

Contracts and state aid

14 | 20

Applicants seminar | Salzburg | 9-10April 2019

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Summary

Partnership
agreement

Subsidy
contract

State aid



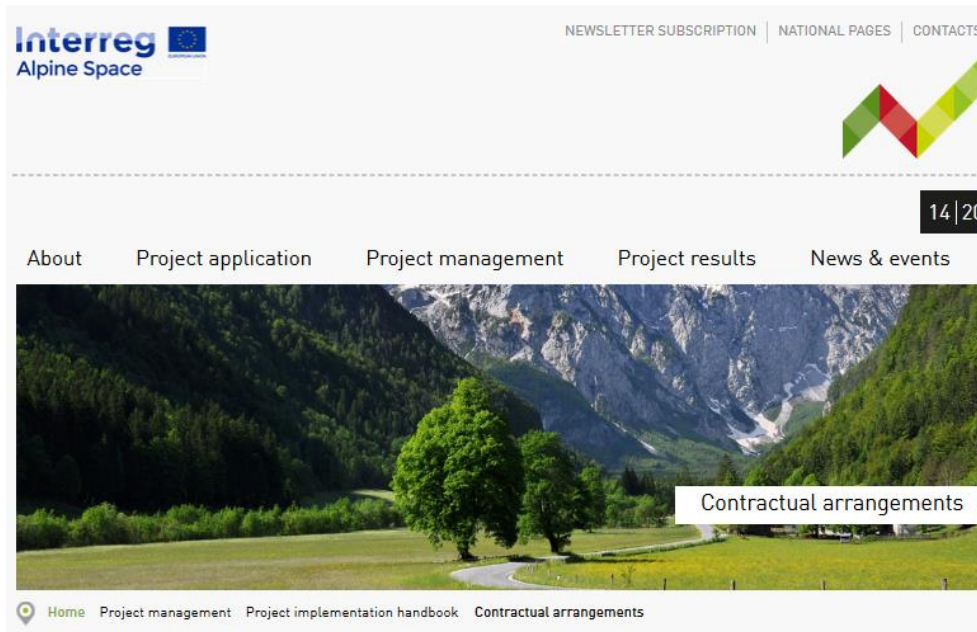
Partnership agreement (PA)

Partnership agreement

- Foreseen by EU regulations (Reg. ETC art. 13)
- Part of application package (with AF)
- Regulates relationship between all partners (incl. LP) for project implementation
- Recalls EU and programme rules for funds and project management
- The programme only needs a scan of the signed partnership agreement
- To be uploaded on the eMS (tab attachment)



PA - Template and entry into force



There are 2 templates:

- **For MS LP:** for the great majority of projects, where the LP comes from a EU country
- **For ERDF LP:** only when the LP is from CH or LI and supported by a EU country for the project financial management

Make sure you select the right one for you!



PA - Template and entry into force

Templates with minimum clauses provided on programme website



Only to be supplemented with project data



Additional clauses may be added, but check of MA before signature required



Entry into force upon signature by all PP and subject to project approval



PA – Procedure

Option 1 (*minimum clauses*)

Today's seminar: guidance

signature: (ERDF) LP with each PP

submission with application form in eMS

Option 2 (*additional clauses*)

Today's seminar: guidance

LP sends **draft** to MA for check as soon as possible, at **latest by 13.05.2019** to alpine.space@salzburg.gv.at

