

# EUROPEAN DEFENCE FUND

The tutorial video relating to these slides is accessible from the [EDF webpage](#)

# Ownership control assessment Tutorial

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Brussels & Online  
29 June 2023

# Q&As via Sli.do: For remote participants

LIVE STAGE Plenary

EUROPEAN UNION  
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instance.password is required

Full name\*  
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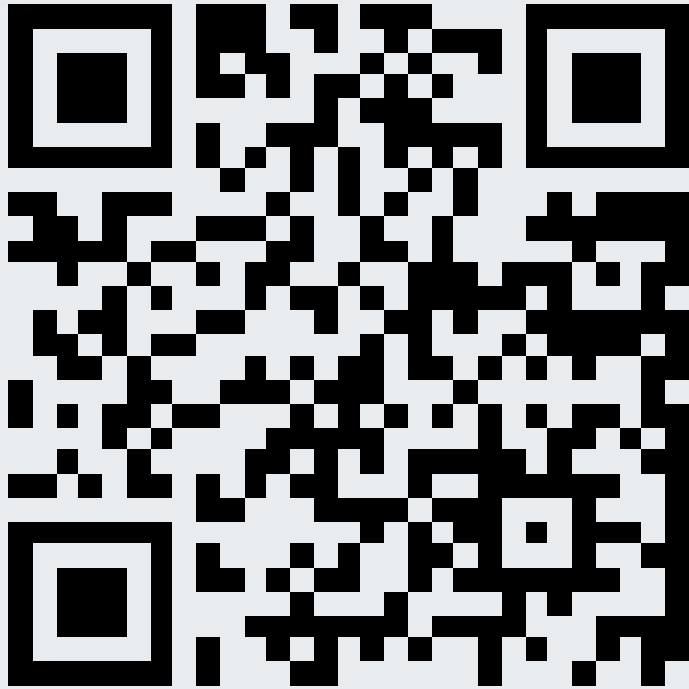
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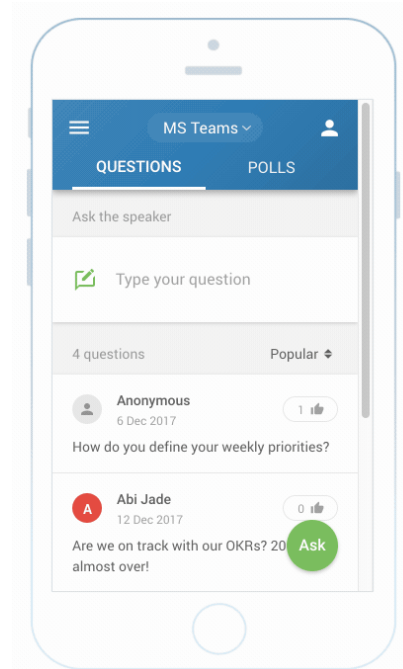
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EDF-2023**

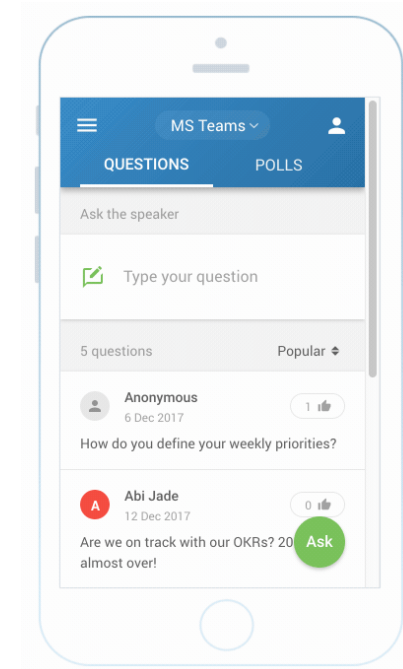
# Q&As via Sli.do: For participants in the room



