

Analysis of the status of entities from various territories mentioned in Article 355 TFEU and other special cases: participation and funding under Horizon 2020.

This note contains information concerning the status of legal entities (natural and legal persons) from the **outermost regions, Overseas Countries and Territories (OCTs), Channel Islands and the Isle of Man, Gibraltar, Northern part of Cyprus, Puerto Rico, Crimea and Sevastopol** in relation to participation in and funding from Horizon 2020. It also contains brief guidance concerning the impact of sanctions adopted by the Council on participation of legal entities in Horizon 2020 projects.

The box towards the end of each section provides concise information concerning the participation and funding of legal entities from all these above-mentioned territories in Horizon 2020.

1. Outermost regions

There are seven outermost regions: Guadeloupe, French Guiana, Martinique and Réunion (the four French overseas departments), the Canary Islands (Spain), and the Azores and Madeira (Portugal). The outermost regions are an integral part of the European Union. The provisions of the Treaties apply to them (Article 355 (1) TFEU).

Article 349 TFEU enables adoption of specific and adapted measures to be applied to the outermost regions, which take into account the characteristics and specific constraints these regions have in complying with the European Treaties. The aforementioned measures concern in particular areas including horizontal Union programmes.

Consequently, entities from the outermost regions are eligible for participation in Horizon 2020 and for funding under the same conditions as entities from the Member States .

2. Overseas countries and territories

Under Article 198 TFEU (Part Four, Association of the overseas countries and territories), the Member States agree to associate with the Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These overseas countries and territories (OCTs) are listed in Annex II TFEU and they are the following:

- Greenland,
- New Caledonia and Dependencies,
- French Polynesia,
- French Southern and Antarctic Territories,
- Wallis and Futuna Islands,
- Mayotte,
- Saint Pierre and Miquelon,

- Aruba,
- Netherlands Antilles:
 - Bonaire,
 - Curaçao,
 - Saba,
 - Sint Eustatius,
 - Sint Maarten,
- Anguilla,
- Cayman Islands,
- Falkland Islands,
- South Georgia and the South Sandwich Islands,
- Montserrat,
- Pitcairn,
- Saint Helena and Dependencies,
- British Antarctic Territory,
- British Indian Ocean Territory,
- Turks and Caicos Islands,
- British Virgin Islands,
- Bermuda.

In addition, Article 355 (2) TFEU provides that the special arrangements for association set out in Part Four (TFEU) shall apply to OCTs listed in Annex II.

On the basis of Article 203 TFEU, which provides for adoption of 'detailed rules and the procedure for the association of the countries and territories with the Union' the Council adopted Decision 2013/755/EU of 25 November 2013. This Decision establishes an association of the OCTs with the Union, which constitutes a partnership, based on Article 198 TFEU, to support the OCTs' sustainable development as well as to promote the values and standards of the Union in the wider world.

Council Decision 2013/755/EU covers cooperation between the EU and OCT in research and innovation (Article 31). In addition, under the terms of this Decision natural persons from an OCTs, as defined in Article 50 of the Decision, and, where applicable, the relevant public and/or private bodies and institutions in an OCTs, are eligible for participation in and funding from Union programmes, subject to the rules and objectives of the programmes and possible arrangements applicable to the Member State to which the OCTs is linked (Article 94).

Taking into consideration the aforementioned, legal **entities from OCTs are eligible for participation** in Horizon 2020 and **eligible for funding** under the same conditions as entities from the Member States to which the OCTs are linked.

3. Channel Islands and Isle of Man

Channel Islands and Isle of Man are territories to which TFEU and TEU apply only to a limited extent. Under Article 355 (5) (c) TFEU, the Treaties shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the

arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

The Channel Islands (which comprise the Bailiwicks of **Guernsey and Jersey**) and the **Isle of Man** are not part of the UK but are self-governing dependencies of the Crown (Crown Dependencies). They have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament.

The formal relationship between the Channel Islands and the Isle of Man and the EU is enshrined in Protocol 3 of the UK's 1972 Accession Treaty. Under Protocol 3, the Islands are part of the Customs Union and are essentially within the Single Market for the purposes of trade in goods, but are third countries in all other respects.

Taking the above into consideration, legal entities from the Channel Islands and the Isle of Man are treated as entities from third countries regarding their participation in Horizon 2020 and their eligibility for funding. This means they may **participate in Horizon 2020**, but they **are not automatically eligible for funding** (as entities from third countries which are only eligible for funding if they meet the requirements of Art 10.2 or 10.1 c) of the Horizon 2020 Rules for Participation).

4. Gibraltar

Under the Treaty of Rome 1973 and the UK Act of Accession of the same year, Gibraltar was classified as a dependent territory of the United Kingdom. Although Gibraltar has its own Parliament which is responsible for passing legislation the UK Government is responsible for Gibraltar's foreign affairs, including relations within the European Union.

Gibraltar is a territory of the European Union to which the Treaties apply. Article 355 (3) TFEU states that: "The provisions of Treaties apply to the European territories for whose external relations a Member State is responsible". This provision has been included in the Treaty since 1957 and it is commonly agreed that Gibraltar is the only territory to which it applies. Joint declaration No 55 of Spain and the United Kingdom annexed to the Final Act of the Intergovernmental conference which adopted the Treaty of Lisbon further clarifies: "The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned".

