



FFG
Forschung wirkt.

**Rechts- und Finanz-FAQ zu Horizon 2020
des Research Enquiry Service (RES) der
Europäischen Kommission**

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1 Allgemeines

1.1 Rechtlicher Status des Beneficiary

1.1.1 Gesellschafterbeschluss für Gemeinnützigkeit ausreichend?

Antwort vom 25.1.2014

Dear RES,

as laid down in the RfP for Horizon 2020, 'non-profit legal entity' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

Could you please inform me about the particular requirements for determining if there is such a „statutory obligation“ in force. In particular, I am interested this obligation needs to be stated in the company agreement (or similar)? Or would a shareholders' decision (formally documented in writing) suffice?

Antwort:

Following-up to your query, please consider that, in order to be considered as a 'non-profit' organisation under the H2020 Rules for Participation, the entity has to be by its legal form non-profit-making. When the 'non-profit' status does not arise directly from the law, the absence of lucrative aim can be deducted indirectly from the statutory/legal obligation to reinvest all the profits made in the activity of the same organisation is requested, without any possibility to distribute them to the members.

This being explained in general terms, please consider that decisions of the managing board, associates, stakeholders, members or representatives of the organisation on the distribution of profits are not considered as sufficient element to prove the non-profit status of an entity.

The obligation has to be specifically inserted in the articles of association, statutes or act of establishment.

Kind regards,

Research Enquiry Service Validation Helpdesk

1.1.2 Auswirkungen einer Statusänderung während der Projektlaufzeit

Antwort vom 3.3.2014

Dear RES,

will it have any effect on an ongoing innovation action if a beneficiary changes its status from „profit“ to „non-profit“ or vice-versa during the course of the project?

Antwort:

In H2020, the following rules will be applied in case of change of status of a beneficiary:

- If the beneficiary change its legal status and the change leads to the loss of certain advantages (i.e. from non-profit to profit), the beneficiary will retain the advantages for the whole duration of the already signed grants. For grants agreements signed after the change, the new status will be applied.
- If the change of its legal status lead to the gain of certain advantages (i.e. from profit to non-profit), the new status and its advantages (i.e. reimbursement rate) will not be applied for ongoing grants but only for grants signed after the change of status.

Regards,

Legal and Financial Helpdesk

2 Mindestteilnahmebedingungen

2.1 Teilnahme von Partnern aus assoziierten Staaten

2.1.1 Nicht-Abschluss eines Assoziierungsabkommens

Antwort vom 18.2.2014

Dear RES,

since the association agreements for H2020 have not been finalised yet, we are wondering what would happen in the following (theoretical) constellation:

A consortium of three partners submits a proposal for a call with a deadline in March 2014. Two of the partners are from different EU MS and one is from a country associated to FP7, which is expected to sign an association agreement for H2020. However, for some reasons the association agreement has not been signed by the call deadline. Would the consortium be considered ineligible? Or would it be eligible as long as the association agreement is signed before the Grant Agreement (if the proposal is selected for funding)?

Antwort:

Annex A to the H2020 WP stipulates that the "at the date of the publication of the work programme, there are no countries associated to Horizon 2020. All countries associated to the Seventh Framework Programme will in principle be associated to Horizon 2020 by the time the first grant agreements under Horizon 2020 are signed. This is, however, subject to the satisfactory conclusion of the respective procedures adopting the association agreements for each of the countries concerned"

It should be noted that participation of legal entities from associated countries is subject to the signature of the Association Agreements. When the eligibility of a proposal depends on the status of the country to become associated, the relevant grant agreements cannot be signed until the association instrument is not yet signed and becomes applicable.

As under FP7, many of the association agreements will contain a clause on provisional application and retroactive effects and encompass the period since January 2014. However, only from the moment the association agreements enter into force (which also implies completion of the necessary procedures for adoption of the association agreements in the countries concerned), the retroactive provisions become finally applicable.

Therefore, proposals in which participate organisations located in future associated countries can be treated only as provisionally eligible subject to the condition mentioned above.

Please note that if the association agreement is not yet signed by the time of the signature of the GA, the proposal would have to be declared ineligible if by the removal of the respective participant the minimum number of participants is no longer met.

Please also note that the Enquiry Service cannot validate participants' individual status and eligibility.

Kind regards,

Legal and Financial Helpdesk

2.2 Beteiligung von Organisationen nicht-assoziierter Länder als 'third parties'

Antwort vom 19.3.2018

Dear RES,

can an institute from USA (non-profit) be a third party of a RIA providing an in-kind contribution against payment (at cost) without to show the necessity that its involvement is necessary to the project (as is demanded to bring on board a USA partner as a beneficiary)?

And can a USA company be hired through subcontracting and/or contracting?

Antwort:

Please note that we can only provide general guidance on the interpretation of the provisions of the grant agreements (GA) concluded under Horizon 2020.

1. Regarding the use of in-kind contributions provided by third parties against payment:
A beneficiary may use in-kind contributions provided by third parties against payment in accordance with Article 11 of the grant agreement (GA). Third parties providing in-kind contributions against payment under Article 11 GA are not subject to the eligibility conditions to participate or to receive EU funding provided for in the Horizon 2020 Rules for Participation. Nevertheless, the involvement of third parties in the action cannot be used to circumvent the Horizon 2020 Rules for participation and/or the applicable Work Programme, that is, to provide financing to a legal entity that would not otherwise have been eligible for funding (see also pp. 125-129 in the Annotated Model Grant Agreement (AGA) available at http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf).
In any event, the specific case of the concerned institute from USA should be discussed with the Commission/Agency, in regard of the requirement that third parties providing in-kind contributions have to be described and justified in the technical annex, and have to be approved by the Commission/Agency.
2. Regarding the purchasing goods, work and services and/or calling upon subcontractors to implement action tasks described in Annex 1:
Provided that contracts or subcontracting comply with Articles 10 and 13 of the GA, there is no particular condition regarding the location of the contractors or subcontractors, except in the case that the option for the pre-commercial procurement (PCP) or procurement of innovative solutions (PPI) is activated under Article 13 in the particular GA. In this specific case, the beneficiaries must ensure that the majority of the research and development work done by the subcontractor(s) (including the work of the main researchers) is located in the EU Member States or associated countries ('place of performance obligation').

Kind regards,

Legal and financial helpdesk

2.3 Wegfall der Mindestteilnahmebedingungen

Antwort vom 16.10.2018

Dear RES,

may I kindly ask you to clarify the consequences for a Horizon 2020 project, if the minimum conditions for participation (art. 9 RfP) are no longer fulfilled within the project duration after signature of the Grant Agreement?

An example: A consortium consists of five beneficiaries (three beneficiaries from EU Member States, one beneficiary from Japan and one beneficiary from Azerbaijan). During the project duration, one beneficiary from an EU Member States terminates its participation and for specific reasons is/can not (be) replaced. Would this mean for the project that it has to be terminated, or may the tasks of the terminated beneficiary be redistributed to the remaining beneficiaries via amendment?

Article 50.3 GA only refers to the POSSIBILITY of project termination, if e.g. following the termination for one or more beneficiaries, the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

Antwort:

Please note that the Enquiry Service does not validate individual cases, it only provides general guidance.

Article 9 of the Rules of Participation in Horizon 2020 actions mentions that the following minimum conditions shall apply:

- a. at least three legal entities shall participate in an action;
- b. three legal entities shall each be established in a different Member State or associated country; and
- c. the three legal entities referred to in point (b) shall be independent of each other within the meaning of Article 8. Please read the [entire text](#).

Having said that, in your particular case, if after the termination, the eligibility conditions will not be fulfilled, it will not be possible to amend the GA to redistribute the tasks of the terminated beneficiary between the remaining beneficiaries, because amendments to the GA may NOT result in changes that if known before awarding the grant would have had an impact on the award decision, like changes to the consortium composition that have an impact on the eligibility criteria established in General Annexes A and C to the Main Work Programme.

In your case if the termination of the participation of a beneficiary would call into question the fulfilment of the minimum conditions for participation, the decision awarding the grant or it will breach the principle of equal treatment of participants, and if it is not possible to remedy the situation adding a new beneficiary, then the grant agreement may be directly terminated in accordance with Article 50.3.1 (c) MGA.

Therefore, in this situation we would highly recommend to contact the project officer responsible for the project as soon as possible to discuss about the particular case.

You can find additional explanations in the annotations to Articles 50.3 and 55.1 in the [H2020 Annotated Grant Agreement](#).

Kind regards,

Legal and financial helpdesk

3 Antragstellung und Einreichung

3.1 Allgemeines

3.1.1 Bestätigungen durch den Koordinator (A-Forms)

Antwort vom 17.3.2014

Dear RES,

In the new proposal submission forms (A-Forms) for H2020, the coordinator has to fill out certain DECLARATIONS, e.g. "the coordinator declares to have the explicit consent of all applicants on their participation and on the content of this proposal".

The system is unclear about what kind of confirmation actually is required by the coordinator? Does an e-mail from the potential project partners suffice? Should the coordinator collect written confirmation signed by an authorized representative of the partner organizations?

According to the footnote in the declarations, also the coordinator can be held responsible for misinterpretation of these declarations. Does this mean the coordinator takes full responsibility for these declarations and will be held responsible for any misinterpretation of the partners or will the partner organizations be held responsible for their misinterpretation?

Antwort:

As indicated in the proposal template, the coordinator is responsible for:

- a. the correctness of the information relating to his/her own organisation and
- b. to declare that he/she has the explicit consent of all applicants on their participation and on the content of the proposal.

It is up to each coordinator to decide in which way to gather this consent by each applicant (an e-mail could be considered sufficient). The Commission will only request the coordinator to prove that such consent was given in cases where doubts arise.

For the information related to the other entities in the consortium, each individual applicant remains responsible for the correctness of the information related to it. If it is found that the information about one entity was misrepresented, this particular entity will be responsible in accordance with Article 131 of the Financial Regulation. The only responsibility of the coordinator is to make these declarations on behalf of participant, therefore participants in the consortium should inform the coordinator that they fulfill the conditions set in the declarations. As such coordinator would not be held responsible for any misinterpretation of the partners or the partner organizations if he or she received such information on their part. The participants will be requested to confirm compliance with the content of the declarations on their own behalf at the moment of their signature of the grant agreement.

Kind regards,

Legal and financial helpdesk

4 Allgemeine Fragen zur Kostenabrechnung

4.1 Förderfähigkeit der Umsatzsteuer (VAT)

4.1.1 Nachweis der fehlenden Vorsteuerabzugsberechtigung

Antwort vom 1.7.2014

Dear RES,

I have a question concerning the eligibility of non-deductible value added tax (VAT) paid by the beneficiary: Under what circumstances is the beneficiary supposed to prove that the VAT paid was in fact non-deductible? Will this only be checked in the frame of a CFS/audit, or also at other occasions?

Antwort:

According to Article 22 of the model GA, the Commission/Agency will carry out checks, reviews and audits during the implementation of the action or afterwards.

This means that the eligibility of VAT may be verified upon request by the Commission/Agency not only during ex-post audits, but also, if necessary, in ex-ante checks and reviews carried out by it (e.g. during the reporting when the consortium submits the financial statements).

Moreover, the eligibility of the VAT may be also be verified upon request by the European Court of Auditors and the European Anti-Fraud Office during checks, audits and investigations carried out by them.

Kind regards,
Legal and financial helpdesk

4.2 Interne Verrechnung

4.2.1 Interne Verrechnung in Form von Durchschnittskosten zulässig?

Antwort vom 20.11.2014

Dear RES,

Could you please answer the following questions regarding internal invoicing in H2020:

1. Regarding the time recordings of internally invoiced personnel:
 - a. According to the AMGA, internally invoiced personnel costs for project specific activities may be eligible if the time worked on the project is substantiated by records covering „all the workable time“ of the relevant personnel. Do we understand correctly that the requirement for time recordings of internally invoiced personnel go beyond the general time recording requirements in H2020 („time records only for the number of hours declared“)?
 - b. In FP7, we received a reply from the RES stating that if a person (internally invoiced personnel) works in a project for two months, the time records would only need to cover these two months in order to substantiate the hours charged to the project. Is that still the case in H2020?
2. Regarding the use of average costs for internally invoiced costs:

In FP7, it is possible (under certain conditions) to charge internally invoiced costs as average where it is difficult to substantiate the actual costs. Is that still the case in H2020?

Antwort:

1. Regarding the time recordings of internally invoiced personnel:

The part of the AGA related to internal invoices is going to be updated in the forthcoming release of the AGA. This update regards, among other aspects, the specific issue pointed out in your question. For that reason we cannot give you a conclusive answer at this stage as this point should be updated soon. We thank you for your understanding.
2. Regarding the use of average costs for internally invoiced costs:

In FP7, it is possible (under certain conditions) to charge internally invoiced costs as average where it is difficult to substantiate the actual costs. Is that still the case in H2020?

Under Horizon 2020 internal invoices must refer to the use/dedication for the project of specific resources (e.g. a researcher, a piece of equipment, etc). Therefore, in general terms it is not possible to charge an internal invoice with an average price for the use, for example, of a research infrastructure (e.g. laboratory) or for a service (e.g. an analysis). In contrast, it would be possible to charge an internal invoice, for example, with 16 hours of the technician doing the analysis and 10 hours depreciation of the testing equipment used.

Further details should be provided in the update of the AGA.

Yours sincerely,

Research Enquiry Service - Legal and financial helpdesk

4.3 Förderfähigkeit von Negativzinsen

Antwort vom 14.8.2017

Dear RES,

the coordinator receives the pre-financing from the EU for a project and administers this amount on his/her bank account. The bank charges penal interest for this amount. Is this penal interest eligible within the project?

Antwort:

We understand that you refer to negative interest rates charged on deposits on the bank account on which the coordinator received the EU payments for the implementation of H2020 action. If that is the case, please note that Article 6.1.(vii) of the MGA provides that for the costs to be eligible they must comply with the principle of sound financial management, in particular regarding economy and efficiency. Negative interest rates are currently applied by a limited number of banks. In this context, paying negative interests for keeping pre-financing deposited in a specific bank would not be considered in line with sound financial management of the EU funds.

Moreover, we draw your attention to the fact that the coordinator acts as the intermediary for the distribution of the funds to the other beneficiaries of the grant. Therefore, it could be expected that the funds are distributed without delay, so as not to generate those negative interests due to the deposit of large amounts. If, for example, the consortium has decided that the coordinator retains part of the pre-financing and this generates a financial cost (e.g. a negative interest) such cost cannot be considered as necessary for the implementation of the action (Article 6.1.(iv)). In consequence, the negative interest rates are not eligible costs for the H2020 actions.

If the coordinator incurs in those costs and wants to charge them to the other beneficiaries, this should be dealt internally by the consortium. In that case, it might be appropriate to include the possibility to transfer such charges and the allocation key in the consortium agreement.

Kind regards,

Research Enquiry Service - Legal and financial helpdesk

Antwort vom 11.11.2020

Dear RES,

we received requests from beneficiaries concerning the following situation:

Due to the negative interest policy of the European National Bank, some banks will charge deposit charges/negative interest.

Example:

If the EU Commission transfers e.g. 1,050,000.00 EUR to the Coordinator of a Horizon 2020 project, the bank charges for amounts above 50,000.00 EUR 0.5% deposit charge/negative interest from the moment the amount is on the bank account. These charges also apply for the bank accounts of other beneficiaries to which part of this grant amount is transferred to (e.g. The Coordinator transfers 250,000.00 EUR to beneficiary A. The bank of beneficiary A will charge the deposit charge/negative interests as well, as the amount received from the Coordinator is above 50,000.00 EUR).

According to article 6.5 (a) (vii) MGA bank costs for transfers from the EC are non-eligible costs.

May such deposit charges/negative interest charged by the banks of the beneficiaries be eligible costs?

If not, does the EC intend to change this issue in view of the expected broad application of such bank charges in the near future?

Antwort:

We understand that you would like to know if negative interests charged on deposits in the bank account in which the coordinator received the EU payments for the implementation of a H2020 action are eligible costs.

We are aware that some banks operating in Europe are applying such charges and that the number of those banks has increased. However we still consider that costs for negative interests to keep pre-financing deposited in a specific bank fail to fulfil the eligibility condition set out in Article 6.1.a(vii) of the Horizon 2020 model Grant Agreement according to which costs must comply with the principle of sound financial management.

In this regard we note that a number of banks operating in Europe do not charge those negative interest rates.

In addition the coordinator acts as the intermediary for the distribution of the funds to the other beneficiaries of the grant. Therefore, it could be expected that the funds are distributed without delay, so as not to generate negative interests due to the deposit of large amounts. If, for example, the consortium has decided that the coordinator retains part of the pre-financing and this generates a financial cost (negative interest) such cost can also not be considered as necessary for the implementation of the action (Article 6.1.(iv)).

Where it is a beneficiary that is facing the issue with their bank account, they may agree with the coordinator that they do not want to receive pre-financing, or assess the possibility to receive it in instalments.

We also draw to your attention that contrary to FP7, under H2020 coordinators do not have to declare and reimburse any potential positive interest they obtained resulting from the pre-financing paid by the Commission.

Kind regards,

Legal and financial helpdesk

4.4 Externe SprecherInnen/Moderation

Antwort vom 6.3.2014

Dear RES,

in Horizon 2020, subcontracts concern the implementation of action tasks and imply the implementation of specific tasks which are part of the action and are described in Annex 1, while contracts do not cover the implementation of action tasks, although they are necessary to implement action tasks by beneficiaries.

However, we are still unsure about the classification of a service as a contract vs. subcontract in such cases where a task is mainly implemented by the beneficiaries, but with the support of external experts. Two concrete examples:

- 1. In a CSA, an event is described as an action task in Annex 1. A member of the external advisory board of the action is a speaker at this event and receives a royalty. Would this be considered as subcontracting (if the rest of the event is implemented by the beneficiaries themselves)?*
- 2. A task in a CSA consists of a series of workshops. The beneficiary responsible for organising these workshops would like to hire a professional moderator to lead the discussions. Would this be considered as subcontracting (if the workshop is organised and carried out by the beneficiaries themselves)?*

Antwort:

Please note that the Research Enquiry Service does not validate specific cases but provides general information.