**PASSCODE:  
EDF-2023**



**ASK A QUESTION**



**UPVOTE A QUESTION**

# Agenda

## Ownership Control assessment (OCA)



**INFO** | **20**  
**DAYS** | **23**

- Legal basis
- OCA eligibility conditions
- OCA process
- Definition of control
- Ownership and control analysis
- At which level must control be assessed
- Declaration of ownership and control
- Key messages
- Reference documents



1. Regulation (EU) 2021/697 establishing EDF, Art.9, restricting participation to all actions to:
  - participants that are **not subject** to *direct or indirect* control by non-eligible countries/entities/nationals
2. Guidance for Participation in Digital Europe Programme (DEP), Horizon Europe (HE) and European Defence Fund (EDF) restricted calls.
3. Rules for Legal Entity Validation, LEAR Appointment and Financial Capacity Assessment for EU Grants and Tenders.



## OCA will be done for all entities except for:

- i. Entities validated as public bodies, considered to be controlled by their country.
- ii. Entities which self-declare to be controlled by ineligible country/entity/national.

# OCA eligibility conditions



- **EU-control derogation:** participants subject to control by ineligible country/entity/national may still participate as long as they fulfil certain conditions, ascertained in a form of a guarantee approved by the Member State in which they are established.
- **Ownership control eligibility conditions** must be fulfilled not only at proposal submission and grant signature, but **throughout the entire action duration**.
- **Any changes** in the control ownership status that occur during the project **must be immediately notified by the coordinator** to the granting authority **together** with an **updated declaration** of ownership control.
- **New participants** joining the action later on must meet as well the ownership control eligibility conditions.



- **Subject to ownership control assessment**

Eligibility criteria for all participants in a project selected for funding

*e.g. beneficiaries, affiliated entities, subcontractors and associated partners*

- **Registration in the Participant Register** (*e.g. obtaining a PIC number*)

Required by all participants at the time of the application

- **Self-assessment** (*“Declaration of ownership and control”*)

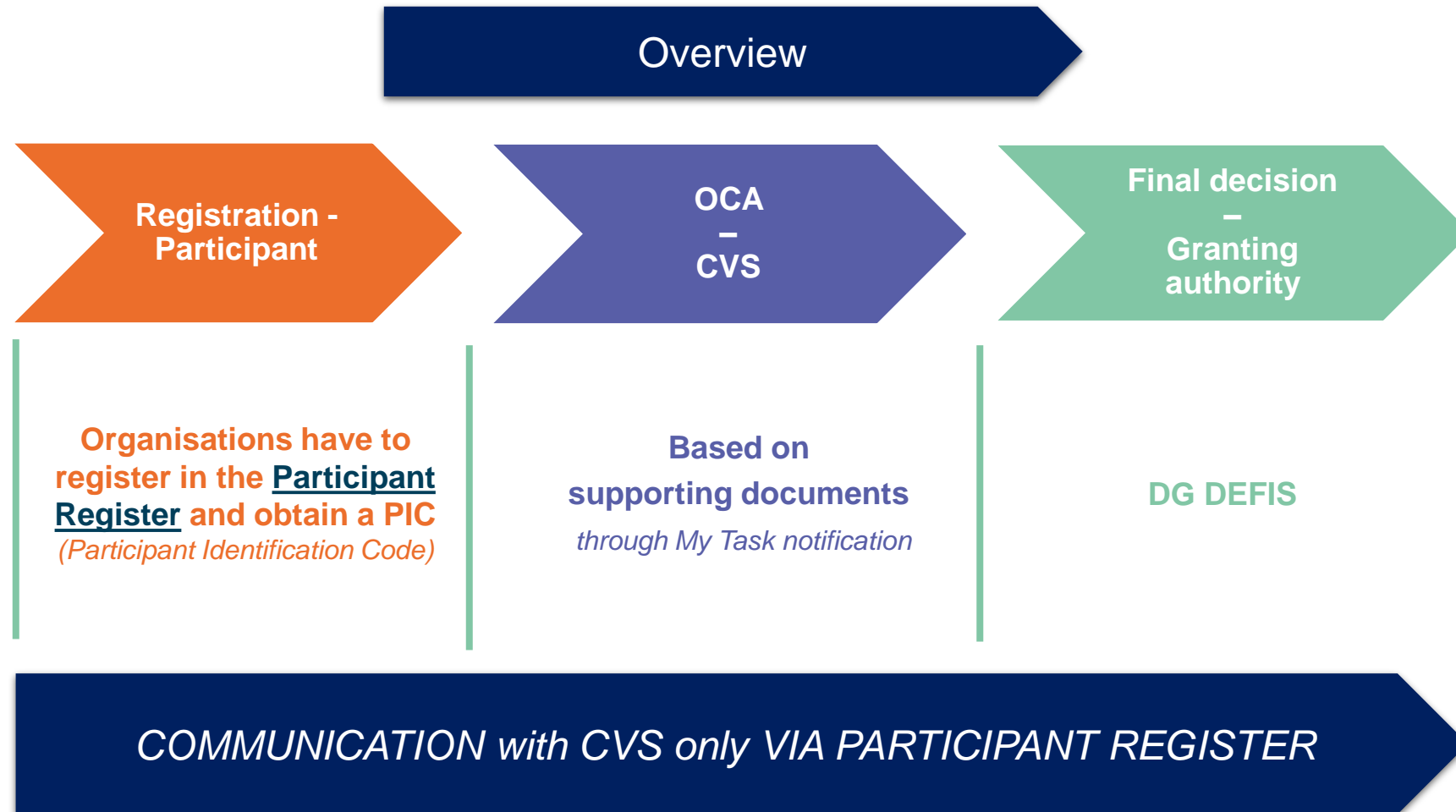
Must be annexed to the application form and filled in by all participants in the proposal

