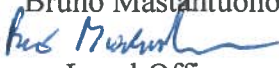






Decision of the Executive Director

No. 130

GAM implementing rules on subcontracting to affiliated entities for the year 2014 and until completion of the actions under the Clean Sky Programme (under Regulation 71/2008)

Written by	Approved by	Signed by	Date
Bruno Mastantuono  Legal Officer	Elizabeth Gavin Head of Administration and Finance 	Eric Dautriat Executive Director 	20/10/2014

THE EXECUTIVE DIRECTOR OF THE CLEAN SKY 2 JOINT UNDERTAKING (CSJU),

Having regard to Article 19 of Council Regulation (EU) n° 558/2014 of 6th May 2014 establishing the Clean Sky 2 JU and its transitional measures¹;

Having regard to the CSJU model Grant Agreement for Members ('GAM') and the special clause n° 1 (linked third parties) applicable to the Clean Sky Programme and its actions under Council Regulation (EC) n° 71/2008;

Having regard to the Clean Sky Joint Undertaking Management Manual (version September 2013);

Whereas

- (1) the main principles to be followed on subcontracting for actions under the Clean Sky Programme (under Council Regulation (EC) n° 71/2008 and the Clean Sky model GAM) are laid down in Article II.7 of the GAM;
- (2) the participation of Members' affiliates entities in the technical activities of an ITD should be approved via the addition of the contractual special clause n° 1 to the GAM.

¹ 2. Without prejudice to paragraph 1, actions initiated under Regulation (EC) n° 71/2008 and financial obligations related to those actions shall continue to be governed by that Regulation until their completion.

- (3) the CSJU has gathered experience in managing complex subcontracting issues related to the implementation of the Clean Sky Programme and involvement of participating affiliates.
- (4) the CSJU has also analysed specific “ex post” audit cases of beneficiaries’ affiliated entities included in the GAM as subcontractors instead of having been included as linked third parties under the GAM special clause n° 1;
- (5) for duly justified reasons, participation of affiliated entities in the GAM as subcontractors may be deemed acceptable by the JU within a specific timeframe and be approved by the JU within the GAM;
- (6) The rules on subcontracting to affiliated entities under the Clean Sky 2 Programme under H2020 and the Clean Sky 2 model GAM have evolved in the sense of allowing an assessment and approval of justified case;
- (7) It is essential for the sake of sound programme management to ensure a minimum level of harmonization in the rules and continuity in the assessment of similar cases related to the same beneficiaries in the two parallel running Programmes (Clean Sky and Clean Sky 2);

HAS ADOPTED THIS DECISION,

Article 1

1. With regard to the actions under the GAMs of the Clean Sky Programme (under FP7 and Council Regulation (EC) n° 71/2008), subcontracting to beneficiaries’ affiliated entities should not be allowed and the participation of the affiliated entity in the GAM should be approved by the contractual special clause n° 1.
2. The above rule may be derogated, under CSJU explicit prior approval, in exceptional and duly justified cases where the beneficiary and the affiliated entity have signed a framework contract or the affiliated entity is the usual provider for the beneficiary and, as necessary requirement, the subcontracting is priced at market conditions. In order to ensure that the price market requirement is duly respected, the beneficiary shall prove that the affiliated entity applies market conditions to the work or service assigned based on an updated market analysis which should be submitted to the CSJU as part of a specific request.
3. In addition to the above, the beneficiary shall provide in the request a detailed justification and establish the evidence that no other supplier could be considered, under normal subcontracting rules, as a consequence of the very specific technical requirements or specifications and/or any legal, confidentiality, IP aspects linked to the service or work other than this affiliated entity.
4. In addition to the above, the contracts (including the framework contracts) must have nonetheless complied with the two general conditions at the time of their award, the best value for money based on market condition or analysis and the absence of conflict

of interests. The list of framework contractors and the proposal to use them in the action shall also consider the evolution over the time of market conditions and prices since the time when the respective framework contract was launched.

5. It is responsibility of the beneficiary to keep this evidence in the relevant GAM files and to allow disclosure of proper evidences in case of audit.
6. Where applicable and justified based on the above criteria, the name of the subcontractors should be indicated in the Annex I of the GAM with a reference to the request submitted to the CSJU.

Article 2

The CSJU reserves the right to lay down specific implementing rules and further criteria to define such a category in the course of Programmes implementation to be used in the framework of a case by case ex ante assessment and validation by the CSJU.

Article 3

1. This decision shall enter into force on the day of its adoption and with effect from 1st January 2014 with regard to subcontracting to affiliated entities approved by the CSJU in the framework of the GAM amendments for the year 2014 and signed by the CSJU by the 31st December 2014. The decision shall serve as basis and guidance for the ITDs for the assessment of any case in the year 2015 and until completion of the actions under the Clean Sky Programme.

2. Any subcontracting to affiliated entities included in the GAMs of the years prior to 2014 and the related CSJU assessment shall not be affected retroactively by the present Decision.

Brussels, 20 October 2014



Eric Dautriat
Executive Director
Clean Sky 2 Joint Undertaking