In case of Gibraltar the Treaties apply by default unless a special derogation provides for a different treatment of this territory. Such derogation exists, for example, in the field of customs legislation, where Gibraltar is excluded from the customs territory of the Union and neither the Treaty rules on the free movement of goods nor the rules of secondary Union

legislation intended, as regards free circulation of goods, are applicable to it. Consequently goods originating in Gibraltar are regarded as originating in a third country.

By contrast, the EU research legislation does not contain any exceptions as to its application to the territory of Gibraltar. Thus Gibraltar cannot be considered as a third country for the purposes of EU research legislation.

Legal entities from Gibraltar are **eligible for participation** in Horizon 2020 and for **funding** under the same conditions as entities from the Member States. Moreover, it follows from a consistent case law that, in applying the EU law to Gibraltar, the Court refers to this territory as a regional entity belonging to the United Kingdom.

5. Northern part of Cyprus

On 1st May 2004, the Republic of Cyprus, that is in principle the whole island, became a Member State. However, Article 1 (1) of Protocol No 10 to the Act of Accession provides that "the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control".

Taking the aforementioned into consideration, legal entities established in Northern part of Cyprus are **eligible for participation and funding** under Horizon 2020 as entities established in an EU Member State, with the exception of any "**governmental authority**" from the "Turkish Republic of Northern Cyprus" or any **person exercising authority on its behalf ("imperium")**. These authorities/persons **cannot be eligible for participation**, as the EU and its Member States do not recognise the existence of "Turkish Republic of Northern Cyprus".

In addition, granting of the EU financing to an entity established in the Northern part of Cyprus is never to be intended to imply recognition of any public authority in the area other than the Government of Cyprus. Therefore, it needs to be checked on a case-by-case basis that the EU funding does not consolidate the property violations perpetrated since 1974.

6. Puerto Rico

Puerto Rico, officially known as the Commonwealth of Puerto Rico, is an unincorporated territory of the United States. Puerto Rico consists of an archipelago that includes the main island of Puerto Rico and several islands: Vieques, Culebra, Mona and numerous islets. Puerto-Rico is not listed in the Work Programme and thus its entities would be - as part of the US or as an independent country. The legal status vis à vis the US is not very clear.

Consequently, legal entities from Puerto Rico can **participate** in Horizon 2020 and they are only exceptionally eligible for funding if one of the conditions listed in Art 10.2 of the Rules for Participation is fulfilled.

7. Entities from countries to which the Council imposed restrictive measures (sanctions)

Sanctions are an instrument of a diplomatic or economic pressure which seek to bring about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles. Restrictive measures imposed by the EU may target governments of third countries, or non-state entities and individuals. They may comprise arms embargoes, other specific or general trade restrictions (import and export bans), financial restrictions, restrictions on admission (visa or travel bans), or other measures, as appropriate. Most importantly, in the context of research policy, the sanctions may impose restrictions/prohibition of technology transfer or direct or indirect transfer of funds to certain entities. The prohibition on transfer of technology may be defined in a broad way and includes training and transfer of know-how.

In case sanctions have been imposed by the Council to certain countries, natural or legal persons from these countries are **not all automatically excluded** from participating in or funding under Horizon 2020 (e.g. Iran, Syria, Russia, North Korea). However, a **very careful case-by-case analysis is needed** to establish if sanctions prevent participation and funding of a particular entity in a particular Horizon 2020 action. This analysis must take into consideration the **sectors and persons/entities** with regard to whom the sanctions have been imposed.

A complete and regularly up-dated list of sanctions is available under the following link:

http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

Further useful information, concerning restrictive measures adopted by the EU, can be found at the following link:

http://ec.europa.eu/dgs/fpi/what-we-do/sanctions_en.htm

For detailed information concerning application of restrictive measures against Russia in the context of research projects, see note Ares (2014) 3209514.

8. Crimea and Sevastopol

In line with Article 9 (5) Horizon 2020 Rules for Participation, Horizon 2020 Work Programmes may provide for additional conditions concerning eligibility for participation or provide for non-eligibility of certain categories of entities. The last case concerns the situation of legal persons from Crimea and Sevastopol, where an illegal annexation took place. This additional condition applies across all actions under Horizon 2020 in compliance with the horizontal EU policy line of not-recognising the illegal annexation of Crimea and the city of Sevastopol (see footnote 7 of Annex C of the General Annexes of the Main Work Programme).

As Crimea and Sevastopol are concerned, given that the EU does not recognise their illegal annexation, **legal persons** established in the Autonomous Republic of Crimea or the city of Sevastopol are **not eligible to participate** in Horizon 2020 actions in any capacity. This criterion also applies in cases where the respective action involves financial support given by grant beneficiaries to third parties established in the Autonomous Republic of Crimea or the city of Sevastopol in accordance with Article 137 of the EU's Financial Regulation. It should be noticed that the aforementioned conditions are **not applied to natural persons**. Natural persons are eligible to participate in Horizon 2020.

If the illegal annexation of the Autonomous Republic of Crimea and the City of Sevastopol ends, the Work Programmes are to be revised accordingly to allow for participation of legal persons from Crimea and Sevastopol.