In both your examples, we understand that the task described in Annex 1 (e.g. the organization of the event or series of events) is performed by the beneficiaries. However, the beneficiaries intend to hire external experts as speaker and/or as moderator during these events. These services provided by the external experts may be considered as contracts for the purchase of services under Article 10 MGA as they do not cover the implementation of the action task, but are necessary for the implementation of the action task by beneficiaries.

However, please note that as mentioned in Article 6 MGA, in order to be eligible, costs must be (among other conditions) "reasonable, justified and must comply with the principles of sound financial management, in particular regarding economy and efficiency". This means that costs must be in line with good housekeeping practice when spending public money and not be excessive. Consequently, if this condition is not fulfilled (i.e. the costs are not reasonable), they may be considered as reckless expenditure and therefore as ineligible (i.e. reckless means failing to exercise care in the selection of products, services or personnel and thus resulting in an avoidable financial loss to the action).

In addition, and as mentioned in Article 10 MGA, beneficiaries must award the contracts on the best value-for-money considering the quality of the services, goods or works proposed, or on the lowest price, while avoiding any conflict of interests.

Kind regards,
Legal and financial helpdesk

4.5 Förderfähigkeit von Geschenken

Antwort vom 27.11.2018

Dear RES,

I have a question concerning eligibility of costs in H2020 (ERC). One of the tasks of the project is to do some tests on the children (testing of educational program; agreement of parents is of course anticipated). These kids will receive instead of money some Lego toy (with logo of the beneficiary – it is normally used as promotional material). Could costs of these Lego toys be considered eligible direct costs (other direct cost, consumables)?

Thank you for the reply.

Antwort:

In general a gift such as described in your question does not fulfil the eligibility condition requiring that costs must be necessary for the action (see Article 6.1(a)(iv) MGA).

If due to the circumstances of the specific case, there are reasons to consider that this cost is necessary for the implementation of the action, we advise you to take contact with the Project Officer in charge.

Kind regards,
Legal and financial helpdesk

4.6 Förderfähigkeit von finanziellen Entschädigungen/Anreizen

Antwort vom 21.10.2020

Anfrage der dänischen Legal and Financial NCPs

(In this case “financial incentives” are not understood as cascade funding/article 15 financial support to third parties.)

Some beneficiaries have, as is their usual practice, planned to give e.g. small monetary amounts to participants in focus groups.

This is apparently accepted in some cases, but not in others. When activities with planned financial incentives are refused, this gives the projects unexpected uncertainties regarding the results they have expected.

Could you give an explanation of the level of acceptance of financial incentives in different projects? And could you ensure that there is a standardized way of handling the use of financial incentives?

Antwort:

We understand that your question concerns the consistent treatment of financial incentives given to recipients that are not party to the GA in Horizon 2020 action Grants.

If the incentives you refer to fulfil the general conditions set in Article 6.1.(a) of the H2020 Model Grant Agreement, the related costs would likely fall under the definition of financial support to third parties (Article 15 of the H2020 grant agreement), which may only be eligible if the work programme includes this possibility. Moreover, the conditions under which the beneficiary of the Horizon 2020 grant can provide such financial support must be set out in Annex 1 to the grant. For example, Annex 1 must indicate how the financial compensation must be calculated, who can receive it, the criteria to pay it, etc. You can find detailed explanations in this regard in the Horizon 2020 Annotated Grant Agreement - page 155 and following.

Alternatively, the costs could be declared as costs of other goods and services purchased specifically for the action (Article 6.2.D.3 of the MGA). In that case, you would have to demonstrate, in addition to the absence of conflict of interests, how the purchase of service ensures the principle of best value for money. (See AGA, p.134 and following).

The description of the action and the means to implement it vary considerable from one grant to another. There may be reasons why situations that may look similar lead to different outcomes.

4.7 Coronavirus (COVID-19)

4.7.1 Stornierungskosten i.Z.m. Coronavirus (Force Majeure)

Antwort vom 10.3.2020

Dear RES,

we receive the first questions on eligibility of costs (event, flight, hotel etc.) in case of cancelling project meetings or events due to corona within Europe. Are the costs for cancelling eligible within the H2020 project (force majeure)?

Thanks for your assistance.

Antwort:

The Article 51 of the H2020 Model Grant Agreement (H2020 MGA) sets out the general framework and conditions in which the force majeure clause can be used. As a general rule under H2020, in case of force majeure, a party will be excused from not fulfilling its obligations (i.e. there will be no breach of obligations under the GA and none of the adverse measures for breach will be applied). Costs will be eligible, if they fulfil the general eligibility conditions like any other costs incurred under the action. However, if force majeure entails extra costs for the implementation of the action, it will normally be the beneficiary who must bear them.

Having said that we are aware that indeed the outbreak of Corona virus in the EU and elsewhere may have implications for the participation of individuals in meetings and events organised by beneficiaries for the purposes of H2020 ongoing actions and for their implementation. For instance, it may prevent beneficiaries to fulfil their obligations under the action or even to carry out work in a zone affected by the virus. It may also force beneficiaries to cancel a meeting due to unavailability of key staff or because most of the participants cannot attend.

If such a situation occurs, beneficiaries must immediately inform the Project Officer, which will examine on a case-by-case basis the possible application of the rules on force majeure, in the meaning of Article 51 of the H2020 MGA.

Example: Beneficiaries cannot attend meetings or events related to the action because of their recent contact with someone suffering from the virus or their presence in an area considered to be at high risk. Costs of travel or accommodation that could not be cancelled and which are not reimbursed from other sources could be eligible (provided that the cost eligibility conditions are fulfilled, notably the that meeting was necessary for the action, the costs were reasonable and in line with the usual practices of the beneficiary on travel) even if the beneficiary did not travel and did not take part in the meeting/event.

Kind regards,

Legal and financial helpdesk

4.7.2 Certificate on the Financial Statements (CFS) / Endabrechnung

Antwort vom 21.4.2020

Dear RES

Coming back to the FAQ [Related to the COVID-19 outbreak, what happens in Horizon 2020 grants if beneficiaries cannot submit all/complete elements for their reports related to interim and final payments?](#) - could you please clarify the following questions:

For final payments: Given the Covid-19 situation, the funding bodies will make the final payment even if the beneficiaries are unable to submit the Certificate on Financial Statements ('CFS') with their final reporting obligation (see Article 20.4 H2020 MGA). However, the amount of the payment for those beneficiaries who do not submit the CFS will be capped at the threshold required for CFS of EUR 324,999.

- 1. Does this mean that the threshold of maximum EUR 324,999 is actually payed to the beneficiaries without the CFS?
Beneficiaries will receive a complementary payment once they submit the CFS for the remaining amount covered by the CFS.*
- 2. Does this mean that only costs above the threshold of EUR 324,999, regardless of the period from which these costs originate, must be subject to a CFS audit?*

Antwort:

Please find below our replies:

1. Yes, the final payment for the beneficiaries without CFS will be capped at EUR 324,999.
2. No. If a CFS is needed, all COSTS declared as actual costs or unit costs calculated in according to the usual accounting practices must be covered by the certificate. Incomplete certificates (e.g. covering for instance only the costs above the threshold) will be returned for correction. However, costs previously audited by the Commission/Agency do not have to be covered again by the certificate and are not included in the calculation of the threshold.

For more information on CFS please see the [Annotated Model Grant Agreement](#), in particular pages 187 to 189.

Kind regards,
Legal and financial helpdesk

4.7.3 Verpflichtende COVID-Tests

Antwort vom 28.7.2020

Dear RES,

in the context of necessary travel in a Horizon 2020 project, the persons travelling are tested on Covid-19.

Are the costs for these Covid-19 tests eligible, if the general cost eligibility criteria (art. 6.1 MGA) as well as the special provisions on travel costs (art. 6.2.D.1 MGA) are fulfilled?

Antwort:

Please kindly note that the Research Enquiry service provides general guidance only and cannot comment on the specificities of your particular case.

We understand that you are referring to Covid-19 tests which are compulsory in order to carry out necessary travel for a Horizon 2020 project.

We first note that if the usual practice of the beneficiary is to consider this type of costs as part of indirect costs, then they cannot be charged to the H2020 as direct cost.

Having said that, in accordance with Article 6.2.D.1 of the Horizon 2020 MGA, travel costs and related subsistence allowances incurred for travels under H2020 actions are eligible if they comply with the general cost eligibility conditions of Article 6.1 and if the costs are in line with the beneficiary's usual practices on travel.

The costs for Covid-19 tests may be eligible if the beneficiary is setting a usual practice of paying the Covid-19 tests generally for its staff's travel. Differently if the beneficiary does not pay Covid-19 tests for travel in other projects/activities, then the cost would be ineligible under H2020 grant agreements.

Kind regards,
Legal and financial helpdesk

4.8 Adjustment des Financial Statement

Antwort vom 8.6.2021

Anfrage des tschechischen National Contact Point

Dear RES,

I have a question concerning H2020 and Financial Statement - Adjustment. We have a case when all costs were reported correctly but adjustment is needed in the number of person-months. In other words, no costs need to be adjusted (i.e. the amount of adjustment is „0“), only negative person-months need to be declared in the Use of Resources (pop-up window).

Do you have experience with this situation? Is it necessary to add an adjustment (is it even technically possible) or only explanation in Part B - 5.2 Use of resources is necessary?

Antwort:

Please note that adjustments to person-months in a past reporting period can be declared in the periodic report. To do this, you must add an adjustment financial statement and fill the use of resources (pop-up window) for personnel costs. If the costs have been reported correctly in the past, you should leave the field corresponding to the amount as 0. A use of resources sheet for the concerned period will be generated together with the rest of the periodic report.

Kind regards,

The Research Enquiry Service

5 Personalkosten und Zeitaufzeichnungen

5.1 Jahresproduktivstunden allgemein

5.1.1 Unterschiedliche Optionen kombinieren (1)

Antwort vom 30.1.2014

Dear RES,

according to the H2020 MGA, art 6.2.A., there are three options for calculating the number of annual productive hours. As explained further in the annotations, the option chosen must be consistently applied to the group of personnel working under similar conditions.

Could you please inform us if a beneficiary has to apply the same option to all H2020 GAs or if it may switch between the different options. E.g., would a participant be allowed to apply the standard number of 1720 hrs in his first H2020 GA, but later change its calculation method and use the "standard number of annual hours generally applied by the beneficiary" in a later GA?

Antwort:

It is not necessary to apply the same option concerning the number of annual productive hours for all actions during H2020. However, the beneficiary must use an option consistently within an action and cannot use under a grant agreement option 1 for one employee and option 3 for personnel employed under similar conditions.

Best regards,

Legal and Financial Helpdesk

Bitte beachten Sie zu dieser Thematik auch die folgenden Antworten (FAQ 5.1.2 und 5.1.3)!

5.1.2 Unterschiedliche Optionen kombinieren (2)

Antwort vom 10.11.2015

Dear RES,

in January 2014, we contacted you regarding the possible combination of different methods for calculating the annual productive hours and received the reply quoted below.

When checking the latest version of the Annotated Grant Agreement, we found the following information on p. 54:

"In principle, the same option must be applied to all personnel working for the beneficiary in H2020 actions. However, the beneficiary may use different options for different types of personnel, if:

- the same option is applied at least per group of personnel employed under similar conditions (e.g. same staff category, same type of contract, etc.) and*
- the options are applied consistently (e.g. the choice of the option is not changed at-hoc for specific employees).*

The beneficiary must use the same option(s) for calculating the annual productive hours during one full financial year. It can only change its option(s) for the next financial year."

Does this mean that your reply to Case_ID: 0840848 / 6801550 ("It is not necessary to apply the same option concerning the number of annual productive hours for all actions...", "...must use an option consistently within an action" – see below) should be regarded as obsolete?

Antwort:

It is not that the explanations of our reply 6801550 become obsolete but rather that they were not as extensive as the new clarifications in the AGA. Your question, back in January 2014, was if a beneficiary had to apply the same option to all H2020 GAs or if it might switch between different options. In that context we replied that:

"It is not necessary to apply the same option concerning the number of annual productive hours for all actions during H2020. However, the beneficiary must use an option consistently within an action and cannot use under a grant agreement option 1 for one employee and option 3 for personnel employed under similar conditions."

The purpose was to:

- clarify that it was possible to switch between options, and
- that the options used had to be applied consistently for staff employed under similar conditions.

However, in view of the question you submitted at that time we did not tackle in our reply other issues like the possibility to apply more than one option (e.g. for different types of personnel) or if and when the option used could be changed during the life of a grant agreement.

We hope that the new explanations made available in the AGA complete and clarify all the possibilities.

Yours sincerely,

Research Enquiry Service - Legal and financial helpdesk

5.1.3 Unterschiedliche Optionen kombinieren (3)

Antwort vom 10.11.2014

Anfrage des dänischen National Contact Point

Dear RES

I have a question with regards to the application of the individual annual productive hours, where it says that "the option must be applied not only to the person for whom it declares costs, but per group of personnel employed under similar conditions" (p.44) or "this calculation method is consistently applied ("per group of personnel under similar conditions", p. 45/46). What does that mean?

An institution will most likely not calculate annual productive hours according to H2020-rules for personnel not working on H2020 projects. However, these people will most likely be "employed under similar conditions". What would the consequences be for the calculation?

Antwort:

Beneficiaries are not obliged to use in all cases the same option to calculate the annual productive hours; although that should be the most common situation. There might be reasons why two options can be used by a beneficiary, even in the same grant agreement. This may be for instance the case if the beneficiary's usual practice is to calculate standard annual productive hours for permanent staff but it does not have an established method for temporary staff (so it decides to use e.g. option 1, 1720 hours, for them).

However, it is not allowed to combine ad-hoc different methods for the purpose of charging costs to the Horizon 2020 action. Let's suppose that in our example above the beneficiary decides to calculate individual actual productive hours only for those temporary employees expected to have less than 1720 productive hours per year. This would be a clear inconsistent application of the calculation method, since personnel employed under similar conditions are charged to H2020 actions using different methods. The costs declared would be adjusted by the Commission, e.g. in case of an audit (as indicated in page 45-46 of the AGA).

In conclusion, regarding the calculation based on individual annual productive hours, the condition that the "calculation method is consistently applied (per group of personnel under similar conditions)" refers only to the calculation of personnel costs for Horizon 2020 actions. This is: when individual annual productive hours are used to calculate the hourly rate of one person for Horizon 2020 actions, the beneficiary must use the same method for all personnel employed under similar conditions for calculating their personnel costs for Horizon 2020 actions. However, the beneficiary is not obliged to use these individual annual productive hours to calculate the personnel costs for non-H2020 projects.

Please note, nevertheless, that if the beneficiary chooses option 3 (standard annual productive hours), the number of hours must be calculated in accordance to the beneficiary's usual practice. Such practice can only be adjusted, if needed, to comply with the rule of the 90 % of the standard annual workable hours. Therefore, under option 3 the calculation method for H2020 must be the one generally applied by the beneficiary.

Yours sincerely,
Legal and financial helpdesk

5.1.4 Auswirkungen von Krankenständen auf die Jahresproduktivstunden

Antwort vom 9.11.2016

Dear RES,

could you please inform us how to calculate the annual productive hours in case of a long-term sick leave (of several months)? What is the impact, if there is any, in case of the three different options for calculating the personnel costs?

Antwort:

Under option 1 for the number of annual productive hours – 1720 fixed hours - the fixed number 1720 cannot be reduced in the context of sick leave, no matter how long the sick-leave period is.

Under Option 2 - individual annual productive hours - the productive hours must be calculated by using the formula:

{annual workable hours of the person (according to the employment contract, applicable labour agreement or national law)

plus

overtime worked

minus

absences (such as sick leave and special leave)}

As explained in our previous answer reference 101000015754, sick leave is conditioned to the occurrence of the event triggering the entitlement (e.g. that the person is actually sick). For that reason sick leave must be taken into account in the formula according to its actual utilisation (how many days of sick leave?). In practical terms, under option 2 the beneficiary may deduct the time the person spent in sick leave to calculate the hourly rate.

Under option 3 – standard annual productive hours - the annual productive hours are calculated in accordance with the beneficiary's usual cost accounting practices. It is therefore the beneficiary who defines how each element is to be treated. Typically the calculation of the standard productive hours already takes into account periods of absences (e.g. sick leave). Moreover, the standard annual productive hours cannot be changed ad-hoc for a single individual (e.g. for a person who is sick for a long period) because then it would not be any longer the standard of the entity. In any case, the number of standard productive hours must be at least 90 % of the standard workable hours.

We also wish to recall that the option for the number of annual productive hours must be applied per group of personnel employed under similar conditions.

Kind regards,

Legal and financial helpdesk

5.1.5 Auswirkungen von Urlaub auf die Jahresproduktivstunden

Antwort vom Mai 2017

Dear RES

I have the following question on personnel costs in Horizon 2020:

If a work contract allows for end-of-year transfers for leave entitlements, may this also be applied to the declaration? Example: An employee is entitled to 20 days of holiday leave per year that may be transferred to the next year. She has signed the declaration for an uninterrupted period from 01/01/2017 – 31/12/2018. The project periods run from 01/01/2017 – 30/06/2018 and 01/07/2018 – 31/12/2019. The employee does not take any holidays in period one but 30 days in period 2 in August/September 2018 (uninterrupted). May the hours worked in Aug/Sep 2018 be taken into account?

Antwort:

Please note that the Research Enquiry Service does not validate individual cases but provides general information.

The calculation method for personnel costs is provided in Article 6.2.A of the Model Grant Agreement (MGA) and there is no different calculation method for staff working 100 % on the action. The percentage of time dedicated to the action does not make a difference to the calculation of personnel costs; it matters only for the type of records that must be kept (see Article 18.1.2 MGA). Therefore, the calculation method for personnel costs provided in Article 6.2.A MGA applies (with the annual productive hours chosen by the beneficiary among the three options).