Validated **public bodies** exempted from submitting declarations

- **Supporting documents**

Must be submitted upon request of CVS through My Task notification in the Participant Register

# OCA process





# OCA process

## How to register in the Participant Register (at proposal stage)



### Participant Register

 Need help?

If you want to participate in a call for proposals or in a call for tenders with eSubmission, your organisation needs to be registered and have a 9-digit Participant Identification Code (PIC). Please quote your PIC in all correspondence with the Commission.

The register contains all participants of EU programmes.

#### Is your organisation already registered? PIC search

Please check whether your organisation has already been registered. If so, no need to register it again.

Search a PIC

**Search for a  
registered  
organisation**

#### Register your organisation

To register your organisation or as a natural person, you need to login into the Portal or, if you are a new user, create your account.

Check what information you need to register in the Online Manual - and keep it to hand during the registration procedure. To start registration, click on the button below.

Register your organisation

**New registration**

# OCA process

## How to register in the Participant Register (at proposal stage)



The screenshot shows the 'Participant's Register' interface. At the top, a progress bar indicates six steps: 1. Identification (highlighted with a red location pin), 2. Organisation Data, 3. Legal Information, 4. Authorised Users, 5. Summary, and 6. Success. Below the progress bar, the 'Identification' section contains the following fields:

- Legal name \* (required): Text input field with a character count of 240.
- Registration country \* (required): Dropdown menu.
- Registration number: Text input field with a character count of 50.
- VAT number \* (required): Text input field with a character count of 20, and a toggle switch labeled 'not applicable' with a character count of 500.

At the bottom of the form, there are two buttons: 'Review the Form' (in red) and 'Next' (in blue).

Identification  
(duplicate check)  
(e.g. Legal name, VAT number)

Organisation data

Legal information

Authorised users

(e.g. Name, e-mail address of the self-registrant and the back-up)

Registration completed

New Participant Identification Code (PIC) in a "declared" status

# OCA process

## Requests in Participant Register



INFO DAYS | 2023

The screenshot shows a user interface for managing an organization's profile. The top navigation bar includes 'Manage my area', 'SEARCH FUNDING & TENDERS', 'HOW TO PARTICIPATE', 'PROJECTS & RESULTS', 'WORK AS AN EXPERT', and 'SUPPORT'. The left sidebar contains 'My Person Profile', 'My Organisation(s)', 'My Formal Notification(s)', and 'My Task(s)'. The main content area displays the organization's PIC number (885167584) and a navigation menu with 'Organisation Data', 'Legal Information', 'Authorised users / LEAR', 'Bank Accounts', 'Financial capacity', 'Messages', 'Documents', and 'SME'. The 'Messages' item is highlighted with a red circle and a notification badge showing '1'. Below this, a message is listed in a table with columns for Subject, Message, Context, Date, and Actions. The 'View' button for the message is also highlighted with a red circle.

