

General Funding Conditions for Funding Agreements based on the RTD Guidelines

0. Introduction

- 0.1 These General Funding Conditions (GFC) shall apply to any funding contracts managed by Österreichische Forschungsförderungs GmbH (hereinafter referred to as “the Funding Agency”) in its capacity as the funding institution appointed by the respective funding provider for the management of funding agreements. The Funding Agency acts as the direct representative of the funding provider.

1. General

1.1 Funding recipients shall:

- a. commence the contractual work in accordance with the agreed schedule, or else immediately after the funding has been granted, to undertake the contractual work in a speedy manner and to conclude it within the agreed schedule, or in a reasonable period of time;
- b. immediately and on their own initiative, inform the Funding Agency about any events that delay or prevent the performance of the funded work or require a modification with respect to the funding application or the agreed terms and conditions, and to comply with their reporting obligations without delay;
- c. grant officials or representatives of the Federal Government, the EU and the Funding Agency the right to inspect their books and accounts as well as other documents required for monitoring the performance of the work (all documents as originals) on their own premises and the premises of third parties and the right to carry out on-site visits. Funding recipients shall provide or arrange for the provision of any information required by such officials or representatives and appoint a suitable contact person for this purpose. Any decision concerning the context between these documents and the work to be performed shall be at the discretion of the official carrying out the inspection;
- d. keep and preserve all books and accounts as well as all documents required for monitoring the performance of the funded project for a period of ten years (subject to the extension of the retention period by the Funding Agency in justified cases) as from the end of the year in which the entire funding amount has been disbursed, starting from the commencement of work at the latest. The documents may be preserved on separate image and data media if these ensure complete, consistent, authentic, true and verifiable reproduction until the end of the retention period. In this case funding recipients shall, at their own expense, make available any auxiliary devices necessary for reading the books, accounts and other documents and, if required, make available permanent copies that can be read without the use of auxiliary devices and provide such permanent copies on data media;
- e. state the amount of any grants they have applied or plan to apply for to another federal ministry, authority or other legal entity, including funding agencies, for the same work, albeit for a different purpose, including grants that have already been approved or earmarked, unless the funding recipient has already provided this information in the application. The funding recipient shall also disclose the amount of funding received for similar work from public and EU funds within the five years preceding the submission of the funding application. This obligation to disclose information shall also include any subsequent funding applications submitted by the funding recipient;
- f. comply with the Equal Treatment Act (GIBG, Federal Law Gazette BGBl. I No. 66/2004), the Equal Opportunities for People with Disabilities Act (BGStG, Federal Law Gazette BGBl. I No. 82/2005) and the prohibition of discrimination specified in Sec. 7b of the Disabled Persons Employment Act (BEinstG, Federal Law Gazette BGBl. No. 22/1970), as amended;
- g. not dispose of claims under any funding agreement by way of assignment, transfer or pledge. Any assignment, transfer, pledge or other disposition of claims under the present funding

agreement shall be ineffective with respect to the Federal Government and the Funding Agency.

- h. acknowledge that the funding is paid from federal or EU funds, and payments to the recipient are thus dependent on the timely inflow of funds. The Funding Agency shall thus not be liable to the funding recipient for the timely payment of funds.
 - i. observe the principles of parsimony, efficiency and expedience when carrying out the funded project and use the funds provided economically and efficiently and only for the purpose for which they have been granted.
 - j. ensure that any exploitation rights (e.g. patents, utility models, copyrights etc.) are contractually regulated in accordance with the provisions of the European Union, national provisions and programme guidelines, in particular with respect to the (consortium) partners.
- 1.2 In order for funding to be granted, the funding recipient must accept the funding proposal including any conditions and requirements imposed in writing within a reasonable period of time, failing which the funding proposal shall be deemed to be withdrawn.

2. Cooperation

- 2.1 The funding recipient shall ensure that all (consortium) partners involved in the project and accepted by the funding provider are fully informed about the funding agreement and all related documents and that they fully submit to the contractual provisions and any related documents with all respective rights and obligations, in particular cost accounting obligations, by means of a written contract. The partners shall be jointly and severally liable. The funding recipient shall ensure that such contracts are drawn up in due form.
- 2.2 The funding recipient shall appropriately manage all funding amounts to be transferred to the partners under the contract in a fiduciary manner. Any interest accrued shall be taken into account.

3. Reporting obligations

- 3.1 The factual report shall provide information about the use of the federal and EU funds granted and include documentary evidence of the performance of the funded work and the resulting output. Numerical evidence shall include a breakdown of all income and expenditure related to the funded work, substantiated with original receipts.
- 3.2 Any reports additionally demanded by the EU shall be presented to the Funding Agency in a timely manner. If the reporting obligations of the Funding Agency or funding provider to the European Commission change, the funding recipient shall be obliged to adjust the corresponding reports to the new regulations.
- 3.3 Documentary evidence can be provided by means of copies of invoices or payment receipts, with the Funding Agency reserving the right to inspect or demand subsequent presentation of the original documents. Receipts may also be transmitted in electronic form if the complete, consistent, authentic, true and verifiable reproduction is ensured, with the Funding Agency reserving the right to inspect or demand subsequent presentation of the original documents. If the use of personal data is required to prove that the funding has been used in accordance with the intended purpose, the funding recipient shall be obliged to obtain relevant approval in accordance with Sec. 8 para. 1 (2) of the Austrian Data Protection Act (Datenschutzgesetz 2000, Federal Law Gazette BGBl. I No. 165/1999) unless the use of such data is permitted under the data protection regulations.
- 3.4 If funding recipients have contributed financial funds of their own or received financial funds from another legal entity for the same purpose, these funds shall also be included in the documentary evidence.