Since there is no obligation to keep time-sheets for periods covered by a declaration on exclusive work, beneficiaries should report:

- for annual hourly rates: a pro-rata of the annual productive hours corresponding to the period covered by the declaration (at the annual hourly rate)
- for monthly hourly rates: 1/12 of the annual productive hours for each month actually worked for the action in the period covered by the declaration (at the monthly hourly rate).

The fact that an employee takes no leave during a reporting period has no impact on the number of hours to be reported, which must be calculated as explained above.

However, please note that if the declaration covers months in which the person was absent for more than half of the working days those months cannot be taken into account to calculate the hours worked in the action, unless the absence is linked to annual leave and the duration does not exceed the pro-rata of annual leave entitlements corresponding to the period covered by the declaration. More precisely, the end-of-year transfer of leave requirements (we presume that the transfer is done in accordance with your national labour law/employment contract) may be taken into account provided that the total duration of the leave does not exceed the pro-rata of leave entitlements corresponding to the whole period covered by the declaration.

In your specific case, where the employee is entitled to 20 days of annual leave, it would mean that s/he would be entitled to 40 days of leave for the two years period (01/01/2017 – 31/12/2018) covered by the declaration of exclusive use. Therefore, the 30 days of leave in August/September 2018 may be taken into account as this period is below the 40 days leave entitlement for the 2 years covered by the declaration.

Further explanations and examples are available in the [Annotated Model Grant Agreement](#) p.64-65.

Kind regards,

Legal and financial helpdesk

5.1.6 Jahresproduktivstunden des Vorjahres I

Antwort vom Februar 2017

Dear RES,

when calculating personnel costs in an H2020 project, beneficiaries generally need to use the hourly rate of the last closed financial year available.

In this regard, how will a case be treated where a person has been employed by the beneficiary in the last year (thus, an hourly rate could be determined) but in a completely different position and with a different work contract?

For example, a person has been employed as an intern/trainee in 2015 and receives a new work contract as scientist in 2016, which also involves a very significant rise in his/her salary.

When reporting e.g. in June 2016, has the hourly rate to be determined based on the (far too low) hourly rate of 2015 or may this case be treated as a person newly hired in 2016?

Antwort:

Please kindly note that the Research Enquiry Service does not validate specific cases but may only provide general guidance.

As preliminary remark, please note that a beneficiary declaring its personnel costs on the basis of annual hourly rates does not have to use systematically the hourly rate of the last closed financial year available; it has to use that rate only when the annual figures of a year are not available at the end of a reporting period (e.g. because the financial year is not closed at the time of the reporting).

Against that background, when a person has been hired by the beneficiary in the last financial year, generally speaking, a change in the position of the person does not impact on the calculation method of an annual hourly rate. In that context, if the beneficiary declares its personnel costs on the basis of an annual hourly rate and if the financial year is not yet closed at the time of the reporting, the annual hourly rate would be based on the figures for the previous closed financial year. That may include, for instance, a period where the given person has received a lower salary due to its former contract.

The case of employees hired during the on-going financial year at the end of the reporting period is an exception to the use of the full financial year for the calculation of the hourly rate. In such case, and since the employee did not work for a beneficiary during the last financial year, the hourly rate can only be calculated on the basis of the personnel costs incurred during the reporting period (see additional explanation in the [Annotated Grant Agreement \(AGA\)](#), p.67).

Taking all the above into account, and regarding the specific case you describe, we understand that a person working on a H2020 action was, firstly, hired on the basis of an internship agreement in 2015 and then has continue to work but as an employee of your organisation since 2016. As indicated in the AGA (p.55), the costs of internships may be assimilated to costs of employees (or equivalent) when the agreement is work-oriented.

In this context, if the internship agreement was training-oriented and so you have not declared any costs of this person under H2020 actions in 2015 under that agreement, the person could be considered as hired during the on-going financial year 2016 (i.e. not yet closed at the time of the reporting in June 2016) as described above.

Otherwise, a change of type of contract would not be sufficient for this person to be considered as hired during the on-going financial year 2016 as explained above.

We take also the opportunity of this message to draw attention on the possibility to calculate the hourly rate per month which has been introduced in the Model Grant Agreement (dated 20 July 2016) as an alternative to hourly rates per full financial year. The calculation is based on the personnel costs paid each month and one twelfth of the annual productive hours calculated according only to option (i) or (iii) i.e. either the fixed number of hours or the standard annual productive hours, but NOT individual annual productive hours. A change for this new option applies to all the beneficiary's H2020 grants and the beneficiary must use only one option (hourly rate per full financial year or hourly rate per month) for each full financial year (for additional explanations, see AGA, p.64).

Kind regards

Legal and financial helpdesk

5.1.7 Jahresproduktivstunden des Vorjahres II

Antwort vom 8.1.2018

Dear RES,

I have a question concerning the “last closed financial year available”.

The MGA stipulates that: “If a financial year is not closed at the end of the reporting period, the beneficiaries must use the hourly rate of the last closed financial year available.”

According to the AGA: “Last closed financial year available refers to the most recent full financial year for which all information necessary to calculate the hourly rates in accordance with the GA is available.”

My question is following:

The reporting period ends up in November 2017, which means the financial year is not closed at the end of the reporting period. However, since the consortium has 60 days to submit the financial report, beneficiaries will have all information necessary to calculate the hourly rates applicable for 2017.

Should beneficiaries use the hourly rate of 2016 for January-November 2017 or should they use the hourly rate of 2017 in this particular case?

Antwort:

When at the end of the reporting period there are months for which the financial year is not closed yet (e.g. the financial year is still on-going), the beneficiary must use the figures of the last closed financial year available to declare the costs for those months (i.e. use the hourly rate of the last closed financial year available also to calculate the personnel costs for the hours worked on those months).

This has to be understood strictly as a reference to the end date of a reporting period and not to the end date for submitting the related technical and financial reports.

Therefore, and as regards the case you describe in your query, it appears that the figures which will have to be used to determine the hourly rate for personnel costs for the period ending in November 2017 will be those of the financial year 2016, and not those of the financial year 2017.

This is because at the end of the reporting period (e.g. 30/11/2017) the 2017 financial year was not closed.

In addition and as indicated in the Annotated Grant Agreement, adjustment to the hourly rate are allowed only for errors (e.g. incorrect accounting information; error in the calculation, etc.).

Otherwise, costs that have been declared cannot be adjusted/changed, even if a recalculation of the hourly rate after the closure of the financial year would give another result.

Kind regards,

Legal and financial helpdesk

5.2 Jahresproduktivstunden: Option 1 („1720 Stunden“)

5.2.1 Auswirkungen einer Überstundenpauschale auf Option 1

Antwort vom 14.5.2014

Dear RES,

according to the Annotated Model Grant Agreement, p. 47, the number of annual productive hours for Option 1 (1720 fixed hours) "is fixed for full-time employees (and it is pro-rata for employees working part-time)."

How about employees receiving a monthly lump sum overtime allowance (extra payment e.g. for 10 or 15 overhours - as a result the weekly working hours are higher than for a regular FTE) - would this increase the number of annual productive hours when Option 1 is used? The monthly lump sum overtime is stipulated in the contract of the employee and he/she has to work those overtime hours to fulfill the contract.

Would this mean - similar to the pro-rata calculation for part-time employees - that the 1720 hours have to be increased according to the stipulated overtime?

Antwort:

Under option 1 the beneficiary may use 1720 annual productive hours for person working full time. This number of hours applies for full time employees regardless of the actual number of working/productive hours in the year. Therefore, you do not need to increase the number of hours under option 1 (i.e. 1720) to take into account overtime.

Best regards,
Legal and Financial Helpdesk

5.2.2 1720-Regel vs. tatsächliche Jahresproduktivstunden

Antwort vom Mai 2017

Dear RES,

When using option 1 for annual productive hours (1720 hours) to calculate the hourly rate, is it necessary to calculate the personnel costs using the number of actual hours worked?

We believe that with option 1, personnel costs are calculated using 1720 hours, even if the person worked more or less than 1720 hours – as long as full-time (100%) employment for the action or the pro-rata activity for the action (e.g. 860 hours) is ensured. However, many practitioners are convinced that they still have to take into account the actual number of hours worked when option 1 is used.

So in case of 1720 and full-time employment for the action, would there be a difference between beneficiaries using time sheets and beneficiaries using the declaration on full-time activity? In other words, if a person fulfills his full-time contract and works exclusively for the action, but the contract at this institution prescribes for example only 1690 hours for a full-time position and the 1690 hours are also documented by time-sheets, is the calculation (annual personnel costs / 1720) multiplied by 1690 or is it automatically (annual personnel costs / 1720) multiplied by 1720?

Antwort:

Under H2020, actual personnel costs to be charged are determined via an hourly rate which is multiplied by the number of actual hours worked on the action.

1720 annual productive hours is an option for the calculation of the hourly rate. The choice of this option has no impact on the number of actual hours charged to the action, which are in principle hours actually worked on the action.

The number of actual hours declared for a person must be identifiable and verifiable. Such hours must be registered via time records or, if the person works exclusively in the action, via a declaration. Exclusive work on the action matters only for the types of records that must be kept (see Article 18.1.2 of the Model Grant Agreement) and entails no different calculation method to calculate personnel costs. For the calculation, the number of hours worked in the action during the period covered by the declaration will be the pro-rata (corresponding to the period of exclusive dedication) of the annual productive hours used to calculate the hourly rate.

Therefore, in your example with 1720 annual productive hours:

1. For an employee having worked in the action 1690 hours in the financial year registered via time records: personnel costs = (actual annual personnel costs / 1720) * 1690
2. For an employee who worked exclusively in the action and signed the declaration for the whole financial year: personnel costs = (actual annual personnel costs / 1720) * 1720

Further explanations and examples are available in the [Annotated Model Grant Agreement](#) (notably p. 67).

Kind regards,

Legal and financial helpdesk

5.3 Jahresproduktivstunden: Option 2 („Individuell“)

5.3.1 Berechnung der individuellen Jahresproduktivstunden

Antwort vom 21.3.2016

Dear RES,

we have a question regarding the calculation of annual productive hours according to Option 2: Could you please confirm which of the following elements must be determined according the legal entitlement (according to employment contract/ applicable labour agreement /national law) and which according to actual utilisation:

1. *annual leave,*
2. *sick leave,*
3. *special leave,*
4. *overtime.*

Furthermore, regarding option 3 (standard annual productive hours): which of the following elements must be determined according the legal entitlement (according to employment contract/ applicable labour agreement /national law) and which according to actual utilisation:

1. *annual leave,*
2. *sick leave,*
3. *special leave,*
4. *overtime.*

Antwort:

Under Option 2 - individual annual productive hours - the productive hours must be calculated by using the formula:

{annual workable hours of the person (according to the employment contract, applicable labour agreement or national law)
plus
overtime worked
minus
absences (such as sick leave and special leave)}

As illustrated in the example in page 56 of the AGA, when calculating the annual workable hours, the beneficiary must exclude the contractual (legal) entitlements of the employee. For example, if the contractual right of the beneficiary is 22 working days of annual leave, then that number of days is to be deducted to calculate the annual workable hours. The reason is that the annual leave entitlement is an unconditioned right for the person. Therefore, the person is not required to work during its leave entitlement and, so, that period is not workable time.

By contrast, other leaves like for instance sick leave or parental leave are conditioned to the occurrence of the event triggering the entitlement (e.g. that the person is actually sick, the birth of a child, etc.). Therefore, by default the person is expected to work normally during the year, except if

the event triggering the entitlement takes place. For that reason leaves other than the fixed annual leaves must be taken into account in the formula according to its actual utilisation (how many days of sick leave (if any)?, how many days of parental leave (if any)?, etc).

The same happens with overtime. Generally the contracts or the collective agreements do not stipulate mandatory overtime (because then it would be part of the normal working hours = workable time; and not overtime). Therefore, overtime is to be included in the formula for its actual occurrence (how many hours of overtime in the year (if any)?).

Under option 3, the annual productive hours are calculated in accordance with the beneficiary's usual cost accounting practices. It is therefore the beneficiary who defines how each element is to be treated. However, in case of an audit the Commission will always verify that the number of standard productive hours is at least 90 % of the standard workable hours. In that context the standard annual workable hours are to be calculated using the contractual entitlement for annual leave (see example in page 58 of the AGA).

Kind regards,
Legal and financial helpdesk

5.4 Jahresproduktivstunden: Option 3 („Standard“)

5.4.1 Meeting/Trainings einrechnen?

Antwort vom 25.3.2014

Dear RES,

one of our clients would like to know if there are any particular rules regarding the inclusion/exclusion of working time spent on trainings and general meetings in the Standard Annual Productive hours.

Furthermore, under what circumstances could time spent in trainings and general meetings be considered as 'time worked for the action'?

Antwort:

As stated in page 46 of the Horizon 2020 Annotated Grant Agreement (AGA), "the beneficiary may include or exclude certain activities (e.g. general training, general meetings etc.) when calculating the standard annual productive hours, if this is in line with its usual cost accounting practices". In this sense, inclusion/exclusion of training and general meetings under option 3 (standard annual productive hours) depends exclusively on the usual practice of the beneficiary. This is without prejudice to the minimum ceiling of 90% of the "standard annual workable hours".

Regarding your second question, general training and general meetings cannot be considered as time worked for the action since, by definition, they are not directly linked to the action.

Best regards,

Legal and Financial Helpdesk

5.4.2 Berechnung allgemein; Verwendung von Daten der Statistik Austria

Antwort vom 21.5.2014

Dear RES,

could you please answer the following questions regarding the calculation of the 'standard annual productive hours' (Option 3) by one of our customers:

1. Sick leave: Would it be acceptable to use the statistical data on the average sick leave per person and year provided by „Statistics Austria“? Or is it compulsory to use the average data of the particular legal person?
2. Travel time: How can a beneficiary determine if the travel time should be considered as productive time or not? In this context, please note that an Austrian employee may either get paid his/her regular hourly rate when travelling, or a reduced hourly rate, or no payment at all (but, even if the travel time is not paid at all, it is still covered by accident insurance).
3. Moreover, our customer is asking if you could provide a few examples for tasks that could be considered as unproductive in H2020.

Antwort:

One of the conditions for the use of option 3 (i.e. standard annual productive hours) is that the number of standard annual productive hours is calculated in accordance with the beneficiary's usual cost accounting practices. By definition, this requires that the entity has a usual cost accounting practice under which it determines the standard annual productive hours. Therefore, if the beneficiary's usual cost accounting practice calculates the number of annual productive hours by taking into account the average sick leave per person and year provided by "Statistics Austria", this would be also acceptable under Horizon 2020. In contrast, if the entity is setting up a methodology to calculate those hours only for the purposes of Horizon 2020, this calculation method would not be acceptable; i.e. the beneficiary would have to choose option 1 or 2.

Regarding questions 2 and 3, under Horizon 2020 the grant agreement does not specify what activities are to be considered as productive or non-productive. This classification will be determined by the usual costs accounting practices of the entity. The beneficiary must ensure, however, that the number of productive hours is at least 90% of 'standard annual workable hours'. We should stress once more that if the entity does not have a usual costs accounting practice for the calculation of the standard annual productive hours, then option 3 cannot be used.

As explained in the annotated GA, "The beneficiary may include or exclude certain activities (e.g. general training, general meetings etc.) when calculating the standard annual productive hours, if this is in line with its usual cost accounting practices."

For more information, please read the [Annotated GA](#).

Best regards,

Legal and Financial Helpdesk

5.4.3 Nachfrage zur Antwort „Berechnung allgemein...“ vom 21.5.2014

Antwort vom 6.6.2014

Dear RES,

this is a follow-up question regarding your reply to Case_ID 0899745/3154029:

Do I understand correctly that a beneficiary choosing Option 3 must have a usual cost accounting practise under which it determines the standard annual productive hours that is already IN USE BEFORE the organisations first participation in a H2020 action?

In other words, is there any possibility to determine the organisation's standard before the first H2020 action starts and to use it from thereon?

Antwort:

Indeed, as indicated in the H2020 Annotated Grant Agreement page 46, option 3 can be used if (among others):

"the number of standard annual productive hours is calculated in accordance with the beneficiary's usual cost accounting practices".

On the same page, the AGA also states that:

"if the standard annual productive hours were calculated not in accordance with the beneficiary's usual cost accounting practices, the auditors will adjust the number of annual productive hours by applying option 2, if possible".

However, it is not necessary that the usual cost accounting practice under which the entity determines the standard annual productive hours is already in use before the organisation's first participation in a H2020 action. The usual cost accounting practice can indeed be put in place at a later stage and, from that time onwards, be used also for Horizon 2020 actions (if it fulfils the conditions of option 3). In contrast, what would not be acceptable is that the cost accounting practice is defined with the only purpose of calculating costs for Horizon 2020 actions, or be used in practice only for that purpose. In that situation the calculation could not be considered as the "usual cost accounting practice" of the beneficiary.

Best regards,

Legal and Financial Helpdesk

5.4.4 Berechnung der Standard-Jahresproduktivstunden

Antwort vom 21.3.2016

Dear RES,

we have a question regarding the calculation of annual productive hours according to Option 2: Could you please confirm which of the following elements must be determined according the legal entitlement (according to employment contract/ applicable labour agreement /national law) and which according to actual utilisation: 1. annual leave, 2. sick leave, 3. special leave, 4. overtime.

Furthermore, regarding option 3 (standard annual productive hours): which of the following elements must be determined according the legal entitlement (according to employment contract/ applicable labour agreement /national law) and which according to actual utilisation: 1. annual leave, 2. sick leave, 3. special leave, 4. overtime.