Subject	Message	Context	Date	Actions
* Ownership and Control - Request for documents	Dear Participant, We are contacti...	Ownership control	02/09/2022	View

# OCA process

## Requests in Participant Register



The screenshot shows the 'Task Centre' interface. The left sidebar contains navigation options: 'My Person Profile', 'My Organisation(s)', 'My Formal Notification(s)', and 'My Task(s)', with the last one circled in red. The main content area shows a search filter for '885167584' resulting in 2 tasks. One task is visible, titled 'Request for ownership control supporting documents', which is also circled in red. The task details include 'PIC: 885167584' and 'Created on: 02/09/2022, 05:17:39 PM'. There are buttons for 'Create date desc', 'Refresh list', 'Assignee: Me', and 'Actions'.



- Lost access to a non-valid PIC
  - In case the self-registrant left the organisation and no one has access to the non-valid PIC, a new PIC needs to be created and the CVS has to be informed via the messaging section of the new PIC account.

- Lost access to a valid PIC
  - If the LEAR is not available anymore and there are no Account Administrators, a new LEAR needs to be appointed via LEAR recovery procedure:

**<https://ec.europa.eu/research/participants/urf/lear-recovery/request/>**



# Definition of control

## EU Guidance

### Participation in DEP, HE, EDF and CEF-DIG restricted calls



#### >>> DEFINITION of control

The possibility to exercise **decisive influence** directly or indirectly through one or more intermediate entities, 'de jure' or 'de facto' on strategic business decisions (such as appointment and removal of senior management, budget, investments and business plans, market-specific decisions, etc)

The fact that no influence is actually exercised is not relevant, as long as the possibility exists

#### >>> ASSESSMENT

At the level of the **ultimate owners and all intermediate layers** (in case of indirect control)

#### >>> ULTIMATE OWNERS

**Except** in the case of **public bodies**, are always the natural persons

#### >>> ELEMENTS TO TAKE INTO ACCOUNT

Ownership structure and specific rights, corporate governance, commercial links conferring control, financial links conferring control, other sources of control

# Ownership and control analysis



- Identification of all **direct and indirect shareholders** up to the **ultimate owners**
- Identification of body(ies) empowered to take **strategic decisions** *i.e. general assembly of shareholders and/or supervisory board/board of directors, etc.*
- Analysis of rules for **appointment/election/removal** of governing bodies as well as their actual composition (*e.g. to identify if any shareholder is entitled to nominate a board representative and/or has majority seats in the board*)
- Analysis of **quorums and majority required** for adoption of strategic decisions to establish if:
  - any shareholder can take strategic decisions either by having the required majorities to approve such decisions or to block such decisions through veto or other specific rights even if he cannot impose such decisions on his own, etc.
- Analysis of possible influence on strategic decisions through **commercial links, financial links** or other means, etc.

