiaries remain responsible towards the Granting Authority for the implementation of the project. The Beneficiaries have to make sure that certain obligations of the Grant Agreement and access rights of EU bodies are applicable to Associated Partners.

The DESCA Core Group (AP Subgroup) designed a first draft version which was sent to the DESCA Consultation Group and the Helmholtz Consortium Agreements Experts for feedback (deadline 08. June 2022).

The DESCA Subgroup is currently assessing the feedback received and will adapt the draft to be able to publish the first Version of the DESCA HE AP as soon as possible (approx. mid/end July 2022)

- The Commission will introduce further lump sum calls in 2022 and considers much wider use of lump sums for the Horizon Europe work programme 2023-2024, latest communication of the Commission indicates 20% of calls in the next WP will use lump sums.
- So far, neither the Commission nor we have the possibility to assess the whole lifecycle and especially the final reporting of a sufficient number of lump sum pilot projects.
- The Commission has published a quick guide and streamed lump sum events online during the last months:

<https://op.europa.eu/en/publication-detail/-/publication/cc123397-b6ea-11ec-b6f4-01aa75ed71a1/language-en/format-PDF/source-254704739>

<https://ec.europa.eu/research/participants/docs/h2020-funding-guide/other/event220407.htm>

<https://ec.europa.eu/research/participants/docs/h2020-funding-guide/other/event220519.htm>

- The DESCA Core Group will build on the experience made with the first lump sum grants and plans to introduce lump sum options once the Commission has provided more guidance and there is sufficient experience with the implementation of lump sums.