Antwort (letzter Absatz):

Under Option 2 - individual annual productive hours - the productive hours must be calculated by using the formula:

{annual workable hours of the person (according to the employment contract, applicable labour agreement or national law)

plus

overtime worked

minus

absences (such as sick leave and special leave)}

As illustrated in the example in page 56 of the AGA, when calculating the annual workable hours, the beneficiary must exclude the contractual (legal) entitlements of the employee. For example, if the contractual right of the beneficiary is 22 working days of annual leave, then that number of days is to be deducted to calculate the annual workable hours. The reason is that the annual leave entitlement is an unconditioned right for the person. Therefore, the person is not required to work during its leave entitlement and, so, that period is not workable time.

By contrast, other leaves like for instance sick leave or parental leave are conditioned to the occurrence of the event triggering the entitlement (e.g. that the person is actually sick, the birth of a child, etc.). Therefore, by default the person is expected to work normally during the year, except if the event triggering the entitlement takes place. For that reason leaves other than the fixed annual leaves must be taken into account in the formula according to its actual utilisation (how many days of sick leave (if any)?, how many days of parental leave (if any)?, etc).

The same happens with overtime. Generally the contracts or the collective agreements do not stipulate mandatory overtime (because then it would be part of the normal working hours = workable time; and not overtime). Therefore, overtime is to be included in the formula for its actual occurrence (how many hours of overtime in the year (if any)?).

Under option 3, the annual productive hours are calculated in accordance with the beneficiary's usual cost accounting practices. It is therefore the beneficiary who defines how each element is to be treated. However, in case of an audit the Commission will always verify that the number of standard productive hours is at least 90 % of the standard workable hours. In that context the standard annual

workable hours are to be calculated using the contractual entitlement for annual leave (see example in page 58 of the AGA).

Kind regards,
Legal and financial helpdesk

5.5 Überstunden

5.5.1 Unterschiede FP7-H2020

Antwort vom 30.1.2014

Dear RES,

could you please outline the Commission's policy concerning overtime in H2020 – is it the same as in FP7 (overtime must be actually paid, necessary, etc.)?

Furthermore, what about overhours of persons working full-time for a H2020 action: since these persons do not need to keep time sheets, how would it be possible to prove that a person has worked more hours than his/her regular working hours?

Antwort:

Compared to FP7 there are certain differences in the treatment of overtime which result from the Horizon 2020 provisions for the calculation of actual personnel costs. As you know, in Horizon 2020 actual personnel costs to be charged to the action are determined via an hourly rate which is multiplied by the number of hours actually worked in the action. This hourly rate is the result of dividing the actual annual personnel costs by the number of annual productive hours (Article 6.2.A of the Model Grant Agreement). Those annual productive hours are to be determined in accordance to one of the three methods offered in the MGA. In practice the three methods already include in the annual productive hours the possible overtime, either implicitly (options i and iii) or explicitly (option ii). As a consequence, the same hourly rate will apply to normal hours and to any possible overtime. This is a factual difference with the information in the FP7 Guide to Financial Issues, page 60, where it was explained that the hourly rate for overtime had to be calculated separately from the standard working hours.

Another difference is that in Horizon 2020 the MGA explicitly provides that under no circumstances can a beneficiary charge for a person in a year more hours than those used to calculate the hourly rate. If overtime takes place resulting in more hours worked for the EU projects than the number of hours used for the hourly rates, the exceeding overtime cannot be charged to the EU projects.

Finally, in the case of persons working exclusively in the EU action, overtime would have no impact on the costs that can be charged. As you correctly point out, persons working exclusively in one EU project do not have to keep time records. Thus, the number of hours worked in the action would be considered equal to the number of annual productive hours and, so, the total eligible personnel costs of the employee can be charged in any case to the action. This would be independent of the fact that the employee has or has not worked overtime while s/he was working exclusively in the EU project.

Kind regards,
Legal and Financial Helpdesk

5.5.2 Verrechnung von Überstunden

Antwort vom Juli 2017

Dear RES,

I am asking you for advice on the following issue concerning the calculation of personnel costs in a Research and Innovation action (RIA) under H2020.

The situation: A university has to submit a financial report for the period Dec 2015 to Apr 2017. A researcher was newly recruited in Jun 2016 and worked on the concerning RIA until Mar 2017. He/she did so essentially full-time, however, the university opted for completing time-sheets and does not want to use the "declaration on exclusive work". From Apr 2017 on, he/she did not work on the action any more (but on nationally funded projects instead). Whether he/she will work on the action again in 2017 is not clear.

The university calculates hourly rates on a yearly basis using option 1 (1720 hours). Accordingly, it calculates a yearly hourly rate for the researcher for 2016 which is also used for the months he/she has worked on the action in 2017 (i.e. Jan to Mar 2017).

Within in those months in 2017, the researcher had no absences and worked a considerable amount of overtime. Consequently, the university would claim more costs for the researcher for these months than it actually had in these months (because the hourly rate is multiplied with a larger number of hours than the monthly average of 1720 hours). However, as far as I understand it, there is no contraction with the "double ceiling" (as this concept is based on a full year).

My question is: are the costs calculated for the researcher from Jan to Mar 2017 eligible even though they are higher than the actual costs (i.e. the monthly income x 3) for these months? Or would it be required to calculate a pro-rata of the 1720 hours?

Antwort:

We understand from your question that you are calculating the hourly rate per full financial year, using the option (i) "fixed number of hours" (1720 annual productive hours). We also understand that because the financial year 2017 is not closed year, you are using the hourly rate of the last closed financial year to calculate the personnel costs of a researcher for the three first month of 2017. You mention that this researcher has worked a considerable amount of overtime during these 3 months. As a result, the costs declared in those months are actually higher than the costs actually incurred. In this context, you would like to know if the costs are eligible.

As a preliminary remark, we would like to recall that:

- In accordance with Article 6.1.(a).(vi) of the H2020 Model Grant Agreement (MGA), for the costs to be eligible they must comply with the applicable national law on taxes, labour and social security. If the working time is incompatible with the national legislation (e.g. exceeds the maximum overtime allowed, does not respect regulations on mandatory breaks, etc.) then the related costs would be ineligible.
- The beneficiary can only charge to the action the actual hours worked on it. Those actual hours must be supported by reliable time records (or the declaration on persons working exclusively on the action if applicable).
- The double ceiling implies that a beneficiary can never charge to EU or Euratom grants more hours in a year than the annual productive hours used to calculate the hourly rate. Equally, the

beneficiary cannot charge to EU or Euratom grants in a year more than the total personnel costs of the person.

This being said, if these requirements are fulfilled, it is possible that the costs declared are higher than the costs actually incurred for some months, for example, as a result of overtime. The costs are eligible provided that, at the end of the financial year, the costs declared to the EU or Euratom grants are not higher than the total personnel costs actually incurred for the person in that year. If so, the beneficiary will have to declare an adjustment to the costs reported.

As a final remark, if the person works exclusively in the action it is strongly recommended that the beneficiary signs the 'declaration on exclusive work for the action'. In that situation, the declaration can serve as evidence that that the person worked for the action all her/his productive hours during the period covered by the declaration. In that case you would apply the simplified calculation, based on a pro-rata of the annual productive hours, explained in the [H2020 annotated grant agreement](#) – p.64.

Kind regards,
Legal and financial helpdesk

5.5.3 Auswirkungen einer Überstundenpauschale auf die Personalkosten

Antwort vom 10.10.2014

Dear RES,

thank you for your reply to Case_ID: 0950687 / 7020330.

However, our request was apparently misunderstood. What we would like to know is NOT the impact of overhours on the annual productive hours, but whether the related costs would be eligible.

In other words, is it possible to include lump sum overtime allowances and extra payments/surcharges for overtime in the basic remuneration, if they are mandatory according to the employment contract or according to mandatory labour law?

And if not, would they be considered as additional remuneration if the general requirements are fulfilled?

Antwort:

The way in which extra payments or allowances to personnel may become eligible is either via the hourly rate (calculated on the basic remuneration) or as "additional remuneration".

We understand that your question refers to the qualification of those "lump sum overtime allowances" either as part of the basic remuneration, as additional remuneration or as an ineligible part of the remuneration.

Generally speaking, a complement to the salary which is mandatory according to the employment contract and/or labour law and which is not dependant on a specific project would most likely classify as basic remuneration. In that case, the complement would be part of the basic remuneration used to calculate the hourly rate. However, we are afraid it is not possible for us to give you a conclusive answer on your specific case based on the information provided in your query.

The Commission is currently working in an update of the Annotated Grant Agreement. This will include an extended review of the section dedicated to personnel costs – additional remuneration, with additional explanations and practical examples. We expect this update to become available before the end of the year. We would suggest you to review your specific case against that updated guidance (once it is published). If at that moment you still have doubts, do not hesitate to contact back the enquiry service.

Yours sincerely,
Legal and Financial Helpdesk

5.6 MitarbeiterInnen mit mehreren Verträgen

5.6.1 Mehrere Verträge nacheinander im selben Jahr

Antwort vom 2.2.2017

Dear RES,

Could you please explain how to calculate the personnel costs of a person who has two different contracts (subsequently) with the same employer in the same year. Let's assume a student is employed by her university as an undergraduate assistant with a very low hourly rate. Later that year, the student graduates from the university and subsequently signs a new contract as a researcher with a much higher hourly rate. In this second position, she also participates in a H2020 project. Can the two employments be treated separately, only taking into account the employment as a researcher for the calculation of the personnel cost?

Antwort:

You are referring to a situation where a beneficiary signs two separate employment contracts with one person in one financial year.

The answer to your question depends on the way the beneficiary calculates personnel costs according to Article 6.2.A Calculation of the MGA. If the beneficiary calculates the hourly rates for its employees per month, then the hourly rate would be calculated separately for each employment contract, as it would only take into account the contract on-going in each month.

If the beneficiary calculates the hourly rates for its employees per full financial year, then, in the calculation of the hourly rate the actual annual personnel costs for the person would include the costs and the productive hours from both contracts.

Kind regards,

Legal and financial helpdesk

5.7 Dokumentation der Personalkosten

5.7.1 Projektbezogene Zeitaufzeichnungen ausreichend

Antwort vom 21.2.2014

Dear RES,

could you please describe the requirements for time recording in a H2020 action in detail.

In particular, we need to know if it is still necessary (like in FP7) required that the time recording system enables complete reconciliation of total hours per person, listing all activities (EU projects, internally funded research, administration, absences etc.) for persons not working exclusively for the action.

There are some statements in the MGA which have raised our suspicion that the rules might have changed in this respect (standard factual finding No. 33 in the „Agreed-upon procedures to be performed and standard factual findings to be confirmed by the Auditor“ reads that „All persons recorded their time dedicated to the action on a daily/ weekly/ monthly basis (...)“ and „All working time to be charged to should be recorded (...).“ Furthermore, the MGA reads in article 18.1.2: „In addition, for personnel costs (declared as actual costs or on the basis of unit costs), the beneficiaries must keep time records for the number of hours declared.“

We would therefore like you to specify if at all, and under which conditions, it would be acceptable to record the hours worked for the action ONLY. Are there any differences related to the method for calculating the annual productive hours (e.g. less requirements for beneficiaries using the standard number of 1720 hrs)?

Antwort:

Article 18.1.2 of the Horizon 2020 model grant agreement explicitly indicates that "for personnel costs (declared as actual costs or on the basis of unit costs), the beneficiaries must keep time records for the number of hours declared". There is no obligation, therefore, to keep records of the hours not declared to the action. Please note also that there are no additional requirements on time-recording for the use of any of the three options for calculating the annual productive hours. In all three cases the general rule defined in article 18.1.2 for personnel costs applies.

Kind regards,

Legal and Financial Helpdesk

5.7.2 Mindestkriterien für Zeitaufzeichnungen

Antwort vom 14.4.2015

Dear RES,

would you please inform us if the criteria listed on page 56 f of the Annotated Grant Agreement under the heading "Time records should include" are compulsory or mere recommendations?

Antwort:

We understand that you are referring to the list of minimum conditions for time records provided on [pp 156-157 of the AGA](#).

These conditions are compulsory. However, the template of time-sheets it is not mandatory provided that these minimum conditions are fulfilled.

As an annotation to Article 18 within the AGA, the purpose of this list is to help users to understand and interpret the MGAs. It has been prepared by the legal Unit and the auditors with the objective of providing as much legal certainty as possible.

Kind regards,

Research Enquiry Service - Legal and financial helpdesk

5.7.3 Tätigkeitsbeschreibung (Zeitaufzeichnungen)

Antwort vom 4.5.2015

Dear RES,

this is a follow-up question to your reply to Case_ID: 1035023 / 4367572.

Since the AGA specifies on p. 156 that "time records should include...", we are wondering if it would be acceptable to record either (a) the reference to the task/work package and the description of the activities carried out or (b) only the description of activities in a separate document (if all the other requirements are met)? Or is it compulsory to include all the required information directly in the time records (as the exact wording "time records should include..." indicates)?

In case that it is acceptable to record part of the information (see above) in a separate document, would it be necessary to sign this document according to the requirements for signing time records?

Please note that this is a crucial point for some beneficiaries whose regular time recording system does not have the technical capacity to record additional information. Thus, they would either need to reprogram their time recording system or to keep double time records for EU actions.

Antwort:

The fact that the time record does not include the reference to the task/work package and a short description of the activities carried out does not automatically invalidate the time recording system. Such information may be recorded separately provided that it fulfils the requirements applicable to time records (i.e. at least monthly periodicity and signed by the person and its supervisor). Having said that, please note that one does not have to keep a detailed list of the activities in the time records. A brief summary to allow identifying the tasks of the person for the project during the period covered by the time record would be sufficient. Some beneficiaries comply with this requirement by using a standard field of "comments" or "observations" within their time-recording systems to record this information.

Kind regards,

Research Enquiry Service – Legal and Financial Helpdesk

5.7.4 Zeitaufzeichnungen auf monatlicher Basis

Antwort vom 28.4.2015

Dear RES,

according to Annex 5 of the Model Grant Agreement refers to time records 'on a daily/weekly/monthly basis'.

Could you please confirm that each beneficiary may chose if it records the time dedicated to an action on daily, weekly or monthly basis (since the Annotated Model Grant Agreement contains no information on this matter).

Antwort:

Article 18.1.2 of the Horizon 2020 model Grant Agreement provides that:

"For personnel costs (declared as actual costs or on the basis of unit costs), the beneficiaries must keep time records for the number of hours declared. The time records must be in writing and approved by the persons working on the action and their supervisors, at least monthly."

Therefore, the minimum requirement is a time recording system on a monthly basis. However, it must be noted that the level of detail and periodicity of the time records can affect their reliability as evidence of the actual time worked on the project. Weekly or monthly time records can provide less information and, thus, are more prone to require complementary evidence supporting the accuracy of the data than daily records. In case of an audit by the Commission/the relevant Agency, an auditor can request this alternative supporting evidence to verify the eligibility of the costs on such basis. That is one of the reasons why the example of timesheet proposed by the Commission is based on daily records.

For H2020, for persons who work exclusively for the action, instead of keeping time records, the beneficiary may sign a 'declaration on exclusive work for the action'.

Kind regards,

Research Enquiry Service – Legal and Financial Helpdesk

5.8 Personalkosten für KMU-EigentümerInnen ohne Gehalt

5.8.1 Gehalt nur für Management des KMU

Antwort vom 4.3.2014

Dear RES,

in FP7, it was possible to use the flat-rate physical persons and SME owners who do not receive a salary for the cases where the SME owner can show evidence that his/her salary corresponded exclusively to the management of the SME and not to his/her research work.

Is it the same for unit costs for SME owners in H2020?

Antwort:

Under H2020 the personnel costs of SME owners not receiving a salary and of beneficiaries that are natural persons not receiving a salary, who work on the action, can be reimbursed on the basis of a unit cost. This applies as well to those who are remunerated/compensated by whichever other means such as dividends, service contracts between the company and the owner, etc.

As under FP7, if the SME owner can show evidence that his/her salary corresponds exclusively to the management of the SME, s/he may declare his/her personnel costs for the action based on the unit cost set out in Annex 2. The salary for the management of the SME cannot be declared.

Kind regards,

Legal and Financial Helpdesk

5.8.2 KMU-EigentümerIn: Untergrenze an Anteilen?

Antwort vom 26.3.2014

Dear RES,

is there a minimum share/partnership interest for an „SME owner without a salary“ to be considered as such in H2020? Would a 1 % share be sufficient? (We assume there is no such minimum but we need to be sure about that).

Antwort:

There is no minimum percentage of ownership to apply the rule. Any co-owner of a Small or medium-sized enterprise not receiving a salary can apply the SME owner flat rate in order to charge their personnel cost to the EU project.

However, it should be said also that while it is perfectly acceptable that an SME shareholder with a very small percentage of ownership uses this possibility, extreme cases like the one mentioned in your example would be carefully assessed. In cases like that, the Commission would most probably verify that this rule (like any other) is not being abused by artificially creating a construction to create profit (e.g. The person working in the project was SME owner only during the duration of the project).

With that "caveat", we confirm as indicated above that there is no minimum percentage of ownership in the SME, and that any legitimate SME owner fulfilling the criteria would be entitled to use this possibility.

Kind regards,

Legal and Financial Helpdesk

5.9 Personalkosten - Diverse Fragen

5.9.1 Costs for natural persons working under a direct contract (1)

Antwort vom 30.3.2015

Dear RES,

the AGA states a number of conditions for the eligibility of the costs of ,natural persons working under a direct contract'. Among others, the costs must not be significantly different from costs for ,personnel performing similar tasks under an employment contract with the beneficiary.'

However, it could happen that the beneficiary is a small company which does not have any employees (only its owners - who do not receive a salary - and consultants with a direct contract work for the SME). How could the eligibility criteria quoted above be assessed by the beneficiary itself/in case of an audit? Should the costs be comparable with the unit costs for SME owners without a salary, or what else would be the reference value in this special case?

