

Torino, April 16th, 2020

S u b j e c t : The extension of the Grant Agreement of Lyon Turin Project and the non-application of the 'use or lose it' principle: [a remark about INEA's decision](#)

We refer to the INEA's announced decision to extend the Grant Agreement No. INEA/CEF/TRAN/M2014/1057372 until 31 December 2022 contained in the letter Ref. [Ares \(2020\)1991281](#) of 8 April 2020 instead of adopting the European 'use or lose it' principle.

In the Grant Agreement the 'use or lose it' principle is stated in point II.25.4, which provides for the reduction of the grant, with the loss of the remainder as a result of the beneficiary's default.

II.25.4 Reduction for poor, partial or late implementation, or breach of contractual obligations

If the action is not implemented properly in accordance with Annex I, or if any beneficiary fails to comply with any other obligations under this Agreement, the Agency may reduce the grant amount set out in Article 3 in proportion to the improper implementation of the action or to the seriousness of the breach of obligations.

In the document "[State-of-play of CEF Transport programme implementation and way forward](#)" reference is made to "The soundness of his implementation... it is important that extensions remain limited and proportionate ...", to "the principle of equal treatment calls for the establishment of a consistent approach concerning extension".

3. Extension of Grant Agreements

Grant Agreements may be amended to extend their duration. However, amendments to Grant Agreements shall not have the purpose or the effect of making changes that would call into question the grant award decision or be contrary to the principle of equal treatment of applicants as outlined in the EU Financial Regulation¹. Since the applications are assessed taking into account the maturity of the Action and the soundness of its implementation plan, it is important that extensions remain limited and proportionate. Moreover, the principle of equal treatment calls for the establishment of a consistent approach concerning extensions.

and to "In exceptional and duly justified cases ... to reach the full completion of a key activity therein ..."

For these reasons, it is considered that no Grant Agreement should be extended for a period of more than **24 months** compared to its initial end date at the time when it was first signed. However, in exceptional and duly justified cases, and where necessary to reach full completion of the action or, at least, to reach full completion of a key activity therein, such extension can be prolonged **up to an additional period of 12 months**. In any case extensions will be assessed on a case-by-case basis and need to be justified through a detailed amended implementation plan and a robust risk assessment. As mentioned above, no extension should result in the duration of an Action exceeding the deadline of 31 December 2023.

But discretion, namely *exceptional and duly justified cases*, must be fully justified, equal treatment is not enough, it must be shown that the conditions are met, that is:

- the granting of the "extension" of implementation is not mentioned in the Agreement itself, except by means of an "Amendment", i.e. an amendment to the Agreement. As a general rule, in the event of "major delays" in implementation, INEA should consider suspending the Agreement (Cf. point II.15.2, Suspension of the implementation by the Agency, in particular paragraph 1(d) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action) with a consequent need to amend the Agreement (**Point II.15.3 Effects of the suspension**).

How can it be argued that we are not in the presence of major delays? The responsibility and failure of Telt? Which are the consequences of delays chargeable to Telt before the COVID-19 emergency?

In general, the EU Regulations on grants establish two fundamental principles that must be respected from the grant award until the completion of the implementation (or "implementation" of the funded action): the principle of transparency and the principle of equal treatment (art. 125 Reg. 966/2012 in force at the time of the Agreement; art. 188 Reg. 1046/2018 in force today);

More generally, **Article 41** of the European Charter of Fundamental Rights, referred to by the Treaty, provides for the "**right to good administration**" and declines it in the duty to state reasons, transparency and access, the right to participate in the proceedings of the EU

institutions and the obligation of the administration to give reasons for its decisions.

Article 41 - Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Therefore, European Commission and INEA must give reasons why:

- delays are not important;
 - because it applies only the principle of equal treatment and not the principle of transparency;
 - because, as a result, it disappplies the "use it or lose it" principle.
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