signature: (ERDF) LP with each PP

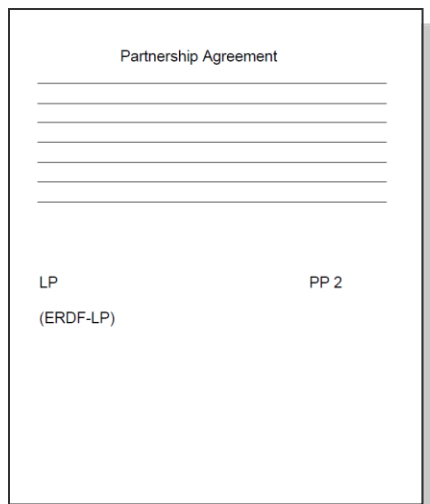
submission with application form in eMS

5 June 2019, 1 pm

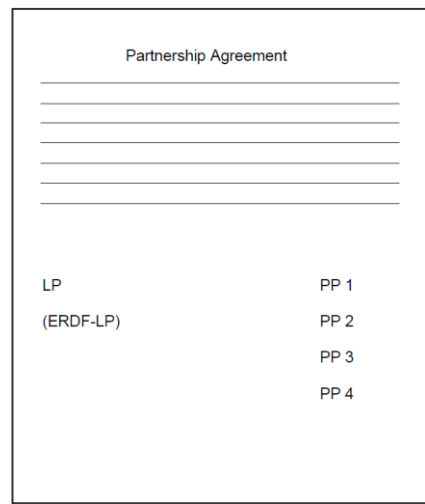


PA – Procedure

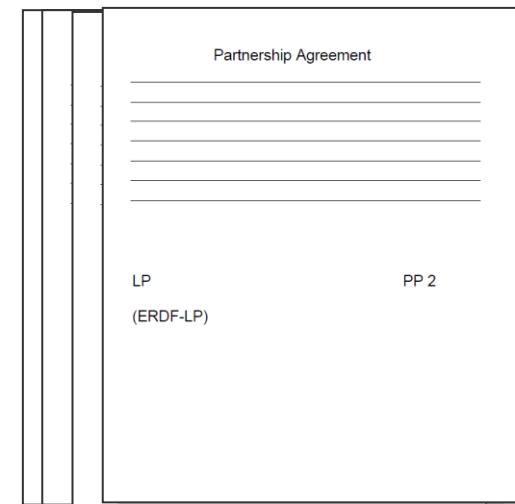
- If difficulties faced with signature, please inform MA well in advance and before the deadline for the submission of the application package
- Make sure each project participant receives one original
- Up to the partnership to decide how to sign, but 3rd option easiest and recommended. Be reminded of date of signature for each PP!



Several PA
bilaterally signed



1 PA with all
signatures



1 PA with several
signature pages



Subsidy contract (SC)

Subsidy contract

- Foreseen by EU regulations (CPR art. 125)
- For approved projects, only
- But (ERDF) LP and PP should be aware already of terms of subsidy
- Contract regulating the conditions for financial support
- Established between the MA and LP (or MA, LP and ERDF LP)
- Clear regulation of tasks, duties and responsibilities



SC - Main elements

- Award and paying out of subsidy
- Eligibility of costs
- Reporting and requests for payment
- Obligations of LP, liability
- Information and communication
- Changes in the project
- Financial control, audits
- Repayment and stop of payment
- Use of project outputs and results



SC - Template and validity

Template with standard clauses provided by programme



MA includes project data



Not possible to amend!