Antwort:

Concerning the requirement in Article 6.2.A.2(c) MGA according to which the costs for a natural person working under a direct contract with the beneficiary must not be significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary, if the beneficiary does not employ any personnel performing similar tasks, it may be useful to refer by way of a parameter to the typical/general salary given for personnel performing similar tasks under an employment contract with a similar entity to the beneficiary. This means that in the absence of a direct comparison with other employees of the beneficiary, reference may be made to similar situations present in the market. In this way, a true and fair account of the costs that can be charged to the action can be ascertained. What remains important is that the comparison is made on an objective quantifiable basic salary, i.e. not a subjective/arbitrary salary.

Best regards,

Research Enquiry Service – Legal and Financial Helpdesk

5.9.2 Costs for natural persons working under a direct contract (2)

Anfrage der dänischen Legal and Financial NCPs

According to H2020 rules, in-house consultants can only be considered as «personnel cost» if they fulfill a number of criteria including being a natural person, not a company. Would it be acceptable to consider as in-house consultant (and therefore the costs would be eligible as «personnel cost») a self-employed person working on the action, but with a contract between the beneficiary and the company of that self-employed person – provided that all other conditions for in-house consultants are fulfilled? Or should we interpret the condition of «not a company» in the most literal sense?

Antwort:

To be declared as direct personnel costs, costs for natural persons working under a direct contract must be fulfilled:

- The general conditions for costs to be eligible set out in Article 6.1 of the H2020 Model Grant Agreement (MGA)
- The specific conditions set out in Article 6.2.A.2 of the H2020 MGA. The term 'direct contract' has to be strictly understood as a contract directly concluded by a natural person (individual), and a beneficiary. The contract cannot be with a corporate body and a beneficiary.

If a given natural person is involved through a corporate body (e.g. a company set up by him/her) under an action, the costs related to the contract concluded between this corporate body and a beneficiary, may however be declared for instance as:

- Costs of purchasing of services; or
- Costs of subcontracting

In any case, the general eligibility conditions and the relevant specific eligibility conditions must be fulfilled.

5.9.3 Bedeutung "equivalent appointing act"

Antwort vom 17.9.2015

Dear RES,

what is the definition of an "equivalent appointing act" in the meaning of article 6.2.A.1 of the Grant Agreement. What are the criteria that need to be fulfilled for an "equivalent appointing act"? Could you give some examples?

Antwort:

The notion of "equivalent appointing act" generally refers to cases of civil servants or similar who do not conclude an employment contract but are nominated for a position through an act (i.e. appointing act).

As in the case of employment contracts, these costs are eligible as direct personnel costs if they comply with the general conditions provided in Article 6.1 of the Model Grant Agreement (MGA) and with the specific conditions for the budget category "direct personnel costs" provided in Article 6.2 of the MGA.

Further explanations are available in the [Annotated Model Grant Agreement](#) under the above mentioned articles.

Kind regards,

Research Enquiry Service-Legal and financial helpdesk

5.9.4 “Secondment” vs. kommerzielle Arbeitskräfteüberlassung

Antwort vom 3.9.2015

Dear RES,

could you please inform me what is the precise difference between ‘seconded personnel’

(i.e. personnel costs) and ‘persons provided by a temporary work agency (considered as a ‘purchase of a service’ or ‘subcontracting cost’ according to p. 61 of the AGA).

Does it make any difference if a beneficiary hires personnel from a temporary work agency for a short time (e.g. to carry out a particular task in a project) or if the employee provided by the agency works for the company for years and is fully integrated in the team?

Can a person hired from a temporary work agency be considered seconded personnel in the following two cases:

- a. The person is selected by the beneficiary. The only service provided by the temporary work agency is the payroll. The person works for the beneficiary for a long time and is fully integrated in the team. The agency is only involved because the company needs to respect an internal headcount limit and cannot employ more people.
- b. The person is selected by the temporary work agency according to the job specification provided by the beneficiary. The person works for the beneficiary for a long time and is fully integrated in the team.

Antwort:

Please note that the Enquiry Service does not validate specific questions but provides general guidance.

The precise difference between persons hired through a temporary work agency and personnel seconded as in-kind contributions is the following:

Where persons are hired through temporary work agency:

- the interest of the temporary work agency is pecuniary (i.e. it does pursue profit as in a commercial transaction) and,
- the selection of the temporary work agency by the beneficiary is therefore subject to the eligibility criteria applicable to purchases and subcontracts (e.g. best value for money and no conflict of interest).

Differently, for secondments of personnel as in-kind contributions by a third party:

- there is no pecuniary interest from the third party (i.e. the third party makes available some of its resources to a beneficiary without this being its economic activity) and,
- The selection of the third party is not subject to the criteria applicable to purchases and subcontracts. In contrast, the third party and its contribution must be set out in Annex 1.
- the eligible costs for the beneficiary are limited to the third parties' costs for the seconded persons (i.e. this limit applies to give assurance that no profit margin is included in the costs declared),

The length of time that a beneficiary uses the services of a person employed by a temporary work agency has no relevance as regarding the classification of the costs. The reason why the beneficiary hires staff through a temporary work agency rather than as employees has no relevance either.

Therefore, and regardless if a given person has been selected by the beneficiary itself or by the temporary work agency, cost of using a temporary work agency that makes personnel available to a beneficiary may not be declared as personnel costs. In contrast they may be eligible as:

- either a 'purchase of a service', if the work or the service to be provided does not represent action tasks described in Annex 1 (see Article 10 MGA),
- or subcontracting, if it concerns the implementation of action tasks which are part of the action and are described in Annex 1.

Further explanations are available in the [Annotated Model Grant Agreement](#) under the above mentioned articles.

Kind regards,

Research Enquiry Service - Legal and financial helpdesk

5.9.5 Personalkostenberechnung bei 100%-Tätigkeit für ein Projekt

Antwort vom 6.10.2015

Dear RES,

according to Page 50 of the AGA (Version May 2015) personnel costs must be calculated by multiplying the hourly rate with the number of actually hours worked on the action. This calculation method also applies for persons working exclusively for the action.

If a beneficiary selects for annual productive hours the option with 1720 hours/full time, and the employee working exclusively on the action (full-time) records only 1.650 hours. Does the Beneficiary have to calculate an hourly rate with a deviator of 1.720 hours (which would mean that the Beneficiary cannot claim 100% of the personnel costs of this employee when multiplying the hourly rate with 1.650 project hours) or can the Beneficiary claim 100% of the personnel costs of the employee (no need for calculation of an hourly rate)?

Antwort:

A beneficiary cannot simply charge 100 % of the remuneration of the employee even if this employee is working 100 % on a project. An hourly rate has always to be calculated independently of the time actually worked by the person for the action.

However, if the person works exclusively for the action during a full financial year, it is strongly recommended that the beneficiary signs the 'declaration on exclusive work for the action' (even if it the person keeps time records). This way the declaration can serve as evidence that that the person worked for the action all its annual productive hours (e.g. 1720 hours if the beneficiary uses option 1).

In this case the annual personnel costs would be divided by 1720 hours to calculate the hourly rate. That hourly rate would be multiplied then by 1720 hours productive hours (justified by the declaration on exclusive dedication). This would result on the total personnel cost of the person working exclusively in the action being declared to that action.

However, please note that:

As indicated above, there is no different calculation method for staff working 100 % on the action. The percentage of time dedicated to the action does not make a difference for the way how personnel costs must be calculated. Therefore, like for any other employee, if at the end of the reporting period there are months for which the financial year is not closed yet (e.g. the financial year is still on-going), the beneficiary must use the figures of the last closed financial year available to declare the costs for those months (i.e. use the hourly rate of the last closed financial year available also to calculate the personnel costs for the hours worked on those months). You can find more detail and examples under pages 51 and 59 of the [H2020 Annotated Grant Agreement](#).

If the person did not sign the declaration, only the hours worked in the action as recorded in the time records could be charged (in your example 1650).

Best regards,

Research Enquiry Service - Legal and financial helpdesk

5.9.6 Freiwillige Gehaltsbestandteile

Antwort vom 20.12.2018

Dear RES,

My request refers to (basic) remuneration which I would like to picture by drawing an example:

An employee works in a Horizon 2020 project and receives a salary.

A part of this salary is fixed in a works agreement between the employer and the works council of the organisation, but as voluntary payment. In terms of national tax law, this amount is considered as part of the salary.

Parts of a salary on a voluntary basis are in general excluded from basic remuneration according to the rules of the MGA.

Does the fact that in terms of national tax law it is nevertheless considered as part of the salary change anything about this?

Antwort:

We understand from your query that an employee works in a Horizon 2020 project and receives a salary for his work. Part of his salary is paid on a voluntary basis. The national tax law considered this voluntary payment as part of the salary. You want to know whether the fact that the national tax law considered the voluntary payment as part of the salary has an impact on the eligibility of this part of the salary and on the qualification of this salary as basic remuneration.

In reply to your question, please note that the fact that the national tax law considers the voluntary payment as part of the salary does not have an impact neither on the qualification of the salary nor on the eligibility of this part of the salary.

Kind regards,

Legal and financial helpdesk

5.9.7 Kostenersatz für Home Office-Geräte

Antwort vom 6.5.2021

Dear RES,

In the course of the new Home Office Act (Austria), the employer is obliged to pay a cost reimbursement for the digital equipment if he/she cannot provide the equipment. Up to EUR 300 can be paid out tax-free for the employee.

Can these costs be taken into account when calculating the hourly rate for H2020 projects?

Antwort:

Please kindly note that the Research Enquiry service provides general guidance only and cannot comment on the specificities of your particular case.

Costs for office equipment of a general nature, whether used by the employees at the premises of the beneficiary or elsewhere, qualify as indirect costs because they cannot be identified as specific costs directly linked to the performance of the action. As such, they are covered by the 25 % flat rate for indirect cost. They cannot be taken into account to calculate the hourly rates used to determine the eligible personnel costs in Horizon 2020 actions.

Kind regards,
Legal and financial helpdesk

5.9.8 Förderfähigkeit von Pensionskassenbeiträgen

Dear RES,

According to the collective labor agreement for Austrian public university employees (§71 (2) 2.), there is a mandatory pension fund to which all employees are entitled to benefit from, if they have an employment relationship that lasts for more than 24 months without interruption. During the 24 months waiting period there are accrued expenses, which only after the 24 months become cost-effective payments. Accrued expenses and cost-effective payments are recorded separately on the payroll, and accrued expenses are not taken into account for the calculation of the hourly rates and therefore not reported or claimed as personnel costs. The 24-month waiting period for the pension fund is carefully checked for each individual employee and each reporting period of each action.

Specifically, this is our current process:

- a) If by or before the end of the reporting period the end of the 24-month waiting period for an individual employee is not reached yet, the associated accrued expenses are not taken into account.*
- b) If however by or before the end of the reporting period the end of the 24-month waiting period for an individual employee is reached, the associated accrued expenses become actual costs and are taken into account for this reporting period.*
- c) If by or before the end of a reporting period the end of the 24-month waiting period for an individual employee is reached and there is a previous period for which the associated accrued expenses for the same employee were not taken into account because the waiting period had not been reached at the time, we do not submit an adjustment for that previous period to retrospectively report these costs.*

This is our question, to which we would highly appreciate a definitive answer upon which we can base changing our process, in case the answer is yes: In case c), can we submit an adjustment for that previous period to retrospectively report these costs (in Horizon 2020 as well as, in the future, Horizon Europe)?

Antwort:

Thank you for consulting the legal and financial helpdesk. Please note that the Research Enquiry Service provides general guidance and cannot validate a specific case.

We understand that under the Collective Agreement of the Austrian universities, employees are entitled to benefit from a mandatory pension fund if they have an employment relationship that lasts for more than 24 months without interruption. The university records accrued expenses for contributions to the pension fund during the first 24 month of the employment contract (waiting period). After the waiting period, the contributions become payments.

In order to be considered eligible, the contributions must fulfil all eligibility conditions under Article 6.1(a) of the Model Grant Agreement (MGA available at: https://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf), notably being actually incurred by the beneficiary. This entails that the contributions must be definitively borne by the University. Moreover, a provision for a future debt is ineligible according to Article 6.5 (iii) MGA. The contribution is therefore not an eligible cost before the waiting period of 24 months has elapsed.

As regards your questions on how and when the contributions may be taken into account in personnel costs:

- a) If the end of the 24-month waiting period for an individual employee is not reached at the end of the reporting period, the contributions do not fulfil the above mentioned eligibility conditions and cannot be taken into account when calculating the hourly rate.
- b) If the end of the 24-month waiting period for an individual employee is reached during or by the end of the reporting period, the cost (monthly contributions for previous months of the reporting period during which the employee worked on the action) is actually incurred and can be taken into account for that reporting period (subject to all other eligibility conditions).
- c) If during or by the end of a reporting period the end of the 24-month waiting period for an individual employee is reached and there is a previous period for which the accrued expenses for the same employee were not taken into account: the beneficiary can claim via an adjustment the cost for the previous reporting period(s) by calculating the difference in hourly rate that would result from including contributions for months of the previous reporting period(s) during which the employee worked on the action.
- d) If the end of the 24-month waiting period for an individual employee is not reached at the end of the action, the contributions cannot be taken into account.

Kind regards,

Legal and financial helpdesk

5.10 Monatliche Berechnung der Personalkosten

5.10.1 Monatliche Berechnung nur in einzelnen Projekten möglich?

Antwort vom 25.8.2016

Quelle: [FAQ-ID 3244](#)

May beneficiaries in Horizon 2020 grants use different methods to calculate the hourly rate (per full financial year or per month) in different H2020 actions or within the same action?

Antwort:

Each beneficiary may choose any of the two options. However, the beneficiary must use only one option in a financial year. Therefore, they have to apply the option they chose for the calculation of actual personnel costs to all its H2020 grants during the financial year. If they want to change from one option to the other, they can only make this change in the next financial year.

Therefore, during one financial year the same method must be applied to calculate the actual personnel costs incurred during that financial year for all the H2020 grants of the beneficiary. However, it is not mandatory to use the same method for the whole duration of the grant, because it is possible for the beneficiary to change the method for all its grants in the next financial year.

Example:

Beneficiary A has two H2020 grants. The first reporting period of those grants is as follows:

Grant 1: From 01/07/2015 to 31/12/2016

Grant 2: From 01/10/2015 to 31/03/2017

This beneficiary may choose, for example, annual calculation for the financial year 2015 (in this example financial year = calendar year) and monthly calculation from 01/2016 onward.

What the beneficiary could not do is to calculate, for example, annual rates for Grant 1 and monthly rates for Grant 2.

5.10.2 Berechnung von Sonderzahlungen und Produktivstunden

Antwort vom 7.8.2017

Dear Helpdesk,

we have some questions concerning the calculation of the monthly hourly rate:

Question 1:

According to the Grant Agreement only the entitlement generated can be included in the monthly personnel costs.

In your example the monthly thirteenth salary is calculated e.g. $3000/12$.

If an employee is only employed from January 2016-February 2016 in Austria the thirteenth salary is calculated on daily basis

$$3000/365*(31+29)=493,15$$

For the calculation of the monthly rate should we calculate:

Var1: for January and February $493,15/2$?

Var2: for January $3000/365*31$ and February $3000/365*29$?

If Var2 is correct shall we always calculate the 13th and 14th salary on daily basis?

Question 2:

If a person is employed from 01.01.2016-13.02.2016 how should the productive hours be calculated?

Var1: $1720/12$ for January; for February $1720/12/29*13$

Var2: $1720/366*31$ for January; for February $1720/366*13$

Antwort:

Please note that we can only provide general guidance and do not provide advice to specific questions.

Your question concerns the calculation of the hourly rate on a per month basis for employees whose remuneration is not project-based and for a beneficiary who declares personnel costs as actual costs. You use the fixed number of hour option for the productive hours.

As regards your first question:

In cases such as yours, if a part of the remuneration is generated over a period longer than a month (e.g. in this case the thirteenth salary), only the entitlement generated in the month can be included in the monthly personnel costs.

If, in accordance with national law, for the specific case the thirteenth salary is to be calculated on daily basis then you shall apply Var2. In practice, the entitlement generated in the month in that situation is the pro-rata of the annual entitlement corresponding to the number of days of the month (as indicated in national law). We understand from your query that this rule applies only to employees which have not been employed by the entity for the full year. If that is the case, for employees employed by the entity for the full year you can simply divide the annual entitlement by 12 to calculate the entitlement generated in each month (see example in page 58 of the [Annotated Grant Agreement](#)).

As regards your second question, the above-mentioned section of the MGA specifies that, when calculating the hourly rate per month, the calculation must be made "using the personnel costs for each month and (one twelfth of) the annual productive hours."

As you calculate the personnel costs per month using the fixed number of hours option, the productive hours are therefore:

For both January: $1720 / 12 = 143.33$ hours.

In regard to both of your questions, please note that the grant agreement formulas for the hourly rates are mandatory. Those formulas may lead to minor/temporary differences with the personnel cost recorded in the accounts. Those differences have no impact on the eligibility of the costs, provided that the formula has been correctly applied and that the double ceiling has been respected. Further details are available on pp. 55, 57-59 of the AGA.

If you calculate your hourly rate per full financial year, or if you have any other questions, please do not hesitate to get back to us.

Kind regards,
Legal and financial helpdesk

Antwort vom 7.11.2017

Dear Helpdesk,

Question 1 was how to calculate the monthly personnel costs when a person is not employed for the whole year.

In accordance to national law the salary and thirteenth salary are calculated for the whole year on daily basis. We will use as already discussed Var 2.

*This means when the person is employed from 01.01.2017-15.02.2017 in January the salary is 3000€ and the 13th salary would be $3000/365*31$. In February the salary is $3000/28*15$ and the 13th salary would be calculated $3000/365*15$. These costs match our payroll.*

This method of the calculation of the 13th salary will be also applied if the person works for the whole year in the company.

*Question 2 was concerning the hourly rate. We will use 1720 for the total year. According to your answer the month has to be calculated $1720/12$. But for me still open is how we should calculate the hours in a month when the person leaves the company during the month. We would suggest that we calculate the hours when a person leaves the company on 15th February as follows: For January $1720/12$ and for February $1720/12/28*15$.*

I would also like to point out that if we need to recalculate the reduced personnel expenses for February for a whole month (although the person leaves the company and doesn't get paid for the whole month) the costs will not match the payroll which makes it really complicated to understand the calculation and to be audited.