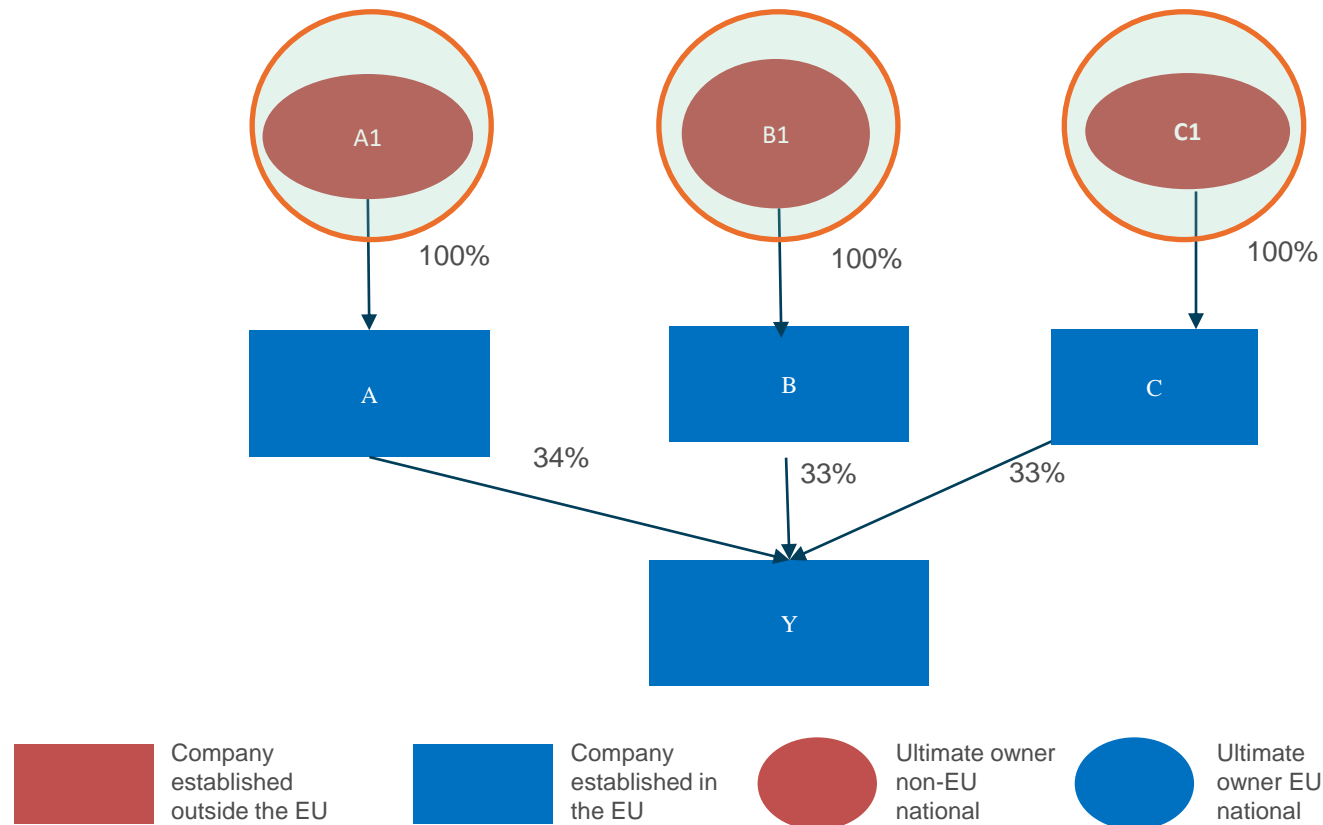
# Ownership and control analysis



1. If all (100%) direct/indirect shareholders are EU nationals and/or EU public bodies => 
2. If all (100%) direct/indirect shareholders are non-EU nationals and/or non-EU public bodies => 
3. If direct shareholders include EU/non-EU nationals and/or (EU/non-EU) legal entities:
  - a. If control by EU **national(s)** or EU **public body (ies)** established based on governance of your organization => 
  - b. If control by non-EU **national(s)** or non-EU **public body(ies)** based on governance of your organization => 
  - c. **If control** by EU/non-EU **legal entity** established based on governance => **further analysis** on the controlling legal entity's ownership and governance is required **until ultimate level** of ownership and control => *declaration "control/no control" depending on the outcome;*
4. Geographical mapping up to the ultimate owners is important to identify the presence/control by non-EU shareholders.