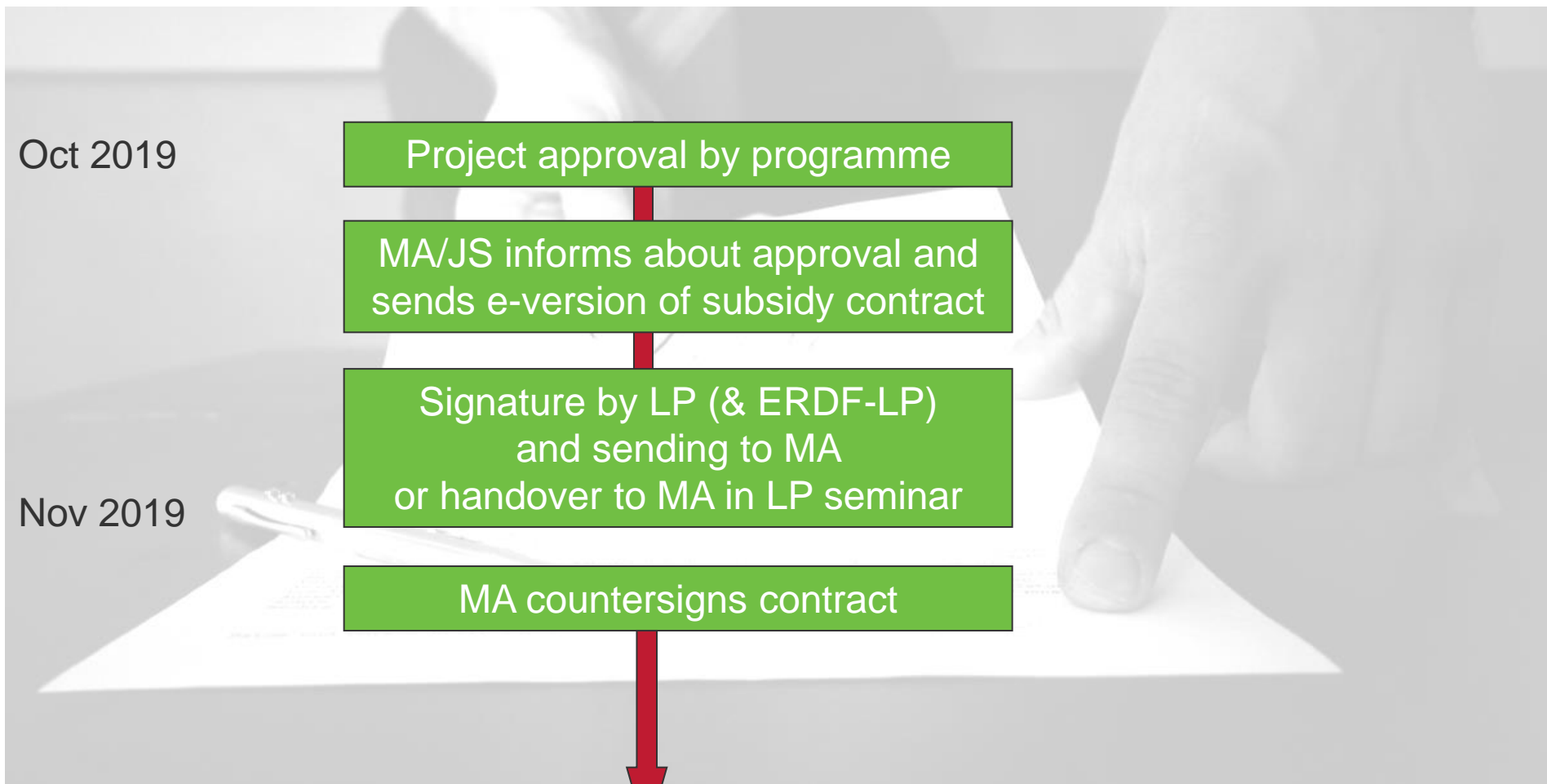


Valid for whole project duration

(references to application form and partnership agreement to avoid re-signature)



SC - Procedure



Aim: all subsidy contracts signed within one month after approval



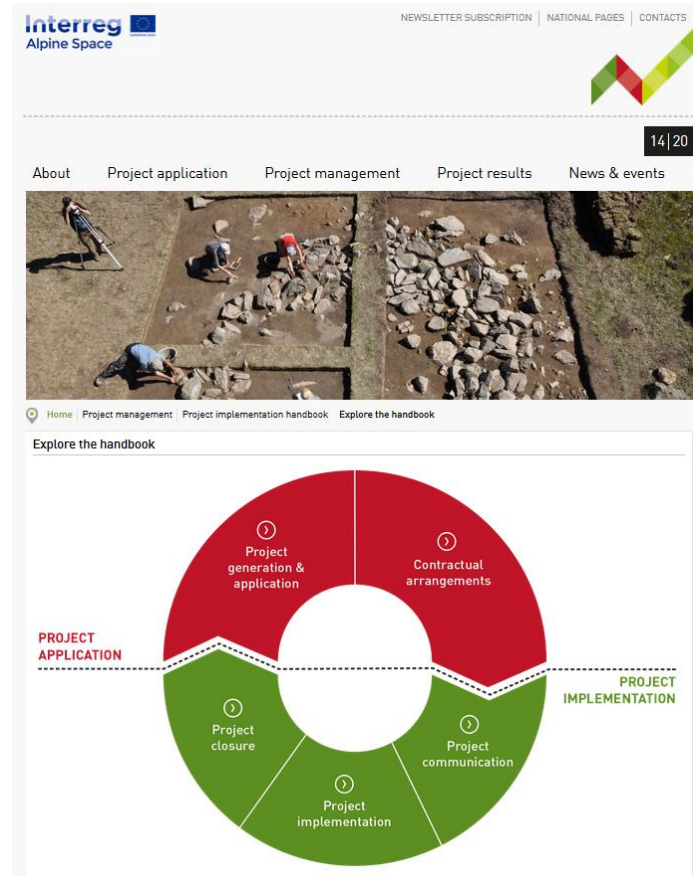
PA and SC - Further reference

Project implementation handbook

- Factsheet 3.1 Partnership agreement
- Factsheet 3.2 Subsidy contract
- Templates for MS LP (LP from EU country)
- Templates for ERDF-LP (LP from CH / LI + ERDF LP from EU country)

Available at

- <http://www.alpine-space.eu/project-management/project-implementation-handbook/contractual-arrangements>



The screenshot shows the Interreg Alpine Space website. At the top, there is a navigation bar with 'Interreg Alpine Space' and 'EUROPEAN UNION' logos, and links for 'NEWSLETTER SUBSCRIPTION', 'NATIONAL PAGES', and 'CONTACTS'. Below this is a main navigation menu with 'About', 'Project application', 'Project management', 'Project results', and 'News & events'. A date indicator shows '14 | 20'. A large image of an archaeological excavation site is displayed. Below the image is a breadcrumb trail: 'Home > Project management > Project implementation handbook > Explore the handbook'. The main content area is titled 'Explore the handbook' and features a circular diagram with six segments representing project phases: 'Project generation & application', 'Contractual arrangements', 'Project communication', 'Project implementation', 'Project closure', and 'Project generation & application'. The diagram is divided into two main sections: 'PROJECT APPLICATION' (red) and 'PROJECT IMPLEMENTATION' (green).