Antwort:

We understand that Question 1 has been answered by our previous question.

As regards your outstanding issue in Question 2, please note that you cannot use the formula you propose for the month of February, even though the employee left half way through the month.

As we already indicated, the grant agreement formulas for the hourly rates are mandatory. Those formulas may lead to minor/temporary differences with the personnel cost recorded in the accounts. Those differences have no impact on the eligibility of the costs, provided that the formula has been correctly applied and that the double ceiling has been respected. In your particular case, please note that the formula is actually contained in Article 6.2.A.Calculation of the Model Grant Agreement (see pp. 49 and 55 of the AGA.)

Kind regards,
Legal and financial helpdesk

5.10.3 Monatliche Berechnung und Überstunden

Antwort vom 10.1.2018

Dear RES,

my request refers to page 59 of the AGA where it is stated that, when using the monthly method to calculate the hourly rate, beneficiaries must make sure that they don't reach the double ceiling (as explained on page 55 of the AGA). If overtime results in more hours worked/more costs declared over the ceiling, the exceeding hours worked can NOT be charged to the action and must be capped at the ceilings.

Additionally, it is said that the ceilings apply per full financial year, not per month.

Let's assume the following situation to clarify:

Organization X calculates the hourly rates of its employees working on an H2020 action on a monthly basis by using option 1 (1720). Please assume that the hours worked and stated correspond to the respective national law.

monthly productive hours: $1720 / 12 = 143,33$

Employee Y has worked on the action according to the following table:

Month	Monthly productive hours
January	143,33
February	150,00
March	120,00
April	143,33
May	165,00
June	110,00
July	143,33
August	143,33
September	143,33
October	143,33
November	143,33
December	143,33
January until December	1691,64

We understand, that only hours worked above the yearly 1720 hour-ceiling can't be charged and must be capped, not those going above the monthly calculated 143,33 hour-ceiling (e.g. in May).

Is it correct that the hours can be charged to the action as stated above, due to the fact that only the annual productive hours of 1720 in total must not be exceeded?

Antwort:

As indicated in the AGA, the ceilings apply per full financial year, not per month. Therefore, the hours declared in any particular month (even if the hourly rate is calculated per month) can exceed the quotient that is obtained when dividing the annual productive hours by 12, which – in the example that you have described – is 143.33.

Kind regards,

Legal and financial helpdesk

6 Sonstige direkte Kosten

6.1 Kosten von Geräten und Infrastruktur

6.1.1 Berechnung von Maschinenstunden

Antwort vom 2.10.2014

Dear RES,

one of our customers would like to use its x-ray machine for a H2020 action. Since this machine is only used for a few hours a year, the hourly rate for using the machine is quite high.

Therefore, our customer would like to know if – and how – it would be possible to charge a lower price than the actual hourly rate on the action (in order to keep the action's budget down).

Antwort:

As you know, by default equipment costs can only be charged to the H2020 action via its depreciation and as long as it belongs to the usual accounting practices of the beneficiary to charge the cost of the equipment to the different research activities. If the beneficiary does not use the equipment exclusively for the action, only the part of the equipment's 'working time' for the action may be charged (i.e. the percentage of actual use and time used for the action). The amount of use (percentage and time used) must be auditable.

Depreciation is to be calculated in accordance with the beneficiary's usual accounting practices and with international accounting standards. If the beneficiary calculates the depreciation based on the time of useful life of the equipment (e.g. X € per year), the allocation of the part of the annual depreciation to the H2020 action must be calculated based on the number of hours/days/months of actual use of equipment for the action as a part of its full capacity (i.e. the number of productive hours/days/months corresponding to the full potential use of the infrastructure). The full capacity includes any time during which the equipment is usable but not used, although taking due account of real constraints such as the opening hours of the entity, repair and maintenance time, etc.

In a practical example:

Annual depreciation of the equipment is 17 200 €

Under normal circumstances the equipment can be used 1720 hours per year

However the equipment is actually used only 100 hours per year

Out of which for the EU action was used (according to the records) 50 hours.

The amount chargeable to the EU action in the year would be:

$17\,200\text{ €} / 1720\text{ usable hours} = 10\text{ € per hour} * 50\text{ hours of use for the action} = 500\text{ €}$

In other words, the fact that the equipment is underused cannot result in an increased cost for the EU action. The actual use of the equipment inferior to its useable time in the year (in our example 100 hours) is irrelevant for the calculation of the amount to be charged to the action.

Kind regards,

Legal and Financial Helpdesk

6.1.2 Dokumentation von Maschinenstunden

Antwort vom 30.6.2014

Dear RES,

could you please outline the minimum requirements for documenting machine hours in H2020. Is it sufficient to document the hours during which the machine is used for the project, or is a full-time documentation required? Please also let us know if and how the machine downtime is to be taken into account.

Antwort:

The GA states that “ the only portion of the costs that will be taken into account is that which corresponds to the duration of the action and rate of actual use for the purposes of the action”. Therefore, the hours used for the project would be sufficient.

Kind regards,

Legal and Financial Helpdesk

6.1.3 Reparaturkosten von Equipment

Antwort vom 6.12.2021

Dear Research Enquiry Service team,

in one of our H2020 projects we use an asset that was written-off already before the start of that project.

This equipment is used 100% solely for that project and till now no costs were charged to the project.

However some parts of the equipment got broken and we need to exchange them in order to make further experiments necessary in the project.

Are we allowed to charge the cost of repairing and the maintenance cost to the project, as it is stated in the AMGA, p. 83: "In some cases (e.g. infrastructure), equipment costs may also include the costs necessary to ensure that the asset is in good condition for its intended use (e.g. site preparation, delivery and handling, installation, etc.)." It is not our usual practice to consider durable equipment costs (or some of them) as indirect costs.

Antwort:

We understand that you would like to know if maintenance and reparation costs of a damaged equipment used exclusively for the project could be eligible and charged to the action as direct costs.

Regarding costs for equipment, as a general rule only depreciation costs or costs of renting/leasing can be charged to Horizon 2020 actions. In this sense, if the replacing of the damaged parts of the equipment implies a new depreciation process (i.e. because the useful life of the equipment is then prolonged) you could charge the corresponding depreciation for the time it is used for the Horizon 2020 action. The same would apply if the spare parts replaced have an accounting value of their own as an asset, and their own depreciation plan, in the accounts of the entity.

If instead the costs are related to day-to-day maintenance, they would typically qualify as indirect costs under H2020. Therefore, they would be covered by the 25% flat rate under Article 6.2.E of the Model Grant Agreement and cannot be declared as direct costs.

Only in very exceptional cases maintenance costs could be declared as direct costs for the action. This may be the case if the maintenance cost for the action has been directly measured and is justified by supporting evidence showing the link with the action (i.e. to qualify as 'direct cost' the cost for the action cannot be calculated by using apportionment methods, key drivers or proxies). In addition, considering maintenance costs as direct costs would have to be the usual cost accounting practice of the beneficiary.

Best regards,
Legal and Financial Helpdesk

6.2 Reisekosten

6.2.1 Stornierung einer Dienstreise wegen Erkrankung

Antwort vom 7.1.2014

Dear RES,

one of our customers approached us with the following question: What if a project manager must cancel business trip to a project meeting due to illness and the flight ticket cannot be cancelled (no cancellation insurance). Can the costs of the flight be charged on the project or do they need to be borne by the beneficiary?

Antwort:

Concerning FP7, as previously indicated (in answer 0506891), Article 40.4 of the FP7 Grant agreement provides the following:

"Where beneficiaries cannot fulfil their obligations to execute the project due to force majeure, remuneration for accepted eligible costs incurred may be made only for tasks which have actually been executed up to the date of the event identified as force majeure. All necessary measures shall be taken to limit damage to the minimum."

Therefore, only costs incurred for tasks actually executed can be eligible. If due to sudden sickness the person could not carry out, at least partially, the activities for the project then the cost of the trip would not be eligible. For instance, if the purpose of the trip was to attend a project meeting and the person did not participate eventually in the meeting, the costs of the trip cannot be charged to the project.

This is dealt with differently under H2020. In a case of force majeure defined under Article 51 MGA, there is no specific effect on the eligibility of costs. Costs are eligible if they fulfil the conditions set out in Article 6 — like any other costs incurred under the action.

Therefore, if the travel could not take place due to force majeure, the cost could still be charged to the H2020 project if they fulfil the cost eligibility conditions. However, Article 51 of the Horizon 2020 model Grant Agreement still requires the beneficiary to take all necessary steps to limit any damage due to force majeure. These may include, for example, trying to cancel the ticket, claim the reimbursement from the cancellation insurance (if applicable), change the flight ticket (if possible), etc.).

For more information please check the [AGA](#).

Kind regards,

Research Enquiry Service – Legal and Financial Helpdesk

Bitte beachten Sie dazu die Anfrage des dänischen Legal and Financial NCP:

Dear RES

one of our customers approached us with the following question on Horizon 2020: What if a project manager must cancel business trip to a project meeting due to illness and the flight ticket cannot be cancelled (no cancellation insurance). Can the costs of the flight be charged on the project or do they need to be borne by the beneficiary?

I know that you previously have answered this question by referring to Article 51 on force majeure. But does that mean that illness in general is considered to be force majeure in Horizon 2020?

(My reference to the previous answer was the [Austrian NCP FAQ](#)).

Antwort:

Cases of illness are not considered force majeure cases, as defined under Article 51 MGA.

Therefore, if due to sickness a person could not attend an action meeting, the costs of the trip could normally not be charged to the H2020 action.

Moreover, Article 51 of the Horizon 2020 MGA still requires the beneficiary to take all necessary steps to limit any damage due to force majeure. These may include, for example, trying to cancel the ticket, claim the reimbursement from the cancellation insurance (if applicable), change the flight ticket (if possible), etc.)

Kind regards,

Legal and financial helpdesk

6.2.2 Bustickets ohne Preis- und Datumsangabe

Antwort vom 23.6.2015

Dear RES,

On the bus tickets for the airport line in Brussels, neither the price of the ticket nor the date of the journey is indicated. Furthermore - to our knowledge - there is no visual difference between the tickets for 4,50 EUR (from the vending machine) and the ones for 6,00 EUR (bought on the bus). Could you please inform us how to deal with this issue when the bus tickets is part of the travel costs in an FP7 or H2020 project. How are the beneficiaries expected to prove that the bus ticket was used for the project (if no date is indicated) and which price was actually incurred (4,50 EUR or 6,00 EUR)?

Antwort:

Under both FP7 and H2020 programs, travel costs are eligible as actual costs if:

- they comply with the general eligibility conditions, i.e. they are linked to the project, necessary, incurred during the project duration etc. (for FP7 projects: see Article II.14 of the FP7 GA; for H2020 action see Article 6.1(a) of the H2020 MGA).
- they are in line with the beneficiary's usual practices on travel

If the beneficiary's usual practices on travel is to reimburse actual costs incurred for bus tickets that are part of travel costs but no prices are indicated on the tickets, actual costs may be prove by means of alternative evidence offering an adequate level of assurance. For instance, and in the case you describe:

- if it is in line with the beneficiary's usual practices, the person who had bought these tickets may have fulfilled a travel cost statement for his/her employer where he has indicated that he had bought directly the tickets on the bus,
- these tickets may have been punched and a date may have appeared on them (to check if and when they have been used),
- the applicable prices are known (e.g. on the website of the relevant public transports it is indicated that there is a higher price for tickets directly bought on the bus and a screenshot may have been taken as well)

Kind regards,

Research Enquiry Service – Legal and Financial Helpdesk

6.2.3 CO2-Emissionsabgabe

Antwort vom 26.8.2019

Dear RES,

I have a question concerning the eligibility of CO2 emission compensations as part of flight tickets, e.g. atmosfair etc. I understand that these payments are not eligible if they are done on a voluntary basis. But if it is the usual accounting practice of the organisation and it is mandatory for all employees to include climate compensations in their flight travels would they be eligible?

Antwort:

We understand from your query that you refer to the option offered by some airlines to pay additional costs when purchasing a ticket to compensate the CO2 emissions related to the flight.

In accordance with Article 6.2.D.1 of the MGA, such additional costs for CO2 compensations will be eligible as travel costs if they:

1. fulfil the general conditions for actual cost to be eligible,
In this respect we recall that the beneficiary may not upgrade its travel policy or purchasing rules (i.e. introducing emission compensations) because of the Commission support (see Article 6.1(a)(vii) of the MGA.
2. and are in line with the beneficiary's usual practices in travel.

Therefore, such extra costs are eligible under H2020 if the beneficiary always pays those extra costs, not only when travelling for H2020 actions. If the beneficiary does not normally pay for such emission compensations, they would not be eligible under H2020.

Kind regards,
Legal and financial helpdesk

7 Sonstige Güter und Dienstleistungen

7.1 Preisvergleich

7.1.1 Bestes Preis-Leistungsverhältnis bzw. niedrigster Preis I

Antwort vom 5.12.2014

Dear RES,

According to Article 10.1.1 of the Model Grant Agreement the beneficiaries must ensure the best price quality ratio for the purchase of goods, works and services. In case of a CFS (Annex 5 of MGA) the auditor must mention each purchase as exception where different offers were not collected.

Some lab based projects need lots of consumables with minor amounts each. According to MGA the Beneficiary needs for each item purchased comparison offers, if he does not want the auditor to mention the invoice as exception in the CFS. For minor amounts the effort to obtain comparison offers is disproportionate to the amount claimed and not necessary according to the internal purchase guidelines.

Relating this issue we have following questions:

- 1. Does the Commission intend to introduce limits below which no offers/best-price quality documentation is necessary?*
- 2. If the Beneficiary mentions a minimum level in his internal purchase guidelines (e.g. 500 EUR), below which it is not mandatory to obtain comparison offers. Does the Beneficiary need to prepare also a best-price quality documentation for each invoice below the minimum level? Must the auditor mention each invoice below the minimum level as exception?*
- 3. If the Beneficiary concludes a framework contract with a lab material supplier before project start: Does the Beneficiary need to prepare a best-price quality documentation for each invoice covered by the framework contract? Must the auditor mention each invoice covered by the framework contract as exception?*

Antwort:

As correctly pointed out in your e-mail, the beneficiaries must ensure the best-price quality ratio for the purchase of goods, works and services as provided in Article 10.1.1 of the Horizon 2020 Model Grant Agreement (MGA).

As a preliminary remark, please note that an exception in the Certificate on the Financial Statements (CFS) does not necessarily imply the rejection of the related costs. If we take the example of the Standard Factual Finding 58 (for goods and services), when different offers were not collected the auditor must report the exception along with the explanation from the Beneficiary. The Commission will assess that explanation to decide on the eligibility of the costs. For example if there is a framework contract with a supplier for the purchase of a certain consumable, and if such framework contract was awarded on the bases of best value for money, transparency and equal treatment, this could properly justify that no offers were asked for that consumable when used for the H2020 action.

In response to your first question, the Commission does not intend to introduce limits for which no-offers/best-price quality documentation is necessary. The MGA specifies that for contracts with a value higher than EUR 60 000, the Commission/Agency may set out additional conditions (such as the

requirement to have a minimum number of offers received etc.) that would be described in the work programme/call.

Regarding your second question, we draw your attention to the fact that the best value-for-money principle does not require competitive selection procedures in all cases. Where the beneficiary did not request several offers, s/he must demonstrate how best value-for-money was nevertheless ensured.

As for your third question on framework contracts existing before the signature of the Grant Agreement, the costs may be declared if they are necessary for the action and have complied with the conditions i.e. best value for money and absence of conflict of interests, at the time of the award of the framework contract.

Note that beneficiaries must demonstrate upon request (e.g. in case of an audit by the Commission/Agency) that the selection of the contractors and suppliers complied with these eligibility conditions. Non-compliance will lead to the rejection (in full) of the costs of the subcontract concerned.

Kind regards,
Legal and financial helpdesk

7.1.2 Bestes Preis-Leistungsverhältnis bzw. niedrigster Preis II

Antwort vom 5.1.2018

Dear RES,

an organization has an internal written practice, that only contracts with an order value of EUR 10.000 or more require several offers to select the best value for money. This practice is applied to all national and international contracts.

With regard to the “best value for money”-principle of the GA: Is such an internal practice accepted or does the EC require several offers even below this threshold value e.g. an amount of EUR 4.000?

Concrete example:

The organization X participates in an H2020 action and needs to buy machinery for EUR 15.000. According to its internal rules, the organization requires several offers in order to evaluate the best value for money.

Furthermore it needs some specific literature and gets an offer for EUR 4.000, which is below its internal threshold value of EUR 10.000, so it doesn't require several offers, but accepts this only offer.

Antwort:

We assume that you refer to the requirement that beneficiaries must ensure the best value for money, or if appropriate the lowest price, when purchasing goods works or services according to Article 10 MGA.

As you know, this requirement reflects the general cost eligibility condition set out in Article 6.1(a)(vii) (i.e. that costs must be reasonable and comply with the principle of sound financial management). It applies specifically to the purchase of goods, works or services (see pp. 41f and 134 of the AGA for further details).

In this context please note that whereas the very nature of this additional cost eligibility condition requires that an analysis of the price-quality ratio be carried out, the best value for money principle does not in all cases require competitive selection procedures. However, if a beneficiary did not request several offers, it must demonstrate how best value for money was ensured.

If this can be demonstrated the auditors will not challenge the internal policy of the entity concerned, unless there is evidence that the cost of the item purchased (without competitive selection procedures, i.e. several offers) is clearly excessive and not in line with the market price.

Kind regards,

Legal and Financial Helpdesk

7.1.3 Bestes Preis-Leistungsverhältnis bzw. niedrigster Preis III

Antwort vom 24.6.2015

Dear RES,

I have a question concerning Art 10 MGA on the documentation of additional "offers".