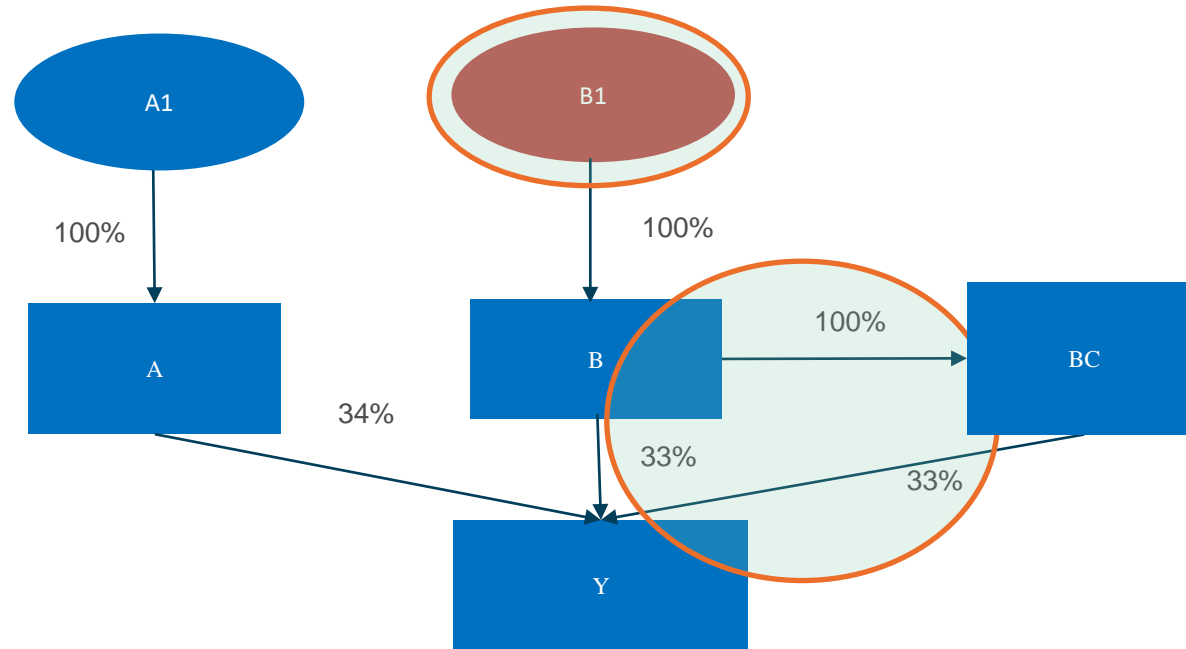


# At which level must the control be assessed?



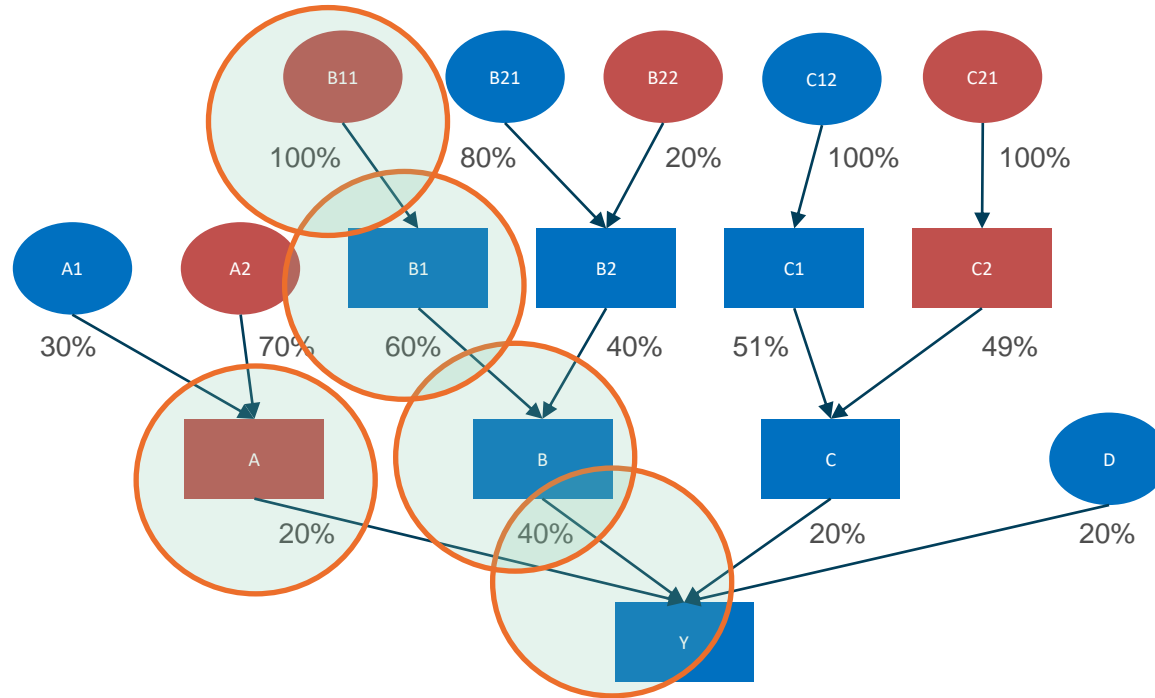
- Needs to be assessed at the level of the ultimate owners
- Ultimate owners are always natural persons (except in cases of public entities) who ultimately control the entity