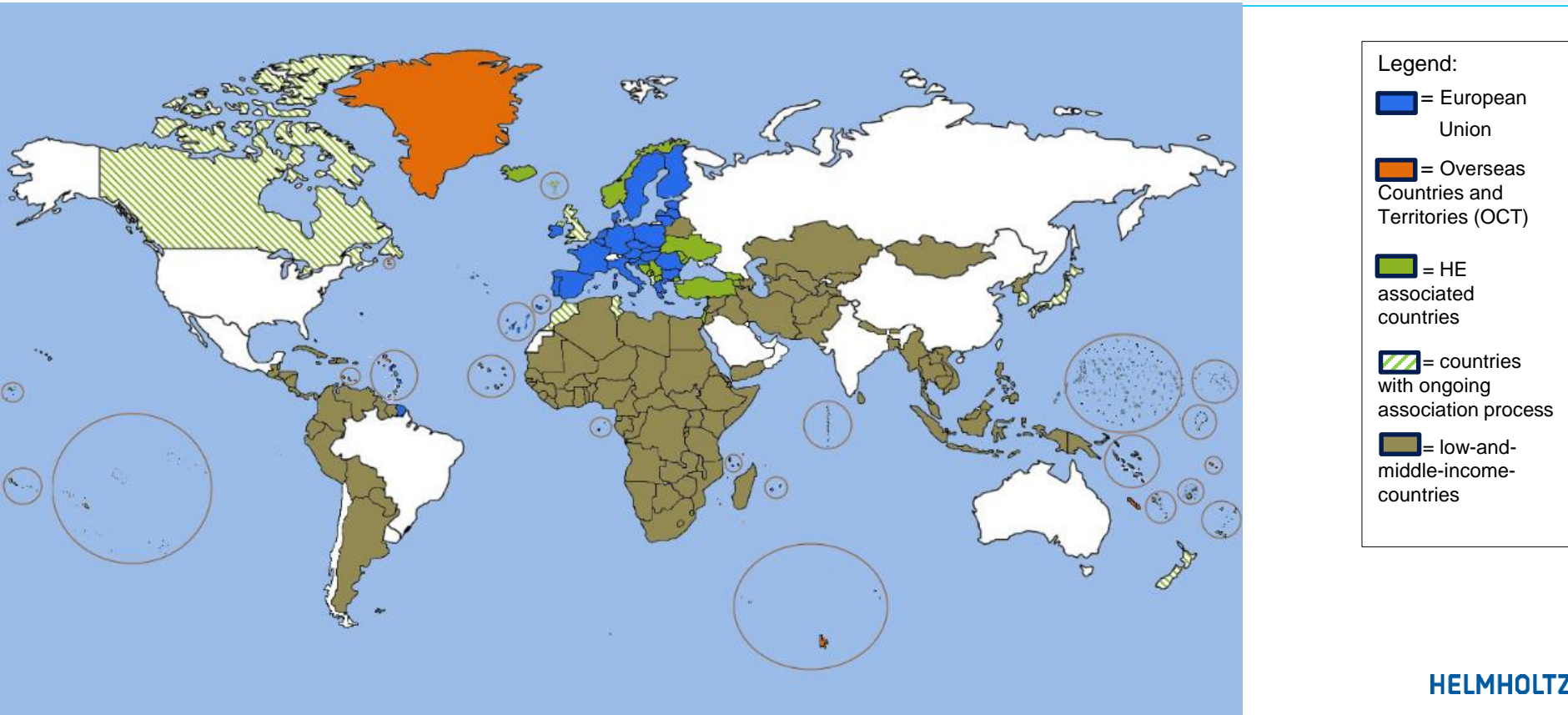
# Horizon Europe

Current status:

Horizon Europe Association Agreement

# A chance to collaborate globally

Countries eligible for funding + Countries with ongoing association process



# The Overseas Countries and Territories (OCT) linked to the Member States

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- Aruba
- The Azores
- Bonaire
- Canary Islands
- Curaçao
- French Guiana
- French Polynesia
- French Southern and Antarctic Territories
- Greenland
- Guadeloupe
- Madeira
- Martinique
- New Caledonia and Dependencies
- Saba
- Saint-Barthélemy
- Saint-Martin
- Saint Pierre and Miquelon
- Sint Eustatius
- Réunion,
- Wallis and Futuna Islands



# Low-to-middle-income-countries in Horizon Europe

■ Afghanistan	■ Central African Republic	■ Equatorial Guinea	■ Iran (Islamic Republic)	■ Libya	■ Niger	■ Somalia	■ Tunisia
■ Algeria	■ Chad	■ Eritrea	■ Iraq	■ Madagascar	■ Nigeria	■ South Africa	■ Turkmenistan
■ Angola	■ Colombia	■ Eswatini (old: Swaziland)	■ Jamaica	■ Malawi	■ Pakistan	■ South Sudan	■ Tuvalu
■ Argentina	■ Comoros	■ Ethiopia	■ Jordan	■ Malaysia	■ Palestine**	■ Sri Lanka	■ Uganda
■ Azerbaijan	■ Congo (Democratic People's Republic)	■ Fiji	■ Kazakhstan	■ Maldives	■ Panama	■ St. Lucia	■ Ukraine
■ Bangladesh	■ Congo (Republic)	■ Gabon	■ Kenya	■ Mali	■ Papua New Guinea	■ St. Vincent and the	■ Uzbekistan
■ Belarus	■ Costa Rica	■ Gambia	■ Kiribati	■ Marshall Islands	■ Paraguay	■ Genadines	■ Vanuatu
■ Belize	■ Côte d'Ivoire	■ Ghana	■ Korea (Democratic People's Republic)	■ Mauritania	■ Peru	■ Sudan	■ Venezuela
■ Benin	■ Cuba	■ Grenada	■ Kyrgyz Republic	■ Mauritius	■ Philippines	■ Suriname	■ Vietnam
■ Bhutan	■ Djibouti	■ Guatemala	■ Lao (Peopel's Democratic Republic)	■ Mirconesia	■ Rwanda	■ Syrian Arab Republic	■ Yemen Rep.
■ Bolivia	■ Dominica	■ Guinea	■ Lao (Peopel's Democratic Republic)	■ Mongolia	■ Samoa	■ Tajikistan	■ Zambia
■ Botswana	■ Dominican Republic	■ Guinea-Buissau	■ Lebanon	■ Morocco	■ Sao Tome and Principe	■ Tansania	■ Zimbabwe
■ Burkina Faso	■ Ecuador	■ Guyana	■ Lesotho	■ Mozambique	■ Senegal	■ Thailand	
■ Burindi	■ Egypt	■ Haiti	■ Liberia	■ Myanmar	■ Sierra Leone	■ Timor-Leste	
■ Cabo Verde	■ El Salvador	■ Honduras		■ Namibia	■ Solomon Islands	■ Togo	
■ Cambodia		■ Indonesia		■ Nepal		■ Tonga	
■ Cameroon				■ Nicaragua			