- 1. a screenshot of internet prices or prices in our ordering system that compares two advertisements/offers when the cheaper was bought, is this enough to fulfill the criteria for the documentation needed?*
- 2. if there is the screenshot of two ads/offers and a plausible reason (written documentation) to buy the more expensive one (better quality), is this enough to fulfill the criteria for the documentation needed?*
- 3. Can we document the comparison between two products that are about the same of the same vendor or do we have to compare the same product from two different vendors?*
- 4. Can framework contracts be concluded after the beginning of a project to fulfill the documentation criterion?*

Antwort:

Please note that the Research Enquiry Service does not validate specific cases but provides general information.

The requirement for best value-for-money or if appropriate the lowest price is the mere application of the general cost eligibility condition set out in Article 6.1(a)(vii) of the model grant agreement (i.e. that costs must be reasonable and comply with the principle of sound financial management) to the costs of the purchase of goods, works or services.

In response to your questions:

1. The supporting documentation should describe how the offers were obtained and assessed, including an explanation on the criteria used, and showing that the contract was awarded to the contractor who best fulfilled these criteria.
Concerning the document format, documents should in principle be kept in the format in which they were received or created. If your assessment was done on the basis of prices and descriptions available in internet the screenshot can be used as equivalent to an offer.
2. For the best price-quality ratio, price is an essential aspect (together with quality criteria, such as technical quality, running costs, delivery times, after-sales service and technical assistance, etc.), but it is not automatically necessary to select the offer with the lowest price. As explained above, the beneficiary must be able to explain the criteria used and show that the selected contract best fulfilled these criteria. The beneficiary thus should be able to provide written documentation detailing the plausible reasons for selecting a particular offer.
3. The best value-for-money principle does not require competitive selection procedures in all cases. However, where a beneficiary did not request several offers from different providers, it must demonstrate how best value-for-money was nevertheless ensured.
4. Framework contracts can be used when selecting a provider if this is the usual practice of the beneficiary for a given type of good, work or service. In order to be eligible the selection of the provider with which the framework contract was signed must have been done also on the

basis of best value for money and absence of conflict of interest. These framework contracts should not be necessarily concluded before the start of the action, but when it is the case the name of the provider should be indicated in Annex 1.

Please note that beneficiaries that are ‘contracting authorities’ or ‘contracting entities’ (within the meaning of the EU public procurement Directives 2004/18/EC and 2004/17/EC — or any EU legislation that replaces these Directives) must moreover comply with the applicable national law on public procurement.

Equally, the Commission may decide to include additional eligibility criteria to be complied with by the beneficiaries if the contract or subcontract exceeds a certain amount. These additional eligibility criteria would be included in the relevant H2020 grant agreement articles (Article 10 and Article 13) and may affect the providers' selection process. Although this is a rather exceptional situation, attention is to be paid regarding the possible existence of such additional criteria and their impact on the way the beneficiaries should ensure a selection based on best value for money.

Kind regards,

Research Enquiry Service - Legal and financial helpdesk

8 Nicht-ProjektpartnerInnen (“Third Parties”)

8.1 Abgrenzungsfrage: „in-kind contribution“ vs. “subcontracting”

Antwort vom 19.3.2019

I want to double check, if in general would be possible that an article 11 relation (use of in-kind contributions provided by a third party against payment), would allow that the third party contributes to the action tasks, but is not responsible for the delivery/execution of that action task. For a better understanding originally that third party was expected to be a contractor, but the PO gave the advice to convert it to an article 11 “third party”.

Antwort:

We understand from your request that you would like to have clarifications concerning the use of third parties, in particular on the distinction between third parties providing in-kind contributions and subcontracting.

As you know, third parties can basically be distinguished between:

- those that actually implement part of the action tasks (e.g. Article 13 of the Model Grant Agreement – subcontracting, Article 14- Linked third parties); and
- those that just provide resources or services to a beneficiary of the grant for it to carry out the action tasks (i.e., Article 10 – contracts, Articles 11 and 12- Third parties providing in-kind contributions).

Consequently, one of the main distinctions between the use of e.g. subcontractors and third parties providing in-kind contributions is whether the third party works directly on action tasks or not. If a third party implements action tasks, its participation would not fit into the definition of Articles 11 or 12.

It should be noted that in any case of participation of third parties, the responsibility lies with the beneficiary because the third parties are not signatories of the grant. Indeed, the beneficiary is responsible for the third parties and for the implementation of the action, including for the tasks carried out by its third parties (if any).

If we understand the situation correctly, the beneficiary needs to use third parties for implementing part of the action tasks. In that case, the following alternatives might be possible:

- **Linked third parties** (Article 14 MGA): the third party must be either have a legal link with the beneficiary (i.e. an established relationship which is broad and not specifically created for the work in the grant agreement and a legal relationship that is not limited to the action, e.g. between an association and its members) or be an affiliated entity of the beneficiary (i.e. be under the same direct or indirect contract of the beneficiary or as the beneficiary or be directly or indirectly controlling the beneficiary).

In this case, the linked third parties must also be named in Article 14 of the grant agreement and their action tasks and estimated costs must be set out in the Annexes 1 and 2.

- **Subcontracting** (Article 13 MGA): the subcontracts must be awarded on the basis of the best value for money (or lowest price) and in the absence of conflict of interests. The action tasks to be implemented and the estimated costs of each subcontract must be set out in Annexes 1 and 2.

- In certain cases, and only if authorised in the call, the consortium may explore the possibility of using Article 15 – **Financial Support to Third parties**.
- A combination of the above.

Best regards,
Legal and financial helpdesk

8.2 Abgrenzungsfrage: „in-kind contribution“ vs. “linked third party”

Antwort vom 1.4.2019

I have a question regarding using third parties in H2020 projects. We would like to use third parties from the members of our association, either as A) Linked Third Party or B) In-kind Contribution provided by a third party against a payment.

There are two questions:

- 1. In case our association is entering an Innovation Action project, what the funding rates for the third parties involved for cases A and B that I refer above. Our understanding is that for case A - the funding rates depend on the type of third party (in case the third party is commercial, 70% funding applies). For case B, our assumption is that 100% funding applies no matter whether the seconded personnel is from a public or private organisation.*
- 2. In case we use third parties in our project, what is the percentage or the amount of work they can perform? Is that OK if we allocate half of the budget for third parties, or is it limited. I am interested on your recommendation on this to make sure we are not excluded from participation due to the fact that we allocate amounts for third parties that are normally not accepted.*

Antwort:

At the outset, please note that there is a vital difference between linked third parties and third parties providing in-kind contributions.

Whilst linked third parties work on action tasks themselves, third parties providing in-kind contributions against payment do not do this. They make available some of their resources to a beneficiary without this being their economic activity (e.g. seconding personnel, contributing equipment, infrastructure).

The eligible costs in respect of in-kind contributions against payment are the amounts that the beneficiary pays to the contributors according to their agreements, within the limit of the third party's costs (the amounts to be paid to the contributors usually exclude a profit margin but if they do, the profit margin is not eligible).

Linked third parties on the other hand must fulfil the same conditions for funding and participation under H2020 as beneficiaries. In this regard, please note that if a legal entity is not eligible for funding as beneficiary (e.g. because it is established in a third country not eligible for funding), it cannot receive funding either as a linked third party. The eligible costs are only the costs of the linked third party, no profit is allowed (neither for the linked third party nor for the beneficiary).

If the entity participates as a linked third party, the funding rate will be the one applicable to it if it would be a beneficiary. For example, a for-profit legal entity will normally get a 70 % funding rate in an innovation action (whether it participates as beneficiary or as a linked third party). By contrast, costs of third parties providing in-kind contributions are considered as costs of the beneficiary. Therefore, the funding rate of the beneficiary will apply also to those costs regardless of the type of entity providing the in-kind contribution.

As regards you second question, please note that beneficiaries must normally have the technical and financial resources needed to carry out the action themselves. The resources must be available at the moment of the implementation of the work (but not necessarily at the moment of submitting the

proposal or signing the GA). However, in these two cases, the beneficiaries must show in the proposal how the resources will be made available.

Further details are available on pp. 123-127 of the Annotated Model Grant Agreement.

Kind regards,

Legal and financial helpdesk

8.3 Abgrenzungsfrage „in-kind contribution“ vs. „other direct costs“

Antwort vom 8.10.2019

Two organisations do have *shared services (among others concerning purchasing and ordering), which are agreed upon in a Shared Service Agreement. Except of this agreement there is no legal link between both organisations.*

Until now both organisations did use a common SAP System (each with its own client) and a common ordering system. Both organisations generated their own separate invoices.

According to internal regulations, one of the organisations should get an own SAP System. Due to this, this organisation is not able to use the common ordering system anymore, which would result in lower prices.

Now there is the approach that the other organisation continues to use this common ordering system, but in the name of the organisation which may not use it anymore and invoices directly to the latter.

May these invoices from one organisation to another be charged to the Horizon 2020 action and may these costs be eligible?

If these costs are eligible, do they have to be declared in the category “other goods and services”?

Is there anything we should pay special attention to?

What if both organisations are beneficiaries in the same Horizon 2020 action?

Antwort:

Please note that the Research Enquiry Service cannot validate individual cases but provides general information.

In principle, a beneficiary must have the appropriate resources to implement the action. If necessary to implement the action, the beneficiary may involve third parties as listed in [Article 8 of the H2020 Model Grant Agreement](#).

We understand from your query that some of the consumables that you will use in the project will be purchased for you by another entity. It is unclear for us if that other entity will then re-sell those items to you or just handle them to you against their purchase price (i.e. for the price that the entity paid for them).

In the first case (re-selling), the costs for the items ordered by the other company may be eligible under other goods and services (Article 6.2.D.3 and Article 10 MGA) if the following conditions are fulfilled:

- The general conditions for actual costs to be eligible are fulfilled (i.e. incurred during the action, necessary, linked to the action, etc. see Article 6.1(a) MGA).
- The beneficiary must make sure that that its purchase complies with the principles of best value for money, or if appropriate the lowest price, and avoids any conflict of interest. This does not require in all cases a competitive selection procedure, however if a beneficiary did not request several offers, it must demonstrate how best value for money was ensured.

In the second case (handed against the purchase price) that would be a situation of in-kind contribution by a third party to a beneficiary against payment - Article 11 MGA -. This may be the case if the third party is making some of its resources available (e.g. consumables it purchased)

without this being its economic activity. The beneficiary may declare the costs for paying the in-kind contribution (also under other direct costs) but only up to the costs incurred by the third party (no profit margin). The third party and its contribution must be set out in Annex 1.

In both situations, the item cannot cover the implementation of an action task described in Annex 1 of the grant agreement, but is simply necessary for the beneficiary to implement action tasks. If the item covers an action task, the costs may fall under subcontracting subject to the conditions in Article 13 MGA.

In the case that both entities would be beneficiaries of the same grant, please note that purchase between beneficiaries is in principle not accepted. If a beneficiary needs supplies from another beneficiary, it is the latter that should charge the costs to the action, otherwise there is a risk that the grant is being used to charge commercial profit margins.

Further explanations are available in the [Annotated Model Grant Agreement](#), under the above mentioned articles.

Kind regards,
Legal and financial helpdesk

8.4 Subcontracting

8.4.1 Teile eines "action task"

Antwort vom 17.6.2014

Dear RES,

according to article 13.1 of the GA, beneficiaries may award subcontracts covering the implementation of certain action tasks described in Annex 1.

Does this only refer to the implementation of „full tasks“ (i.e. the whole task is subcontracted) – as the wording suggests – or could the implementation of a „significant part of a task“ by an external provider also be considered as subcontracting under certain circumstances?

Antwort:

We are afraid it is not possible to give a conclusive answer to your question since the reply would depend, at least partially, on the specific case. For example, let's suppose that the action task described in Annex 1 is to carry out 1000 laboratory tests. The consortium carries out directly 500 but decides to externalise the other 500. This would be a subcontract even if the "full task" has not been implemented by the external service provider.

Another example might be the development of a prototype identified as an action task in Annex 1. Let's suppose that this prototype is composed of several elements among which there is a tailor-made stainless steel container and a new electronic device that needs to be designed and fabricated to be integrated in the prototype. If these two elements are externalised, the tailor-made stainless steel container would be normally considered as a purchase of goods needed for the action task (developing the prototype). In contrast, designing and fabricating the new electronic device would be considered as subcontracting as it is part of the action task (developing the prototype).

As you can see, if it is the entire "task" or only "part of the task" what is externalized does not determine in itself if this is to be regarded as a subcontract or as a purchase of goods or services.

The best thing is to check with the project officer whether the specific tasks to be externalised is a subcontract or a contract.

Yours sincerely,
Legal and financial helpdesk

8.5 Linked Third Parties

8.5.1 Mitgliedschaft im selben Verein

Antwort vom 24.6.2015

Anfrage der Nationalen Kontaktstelle für Recht und Finanzen, Dänemark

Linked third parties - associations:

Under which circumstances would the Commission say that members of the same association have a legal link among themselves? Let us say that both company A and company B are members of association Z. There is a legal link between Z and A as well as between Z and B. What kind of characteristics should the membership have so that the Commission would say that there also is a legal link between A and B? Could you provide any examples?

Antwort:

The fact of belonging to the same association and of having a legal link with the association does not imply, in itself, that there is a legal link between each legal entity as members of the association.

So, as regards your example, A and B may be seen as linked third parties if they are affiliated or having a legal link between themselves (in addition to the legal link they may have with the Association Z) only if an established relationship between A and B exists, which:

- is broad and not specifically created for the work in the H2020 grant agreement and,
- legal

Kind regards,

Legal and financial helpdesk

8.6 In-Kind Contribution

8.6.1 Einnahmen bei kostenloser Sachleistung

Antwort vom 8.4.2019
Anfrage der belgischen NCPs

1. Situation:

The stakeholder has mentioned in his proposal that a third party would give access to its equipment (a simulator) and their personnel to test the simulator, on their premises, all of this free of charge. So the beneficiary did not provide in-kind contribution in the budget table.

Question:

The beneficiary will not hand-in costs for use of this simulator (since he will not have to pay for it), only travel cost of their personnel to this simulator. But is this "gesture" of this third party a receipt of the project? Do they have to mention this use, or can they just use the simulator, report the outcomes of the test, and that's it?

2. Situation:

The AMGA states on p. 138 :

This Article refers to the case where a third party makes available some of its resources to a beneficiary, for free (i.e. without any payment, contrary to the case covered by Article 11). In this case, the beneficiary itself makes no payment and there is therefore NO cost incurred by the beneficiary. However, the GA provides that it may charge the costs incurred by the third party for its in-kind contribution (see also Article 6.4)

Question:

What does MAY mean here? When is advisable to the beneficiary to incur cost to the project/the Commission that were not paid to the third party? So the beneficiary receives then money for something that they have not paid for. So then this is a receipt? And where in reporting do you indicate receipt?

When is it necessary to report the receipt and when can it be avoided?

Antwort:

Article 5.3.3 comprehensively enumerates cases of receipt. Amongst them, the case of in-kind contributions provided by third parties free of charge are considered as receipts under the following cumulative conditions (see Article 5.3.3 first c):

- they are specifically used for the action, and
- they have been declared as eligible costs.

So, the first case you describe in your query will not be considered as a case of receipt, because the access of the equipment has not been declared as eligible costs by the beneficiary.

As regards the second part of your query, please note that the wording 'may' in the Article 12 refers to the voluntary choice offered to the beneficiary to declare or not any in-kind contributions provided free of charge by a third party.

The overall objective of Article 12 is notably to address some particular cases where resources are put at the disposal of the beneficiary, when the beneficiary still wants to valorise the corresponding costs even if not recorded in its accounts. This may be typically the case of the professors paid centrally by their relevant Ministry and affected to a University.

As stated under Article 5.3.3 first c) and explained above, only the in-kind contribution specifically used for the action and declared as eligible cost must be also declared as receipt. Any receipt must be declared at the final reporting period by each beneficiary in its financial statement.

However since receipts are counted at action level (not at beneficiary level) for the payment of the balance, it is generally possible that they do not lead to a profit and so that they will not affect the final grant amount.

9 Geistiges Eigentum

9.1 Schutz der Ergebnisse

9.1.1 Mitteilungen nach Projektende

Antwort vom 7.4.2014

While reading through the MGA and the information material the question is who will be able to/ who should send the information concerning protection of results (27.3 and 26.4) up to 4 years after the end of an action.

Will the participant Portal to an Action be open until 4 years after the end of Action?

Antwort:

In accordance with the model GA (Article 26.4.2) a beneficiary that intends to stop protecting results or does not seek an extension must formally notify the Commission/Agency.

All communication between the consortium and the Commission/Agency must be in electronic form via the electronic exchange system of the Participant Portal), except for formal notifications after payment of the balance.

Formal notifications after the payment of the balance must be made by registered post with proof of delivery (Art. 52 General Model Grant Agreement).

More explanations about communication between the parties is available in the [annotated model grant agreement](#), under Article 52.

Best regards,
Legal and financial helpdesk

9.1.2 Schutz nur in einzelnen Staaten

Antwort vom 7.4.2014

While reading through the MGA and the information material in regards to 27.3 and 26.4 of the MGA we had the question: if one protects a result in one country but not in other EU countries or third countries would this be seen as "not protecting them"?

Same question if one files i.e. a PCP or EU patent application and than chooses just one or two countries, would this be a "stop protecting them" for the other countries not chosen and therefor needing an information to the EU in accordance with 26.4.?

Antwort:

In accordance with Article 27 of the General Model Grant Agreement (MGA), beneficiaries must adequately protect (including for an appropriate territorial coverage) if results can reasonably be expected to be commercially or industrially exploited and protecting them is possible, reasonable and justified given the circumstances. Article 27.2 of the MGA refers to the possibility of the EU, Euratom or Agency to assume ownership under the terms and conditions set out in Article 26.4 MGA.

Article 26.4.2 of the MGA includes the case in which a beneficiary intends not to seek an extension (e.g. protection in one or two countries only) and requires indeed notification and foresees possible assumption of ownership. However, the requirement to notify and the possibility to assume ownership does not apply if an extension would not be justified given the circumstances.