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- Ultimate owners are always **natural persons** (except in cases of public entities) who **ultimately control the entity**



# Declaration of ownership and control (DoC)



The DoC should include the below information for your organisation and its direct and indirect controlling shareholders

## Elements for assessment

## Information in DoC

## Supporting documents/information to be provided upon request from the Central Validation Service

### Ownership structure



- identification of all shareholders with percentage of shares/voting rights
- information on their country of establishment (if legal entities) or nationality (if natural persons)



- Graph visualising the complete ownership structure up to ultimate owners
- Documentary evidence demonstrating all direct and indirect shareholders *e.g. commercial registry extracts; shareholders/members/partners registers shareholders agreements etc. with the exact allotment of shares/voting rights*
- Documents evidencing nationality of ultimate owners

### Corporate governance



- rights attached to the shares detained; specific veto rights...
- decision-making bodies, their composition; the decision-making procedures and quorums required
- rules regarding election, appointment, nomination of members of the decision-making bodies



- Articles of association, Statutes, shareholders agreement, MoU among shareholders;
- Rules of decision-making procedures;
- Report/minutes of shareholders meetings, together with the attendance list identifying the present/represented shareholders and their respective votes

### Commercial or financial links



- Economic or financial dependence on third-country direct or indirect shareholder



- Information on contractual relationships (cooperation agreements /contracts/ arrangements) which can give control
- Information on financial relationships (financing agreements/loans/financial guarantees etc.) which can give control

- »»» Get familiar with the control definition in the Guidance for restricted calls.
- »»» Ownership control is assessed at all levels up to ultimate owners - identify all direct and indirect shareholders.
- »»» Extra attention to shareholders with right to nominate/appoint board members and/or having consent, pre-approval, veto rights on strategic decisions.
- »»» Nationality of board members is not decisive while the nationality of ultimate owners is.
- »»» Minority shareholders may sometimes have the possibility to control even if not imposing decisions alone but through veto/blocking rights.

# Tips – Key Messages



- »»» Strategic decision may require approval of two or more EU and non-EU shareholders. This is a case of joint control i.e. control by ineligible country/entity/national is present.
- »»» In case of doubt, always consult your legal adviser before submitting your declaration of ownership control.
- »»» Be prepared to provide the correct supporting documents at CVS request in a timely manner.
- »»» Confidentiality treatment – all documents and information treated with confidentiality and in compliance with the EU Data Protection Regulation 2018/1725.
- »»» Communicate immediately to the GA any changes (direct or indirect) that could impact the ownership control requirements together with an updated declaration of ownership and control.