State aid

- Relevant since project development, and into implementation
- Applies to Interreg and other ESI funds
- Regulated by EU law (TFEU, art. 107-109) or equivalent (EEA agreement / bilateral agreements for CH and LI)
- General principle: avoid that granting of (public) subsidies distorts competition



State aid - Definition

Any aid granted through public resources which may distort competition by giving a (selective) advantage to certain undertakings which affects trade between Member States

Cumulative conditions:

if only one of the criteria (underlined above) can be excluded, no state aid!

Some are always true for Interreg projects (e.g. use of public resources), others need to be assessed.

If state aid is confirmed, specific rules apply:

- Project approval: funding of state aid relevant activities is subject to limits of *de minimis* aid
- Project implementation: state aid checked by FLC with payment claims + ex-post audits. If state aid rules are not complied with, expenditure is deemed ineligible





State aid – Project approval

In case of project approval under *de minimis*

- Self-declaration by the undertaking
- Main requirements:
 - max EUR 200,000 (gross grant equivalent) or EUR 100,000 for road freight transport sector
 - over a 3 year period
 - per single undertaking
 - per Member State

– Aid provided by MS of MA: Austria

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Declaration on *de minimis* aid ¹

I, the undersigned, and legally representing [name of the undertaking] [NACE code]² which is involved in the project [project number] [project acronym], declare that (please select the applicable option):

the undertaking I represent and all other undertakings belonging to the same group as my institution (i.e. single undertaking³) have not received any contribution falling under the *de minimis* Regulation during the previous three fiscal years (this being the current fiscal year and the previous two fiscal years);

OR

the undertaking I represent and all other undertakings belonging to the same group as my institution (i.e. single undertaking) have received the following contribution(s) falling under the *de minimis* Regulation during the previous three fiscal years (i.e. the current fiscal year and the previous two fiscal years):


(Please add lines where needed)

State in which <i>de minimis</i> aid was granted	Organisation which granted <i>de minimis</i> aid	Form of grant ⁴	Date of grant ⁵ (DD/MM/YY)	Amount of aid in EUR (gross grant equivalent) ⁶
TOTAL				

I declare in addition that the [name of the undertaking] (please select the relevant option in case this is applicable):

did not receive any other State aid for the same eligible costs;

¹ Regulation (EU) 1407/2013 on *de minimis* aid (the '*de minimis* Regulation').
² The Nomenclature of Economic Activities (NACE) is the European statistical classification of economic activities. NACE groups organisations according to their business activities. NACE codes are available at the following link: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&code=C0101000>
³ Article 2(2) of the *de minimis* Regulation defines which undertakings are considered as a single undertaking (and therefore belong to the same legal group). This definition is set out in the footnote 4's State aid'. Please check it carefully.
⁴ Aid may be granted in the form of e.g. grants, guarantee, loans, etc. Please specify which form of grant has been received.
⁵ The date of grant of the aid is the date when the legal right to receive the aid is conferred to the undertaking.
⁶ If the aid is provided in a form other than a grant (e.g. loan), the gross grant equivalent has to be indicated. Gross grant equivalent means the amount of the aid, had it been provided in the form of a grant, before any deduction of tax or other charge.



State aid – Project development

Recommendations

Check if activities are state aid relevant

1) Is any of your project partners an **undertaking**?

- What counts is the type of activities, not the legal status of your partners (they may be public or private, for profit or not-for profit)
- Look at project activities: do your partners offer goods or services for which a market exists?
- There is provision of goods/services regardless whether users pay or not for them (as long as ERDF is received)



State aid – Project development

2) Does any of your project partners receive **economic advantage**?

- Would benefits have arisen in normal market conditions? e.g. subsidy is received for commercial research activities
- Do they keep this advantage or do they pass it on to other players?
e.g. an organisation offers trainings for free to companies

3) Is the benefit **selective**?

- Is the benefit received only by certain market operators? Are others excluded, e.g. based on the size, type of activity, location, etc. e.g. the aid is granted to SMEs only



State aid – Project development

If you identify state aid relevant activities:

- Redesign your activities if needed: can anything be done to offset state aid? e.g. no economic advantage / not selective
- Assess cost-benefit for your project: if activity is state aid relevant, appraise its importance vs administrative constraints
- Contact programme bodies for further guidance
- Describe clearly in the AF the activities that might be state aid relevant



State aid – Where to learn more

Project implementation handbook

- Factsheet 4.3 on state aid
- Template on *de minimis* declaration

Other sources

- INTERACT questions and answers <http://www.interact-eu.net/download/file/fid/2957>
- Articles 107-109 of the TFEU
- EU Regulation 1407/2013 on *de minimis* aid
- Commission notice on notion of state aid
- [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)
- DG Competition website http://ec.europa.eu/competition/state_aid/overview/index_en.html
- EFTA website <http://www.eftasurv.int/state-aid/>



For more questions

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