Best regards,
Legal and financial helpdesk

9.2 Verwertung der Ergebnisse

9.2.1 Dokumentation der Verwertung

Antwort vom 1.7.2014

In 28.1. of the MGA the exploitation Obligation of a beneficiary is laid out. To be sure to be able to comply - since as a Research Organisation we do not develop or create "products or process" for the market, our question is what kind of documentation will be needed for the verification of further research or service providing (most of the exploitation will - next to other H 2020 Projects- in internal research and contract research which has high obligation on confidentiality).

Antwort:

As mentioned by you, Article 28.1 states that the beneficiaries must take measures aiming to ensure exploitation of their results. This is a best effort obligation, and it will depend on the specific circumstances, including the legal status of the beneficiary. In any case, beneficiaries must be proactive and take specific measures to ensure that their results are used. These measures may aim for exploitation by the beneficiary itself (e.g. for further research or for commercial or industrial exploitation in its own activities, as it seems to be your case), or by others (other beneficiaries or third parties, e.g. through licensing or by transferring the ownership of results).

In any case, the type of verification of this obligation and the documents required will depend on the specific measures adopted by the beneficiary. Although it is easier to show in case of commercial or industrial exploitation, the use of the results for further research or contract research may be substantiated by internal documents, records, copies of contracts, etc...

The Commission is bound to respect the confidentiality of confidential information provided, as detailed in Article 36 of the Grant Agreement. For more information on this point, please see [Article 36 of the Annotated Grant Agreement](#).

Kind regards,
Legal and Financial Helpdesk

9.2.2 Bedeutung von “Public Research Organisations” in Art. 23a GA

Antwort vom 22.8.2014

Dear RES,

according to article 23a, Beneficiaries that are universities or other public research organisations must take measures to implement the principles set out in Points 1 and 2 of the Code of Practice annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities.

Would you please inform us which definition of „other public research organisations“ applies in this context. Is there a legal document where we can find the exact, legally binding definition? In particular, we need to know in how far this applies to research organisations which are organised as private companies, but where the state holds a relevant part of the shares (e.g. the state is the majority owner or at least has a blocking minority).

Antwort:

Regarding the definition of “public research organisations”, as the Commission Recommendation on the management of intellectual property in knowledge transfer activities was issued under the Framework programme 7 (FP7), we refer to the FP7 definitions for the notions of “research organisations” and “public bodies”. In this respect, the FP7 Rules for participation (Article 2.1.7) define a research organisation as a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives. Article 2.1.13 of the same Rules provides that a public body is defined as any legal entity established as such by national law, and international organisations.

Therefore, in order to determine if a research organisation is “public”, you need to refer to the applicable national law.

Best regards,
Legal and Financial Helpdesk

10 Payments

10.1 Auszahlung an die Beneficiaries

Antwort vom 20.7.2018

Dear RES,

there was a new approach communicated in H2020 related to the grant payments (i.e. pre-financing payment, interim payment(s), balance payment) made by the European Commission to the consortium. While in FP7, all consortium members were affected by payment delays due to missing information/not accepted reportings of one or more beneficiary/ies, this is claimed to have changed in Horizon 2020.

After study of the relevant legal texts (MGA, AGA, FR...), I could not find clear indications that would confirm this.

e.g. Article 47 MGA about the "suspension of payment deadline" does not explicitly refer to "one or more beneficiaries", but (according to my interpretation) to the consortium as a whole.

Contrary to this, article 48 MGA about the "suspension of payments" clearly mentions "one or more beneficiaries".

This leads to the following assumptions:

- If payment requests do not comply with the provisions of the GA, are incomplete or require clarification, as well as if there are doubts on the eligibility of costs that require additional verifications (article 47 MGA), payment deadlines may be suspended for the whole consortium.*
- In cases, where the Commission identifies substantial errors, irregularities, fraud or serious breach of obligations in this or other grants, the payment may be suspended for one or more beneficiaries. Payment for parts not suspended will be made by the Commission.*

Article 20 MGA ("reporting - payment requests") only refers to the time of report submission, where the coordinator either submits the reports without the missing report of one beneficiary or reports zero costs for that beneficiary. This does not correspond to the situation of reports not accepted/to be corrected after submission.

Which article/text states the possibility of payments to those consortium members that fulfilled all reporting obligations set by the EC, while one or more consortium member(s) did not?

Antwort:

We understand from your question that you would like to know what are the possibilities (and their legal basis) to make payments to co-beneficiaries when one of them fails to fulfil its reporting obligations under Article 20 of the H2020 Model Grant Agreement (MGA).

At the time of reporting (e.g. interim payment or payment of the balance), the Commission may take the following measures:

- rejection of the costs declared by one or more beneficiaries in accordance with Article 42 MGA, if it finds these costs ineligible. If the ineligible costs are found in-between payments, the Commission will reject them at the next payment (i.e. deduct the amount rejected from the costs declared in the next financial statement and calculate the amount to be paid accordingly). As for the procedure, it differs according to whether cost rejection leads or not to

a recovery. For instance, if the rejection does not lead to recovery, there will be the possibility for the beneficiary to object ex-post to rejection via the payment review procedure (in this way, the Commission pays quickly without having to suspend the payment deadline). If the rejection leads to a recovery, there will be a contradictory procedure. For more information on rejection of costs please see Annotated MGA, pages 296-299.

- suspension of the payment deadline (Article 47 of the MGA) if the payment request cannot be immediately approved because it does not comply with GA requirements (e.g. wrong template used, errors in the financial statements); it is incomplete or requires clarifications or there are doubts on the eligibility of costs in the financial statements that require additional verifications. The suspension of the payment deadline is ad hoc measure that affects all the beneficiaries of the grant. In this case, the Commission will send back the report to the coordinator, as a single package, together with a notification letter that explains the reasons and requests modifications and/or clarifications. If the issues have been resolved satisfactorily or the Commission has finished the necessary verifications, it will lift the suspension and release the payment (as for the amount of the payment, depending of the results of the discussions, it could be less than the declared costs for the beneficiaries, if the Commission rejects costs at this stage). If it appears that despite the efforts of the coordinator, the beneficiary concerned does not submit its reports in compliance with Article 20 of the MGA, the Commission may take other measures, such as the suspension of the payment for the beneficiary concerned (Article 48 of the MGA). For more information on suspension of payment deadline please see Annotated MGA, pages 315-316.
- suspension of payments (Article 48 of the MGA) is a precautionary measure to avoid making payments, in whole or in part, for one or more beneficiaries which have committed or are suspected of having committed substantial errors, irregularities or fraud or serious breach of obligations. This procedure allows the Commission to make payments to beneficiaries which are not concerned with the suspension of payment and carry on the discussions with the beneficiary concerned by the suspension separately. During suspension, NO individual financial statements may be submitted for the beneficiary concerned with the periodic reports (except for the last one). If the issues with the beneficiary concerned have been resolved satisfactorily the Commission will lift the suspension. For more information on suspension of payments please see Annotated MGA, pages 317-319.

In any case payments are subject to the approval of the periodic report (Article 21.3). If the report is not approved it may lead to the rejection of costs for a beneficiary (Article 42). In this case the Commission will pay the accepted costs to the other beneficiaries.

Kind regards,

Legal and financial helpdesk

11 Checks/Audits/Reviews

11.1 Fristen

11.1.1 Frist für "Checks" (Art. 22.1.1)

Antwort vom 20.6.2014

Dear RES,

according to article 22.1.1 of the Grant Agreement, the Commission or Agency may check the proper implementation of the action and compliance with the obligations under the Agreement and may request additional information in accordance with article 17 "during the implementation of the action or afterwards" .

Since there is no time-limit indicated in these articles, can you please either confirm that no limits apply in relation to this obligation, in the other case, provide further information on possible time aspects in this context.

Antwort:

No direct time limit applies to the right of the Commission/Agency to carry out checks on the proper implementation of the action and compliance with the obligations under the Agreement.

It depends on the issue at stake. For example, Article 18 of the H2020 Model Grant Agreement sets up the period during which beneficiaries have the obligation to keep records and other supporting documentation. This period is limited to [option by default: five] [option for low value grants: three] years after the payment of the balance. After such period is expired the Commission/Agency may still carry out checks but the beneficiary is not obliged to have kept the supporting records. For carrying out audits, the Commission has a time period of 2 years after the payment of the balance.

Certain IPR obligations (for example, related to the protection of the results, in accordance with article 26.4 of the H2020 Model Grant Agreement) may run beyond the end of the duration of an action/payment of the balance. The applicable time-limits for such obligations are specified, where appropriate, in the Model Grant Agreement. In such cases, the Commission may request additional information on the compliance with such obligations.

Best regards,
Legal and Financial Helpdesk

11.2 Sprachkenntnisse von Auditoren

Antwort vom 21.8.2017

Dear Helpdesk,

we have a question on second level audits. An institution was informed about a second level audit coming soon. The auditors do not speak German, just English. In the past, the institution has always been audited by a group of auditors with at least one German speaking auditor to avoid misunderstandings. The institution was now informed as not all employees might speak perfectly English, it might be better to pay for a translator/interpreter. Is there an obligation to organize an interpreter by the beneficiary? The official language for the project is English, but getting audited by a team that neither speaks German nor knows the German system might lead to further complications. What are the official regulations concerning the language of a second level audit?

Antwort:

We assume that your case relates to an H2020 action. According to art 22.1.3 §11 of the Horizon 2020 Model Grant Agreement: “Audits (including audit reports) are in the language of the Agreement”. In that context, as English is the language of the grant agreement, the audits are to be conducted in that language. The Commission tries, nevertheless, to include in the team of auditors at least one able to speak the national language of the beneficiary. However, this is not always possible.

The beneficiary has no obligation to arrange for a translator; by contrast it has the obligation to collaborate in the audit (art 22.1.3 §6). If one specific employee who has to be interviewed in the context of the audit does not speak English, it may be assisted by another colleague during the interview. For example, it may be expected that the project leader at the beneficiary speaks English and can act as intermediary for any questions to the non-English speaker colleague.

Finally, please note that if any misunderstanding happens during the audit work, that can be clarified by the beneficiary at the closing meeting of the audit or via its comments on the draft audit report.

Kind regards,

Research Enquiry Service

12 Participant Portal/F&T Portal: LEAR/LSIGN/FSIGN

12.1 Allgemeines

Antwort vom 3.6.2014

Dear RES,

could you please inform us if, and how, the Research Participant Portal and the Participant Portal used by the Life Long Learning programme are interconnected.

In particular, we would like to know if an Account Administrator appointed in the frame of LLL can change the organisation's data provided in the H2020 context, and vice-versa.

Antwort:

Absolutely: the answer is yes.

Behind the portal layout, it is exactly the same instance of the IAM and PDM/URF systems, including their database.

The only difference at the level of the applications is in URF, where the EAC portal hyperlink to URF enables "multilinguism + EAC facts + optional SME assessment".

Kind regards,

The Research Enquiry Service Back-Office

12.2 Audit Contact (AUCO)

Antwort vom 21.10.2020

Anfrage der französischen Legal and Financial NCPs

Identified point of contact for financial audits:

The roles (AuCo) do not seem to be adapted to large organisations: these need to have a primary audit contact identified for the Head Quarters and then to be allowed to name one or several (local) audit contacts for each project audited. They have been told audit contacts have a view on the whole "audit", even when several projects are audited under the same "audit" reference, although this generates issues on access rights (each "local" administration may be not be allowed to access data on all the projects audited).

Antwort:

The LEAR gets assigned the Primary Audit Contact (PAuCo) role when an organisation has been selected for an audit. This role may nominate other Primary Audit Contacts (PAuCo) for the organisation and also the Audit Contacts (AuCo) roles for the audits. AuCos will carry out the audit tasks in the Audit Management System (AMS). PAuCos cannot access the audit unless the AuCo role is given to the person.

The AuCo role is granted access to the audit process and its documents, it is not granted access to the audited project data.

The documents of the audit process include letter of announcement, the audit supporting documents provided by the audited organisation, the audit reports (draft and final), and the comments provided during the contradictory.

There is some information on the new roles for audits in the Portal online manual and the 'IT How To' page dedicated to the [roles and access rights](#). We are reviewing it to ensure that it gives a clear picture of how the roles work.

13 Konsortiumsinterne Fragen

13.1 Zeitpunkt des Abschlusses des Konsortialvertrags

Antwort vom 3.6.2014

Dear Helpdesk,

lately we received follwing questions we can't answer with legal certainty. Maybe you can clarify the situation. According to Art. 41.3 GA together with the annotated MGA to Art. 41 and the respective work programme, a consortium agreement has to be signed before the grant agreement is signed.

As between the information that the project will be funded and the latest possibility to sign the GA there are only 3 months, some participants are wondering what will happen, if the consortium cannot sign the consortium agreement before the model grant agreement? Will the Commission check that the consortium has been signed internally? In case the consortium agreement hasn't been signed, will the Kommission stop the project or stopp the negotiation procedure for the MGA?

Antwort:

In line with Article 24 (2) of the Horizon 2020 Rules for Participation and Article 41 (3) of the MGA, the participants have to conclude a consortium agreement if the work programme does not rule otherwise.

However, neither the Rules for Participation nor the MGA stipulate that this agreement has to be concluded before the grant agreement is signed. The annotated grant agreement consequently only recommends strongly (“should in principle”) that the consortium agreement be negotiated and concluded before the action starts because not having a consortium agreement at this moment could delay and jeopardise the action. However, the Commission will not stop the grant preparation phase (there are no negotiations any longer), if it should become aware that the applicants have not yet concluded a consortium agreement.

However, and unless specifically ruled out by the WP, the obligation to have a CA signed exists, and should the Consortium not sign one, this may be considered a breach of grant obligations.

In case the work programme exceptionally stipulates that a consortium agreement be concluded before the signature of the grant agreement, this would be an additional participation condition (Article 9(5) of the H2020 Rules for Participation. Consequently, if the Commission becomes aware of the absence of the conclusion of a consortium agreement it would not sign the grant agreement.

Best regards,

Legal and Financial Helpdesk

14 Fragen zum ERANET-Cofund

14.1 Annex 8 und Anforderung des 2nd Pre-Financing

Antwort vom 13.7.2015

Article 20.3 (f) of the Grant Agreements of ERANet (...) and ERA-Net (...) states that among other documents for the periodic report, Annex 8 has to be submitted to request a second pre-financing payment. Therein, the Coordinator has to declare that a certain percentage of the pre-financing instalment “has been used”.

Could you firstly please confirm that the Coordinator has herein only to report a single figure and that any expenses do not need to be further broken down in conjunction with the request for the second pre-financing? Could you secondly please specify how “have been used” has to be understood in this context?

In the abovementioned ERA-NETs, not all of the first EC pre-financing is transferred to the beneficiaries but used to pre-finance coordination costs of the Coordinator and work package leaders as well. Therefore, the Coordinator will transfer money to selected work package leaders and to own subcontractors as well. Could you please specify by which data exactly both the Coordinator and each beneficiary has to substantiate expenses? Does the Coordinator both need to eventually report about outgoing payments to beneficiaries and report on own payments to subcontractors and payments of internal costs for coordination activities? Do beneficiaries need to eventually report only the reception of payments by the Coordinator or do they need to report on payments to subcontractors and payments of internal costs for coordination activities as well in case they are work package leaders?

Antwort:

Annex 8 (Model for the statement on the use of the previous pre-financing instalment) states that the authorized representative of the coordinator should declare both the percentage and the amount in absolute terms of the previous pre-financing instalment, paid used for the specific grant agreement. No other details should be provided in the statement. The amount to be declared will be based on substantiated data (bank slip/treasury account) provided by each beneficiary.

An amount is considered as used when the cost has actually been incurred or paid (i.e. to other third parties) by the Coordinator or by a beneficiary.

Kind regards,

Research Enquiry Service – Legal and Financial Helpdesk

14.2 “Additional Activities”

Antwort vom 23.6.2015

Articles 5.2. (e) and 18.1.2 (b) of the Grant Agreements of ERANet (...) and ERANet (...) state that for unit costs for coordination costs for additional activities, adequate records and other supporting documentation to prove the number of units declared must be provided. Could you please specify which activities qualify as additional activities and give examples for adequate records and supporting documentation.

Antwort:

An ERA-NET Cofund consortium may carry out additional activities. The activities have to be related to the coordination of public research and innovation programmes and should focus on the preparation and implementation of joint activities including additional calls without Union top-up funding (activities comparable to the ones of the FP7 ERA-NETs) (see General Annex D to the Main Work Programme). To carry out these activities, the beneficiary may receive financial support from the union in the form of Unit costs.

In relation to the example of unit costs, as the annotations of the [general model grant agreement state on page 154](#), the beneficiaries must keep detailed records and other supporting documents to prove the number of units declared. It is not necessary to keep records on the actual costs incurred.

The ERA-NET Cofund unit cost for additional activities is a fixed amount per beneficiary per year (EUR 29 000). Here the unit is each year for which the beneficiary has implemented the additional activities indicated in Annex 1 and reported in the progress reports. The detailed records and supporting documents to be kept depend on the type of those activities. For example, to prove participation in meetings related to the coordination of public research and innovation programmes, the beneficiary should be able to provide meeting minutes, participants lists, presentations given and reports produced during/after the meetings. If the additional activities include other joint calls without EU co-funding, the beneficiary should prove that the calls have taken place. It is essential that the supporting documents are strictly related to the additional activities as described in Annex 1 to the grant agreement.

If during a year the beneficiary has not carried out additional activities, then it cannot declare the unit cost for that year.

If during the year the beneficiary has carried out only part of the additional activities programmed for that year, two situations are possible:

Either the beneficiary does not declare the unit cost for that year; or if the beneficiary declares the unit costs for that year, the Commission may decide to reduce the grant at the end of the action in proportion to the improper implementation (i.e. the additional activities not carried out).

Kind regards,

Research Enquiry Service – Legal and Financial Helpdesk