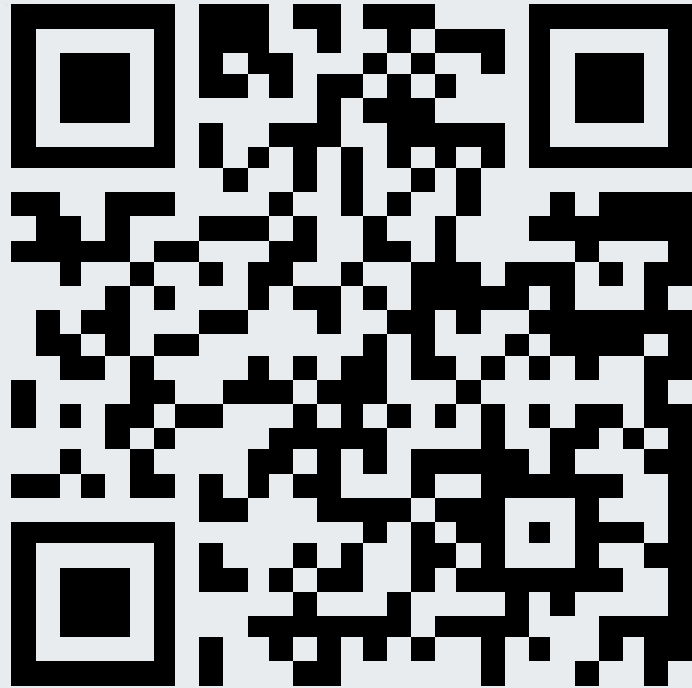
# Ownership/Control assessment

## Reference documents



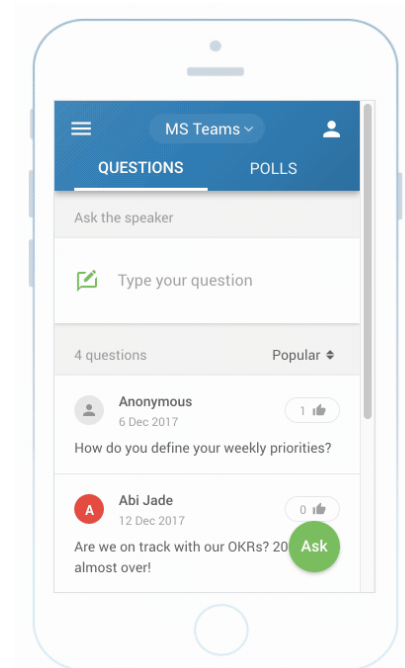
- EDF Regulation (EU) 2021/697: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0697>
- Rules for Legal validation, LEAR appointment and financial capacity assessment: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/rules-lev-lear-fca\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/rules-lev-lear-fca_en.pdf)
- Guidance on ownership control restrictions for applicants: [Guidance on restricted calls](#)
- Declaration of Ownership/Control: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/reference-documents;programCode=EDF>
- How to register in the Participant Register: <https://webgate.ec.europa.eu/funding-tenders-opportunities/display/OM/Online+Manual>
- Online Manual, IT How to, IT and RES Helpdesk and specific FAQs on the Funding and Tenders Portal: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/support/support>
- Legal notice on the Funding and Tenders Portal (terms and conditions, data protection): <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/support/legalnotice>

# Q&A Time !

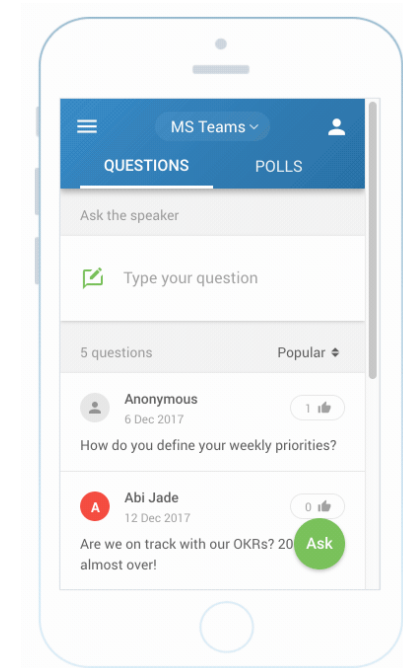


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- **Scan the QR code**
- **Enter your name & event passcode**
- **Ask a question!**



**ASK A QUESTION**



**UPVOTE A QUESTION**



**QUESTIONS?**

**MANY  
THANKS  
FOR YOUR  
ATTENTION**