# Countries associated to Horizon Europe, Countries with ongoing Association processes, new worldwide possibilities

- Armenia
  - Bosnia and Herzegovina
  - Faroe Islands
  - Georgia
  - Iceland
  - Israel
  - Kosovo\*
  - Moldova
  - Montenegro
  - North Macedonia
  - Norway
  - Serbia
  - Turkey
  - Ukraine
  - Albania (signed)
  - Tunisia (signed)
  - United Kingdom
  - Morocco
  - Republic of Korea
  - Japan
  - Canada
  - New Zealand
- + Association of UK agreed in the EU-UK Trade deal
- + Association negotiations continue with Morocco
- + exploratory talks - new worldwide possibilities
- (not official yet - Singapore)

# UK – in the bleak midwinter

## Association or Plan B

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Assoziierung – Ursprünglich sollte eine Assoziierung im Schnellgang durch Annahme von Protokoll 1 zum Handels- und Kooperationsabkommen erfolgen.

Problem – Die UK wollen bestimmte Bereiche des Abkommens nicht anwenden und zudem durch ein geplantes Gesetz aushebeln – Die EU hat Vertragsverletzungsverfahren eingeleitet. Ein Kompromiss konnte trotz Vorschlägen von EU-Seite bislang nicht gefunden werden - Solange bleibt die Assoziierung auf Eis.

Letzter Stand – UK Forschungsminister warnt EU, dass eine Assoziierung bis Herbst/Winter 2022 erfolgen soll, da UK sonst ein eigenes Forschungsprogramm (Plan B) auflegen möchte.

Budget von Plan B unklar:

8,6 Mrd. Pfund (10,03 Mrd. €) Rücklage für Assoziierung

15 Mrd. Pfund (17,49 Mrd. €) Verbale Ankündigung UK Forschungsminister 8. Juni 2022

Inhalte:

Fokus verstärkt auf Innovation, Internationale Kooperation, Exzellenzanwerbung (Rivalität ERC)

# Lump sums pilots

Feedback from the Helmholtz Research Centers

# Lump sum projects

## Challenges

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### Costs

- More detailed budget planning at proposal stage based on actual costs (spending) and not average costs.
- Personnel cost categories of budget template do not fit to existing personnel cost categories of beneficiaries – adaptation needed to fill in template.
- Budget cuts in Grant Preparation Phase – restructuring necessary.
- Low success rate even for second stage in two stage-procedures – not adequate with regard to effort at proposal stage.

### WP Management

- Splitting up tasks into more work packages to reduce dependency between work packages and partners involved in WP (e.g. 8 WP → 18 WP).
- Budget must be linked to WP and tasks.

# Lump sum projects

## Implementation

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### Project Reporting

- Many projects have not yet finalised their first interim reporting. Those who did had mixed experiences: no timesheets or figures needed, unfinished WP were not paid.
- Project delays because of the COVID-19 pandemic required amendment to prolong the project duration.
- Deliverables are rejected and require extensive rework.
- Lack of legal certainty how incomplete work packages will be dealt with.

### Amendments

- Expectancy of more amendments because they are required for all transfers within the consortium.
- No possibility to apply for a cost-neutral extension of the project duration (apart from COVID delays).

# Lump sum projects

## Coordination

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- Coordinators need to check the budget template of each beneficiary to be integrated in the budget of the proposal.
- Distribution of tasks among partners need to be discussed in depth and agreed upon upfront.
- Micromanagement of work packages. More discussions during the implementation because more WP generate a higher quantity of changes, cuts and delays.
- More controlling and monitoring needed.
- More/repeated discussions in general to adapt each beneficiary and its staff to the lump sum approach.
- Consortium Agreement negotiations need more time because there is no model contract available yet.

# Lump sum projects

## Status quo & Questions

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- For interim reporting, no figures or timesheets are needed, but the proposal budget must be based on actual costs calculated according to Horizon Europe rules.

BUT: accounting principles of the beneficiaries often require a time recording system and so far we do not know which kind of information will be required for ex-post audits e.g. to demonstrate that tasks were carried out or for checks of the methodology with which the budget was calculated.

What does the audit strategy for LS projects look like and which consequences does it entail?

- The Commission communicates the necessity to use lump sums on a broader scale to significantly reduce the error rate.

BUT: There is no connection between the completion of work packages and the error rate.

To reduce the error rate, is it really necessary to limit the Commission's payments to completed work packages? Would lump sum payments based on the fulfillment of tasks by beneficiary not be sufficient?



# Thank you for your attention!

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