4. Use of data by the Funding Agency

- 4.1 The funding recipient acknowledges that all personal data provided in the course of development and implementation of the contract – if the use of such data constitutes a vital prerequisite for the performance of the tasks entrusted to the Funding Agency or is otherwise permitted according to Sections 7 to 11 of the Austrian Data Protection Act (Datenschutzgesetz 2000, Federal Law Gazette No I 165/1999 as amended) – will be used by the Funding Agency for the conclusion and implementation of this contract, for the fulfilment of the tasks entrusted to it and for control purposes. This may mean that the data must be transferred or disclosed in particular to bodies and authorised representatives of the Audit Office, the Federal Minister of Finance and the European Union.
- 4.2 The same applies if several officials of the Federal Government and/or the Funding Agency intend to grant funding to the same funding recipient for the same work, albeit for different purposes, and therefore require mutual information.

5. Suspension and repayment of funding

- 5.1 The funding recipient, subject to the assertion of more extensive statutory claims, shall immediately repay the funding in whole or in part as unjustified enrichment upon demand by the funding provider, the funding agency or the EU, and the claim to any approved funding not yet disbursed shall expire in particular if:
- a. the funding recipient has informed executive bodies or agents of the Federal Government, the Funding Agency or the EU, in particular the economic situation of the funding recipient, incorrectly or incompletely about material circumstances;
 - b. the funding recipient has not provided mandatory reports, records or information if a written warning with a corresponding deadline and an express reference to the legal consequences of non-compliance has remained without effect and if the funding recipient has failed to give notice as provided in the funding agreement;
 - c. the funding recipient does not of his/her own initiative notify events immediately – in any event, in particular those concerning the economic situation of the funding recipient, before an inspection or the notification thereof – that would delay or render impossible or require a change of the execution of the funded work;
 - d. the funding recipient without prior, explicit consent of the funding provider realizes funded investment or transfers it in other ways;
 - e. the funding recipient ceases operation, sells or decommissions his/her business, or in the event of substantial changes in the ownership structure, respectively when a transfer of rights of the company in other ways takes place, before the due conclusion of the funded work or within a period of three years of conclusion thereof;
 - f. the legal and economic influence of the funding recipient changes before the due conclusion of a funded work or within a period of three years of conclusion thereof, e.g. if the funding recipient sells the majority of shares in a company, even if the decisive change does not occur at once;
 - g. without prior, explicit consent of the funding provider concerning an significant change of personal structure of the funding recipient will be made, in particular when the necessary key personnel, for reaching the funding aim, will be exchanged or won't be present;
 - h. the funding recipient impedes or prevents intended inspection measures or if the eligibility for funding can no longer be verified within the period of time provided for the retention of documents;
 - i. the funding recipient has used the funding in whole or in part contrary to its intended purpose;
 - j. the work has not been or cannot be carried out by the funding recipient, or cannot be carried out in time;
 - k. the funding recipient fails to comply with the prohibitions on assignment, transfer and pledging and other prohibitions on disposition in accordance with Section 1.1 g);

- l. the funding recipient fails to comply with the Equal Treatment Act, the Equal Opportunities for People with Disabilities Act and the prohibition of discrimination specified in Sec. 7b of the Disabled Persons Employment Act;
 - m. suspension and/or repayment is demanded by executive bodies of the EU;
 - n. the funding recipient has not complied with other conditions for funding, in particular such that are intended to secure the attainment of the purpose of the funding, and if the funding recipient has substantially breached any other obligation under the funding agreement.
- 5.2 In cases a) to c) as well as i), k), l) and n) in any event, and in the other cases only to the extent that the funding recipient (or persons whose services the funding recipient has enlisted to prepare the documents relevant for the funding application or to carry out the funded work) is at fault with respect to a demand for repayment, interest shall be payable on the amount of repayment from the date of disbursement of the funding at a rate of 3% per annum above the base rate of interest applicable at the time as published by the Austrian National Bank, applying compound interest. If the funding recipient is not at fault in cases h), j) and m), interest shall be payable on the amount repayable from the date of disbursement of the funding at a rate of 4% per annum, applying compound interest.
- 5.3 If this rate of interest is below the rate of interest specified by the EU for repayments, the latter shall be applied.
- 5.4 In the event of default in the repayment of the funding, default interest shall be charged from the occurrence of default at a rate of 4% per annum above the base rate of interest applicable at the time.

6. Liability

- 6.1 The funding recipient shall be fully liable to the funding provider and the Funding Agency for compliance with the contractual provisions. The funding recipient shall also be liable for the conduct of any related third parties (e.g. owners, executive bodies, etc.). The funding recipient shall indemnify and hold harmless the funding provider and the Funding Agency from and against any claims from third parties.

7. Jurisdiction

- 7.1 Any legal disputes arising from the granting of funding shall be settled by a Vienna court of competent jurisdiction.