FFG

Rechts- und Finanz-FAQ zu Horizon 2020

des Research Enquiry Service (RES) der Europäischen Kommission

Stand: 16.08.2017

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1 Allgemeines

1.1 Rechtlicher Status des Beneficiary

1.1.1 Gesellschafterbeschluss für Gemeinnützigkeit ausreichend?

Antwort: 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:

Thank you for your e-mail.

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: 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: 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:

Thank you for your question and sorry for our delay in responding.

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

3 Antragstellung und Einreichung

3.1 Allgemeines

3.1.1 Bestätigungen durch den Koordinator (A-Forms)

Antwort: 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:

Thank you for your question. We would like to apologize for our delay in answering, which is due to the high number of questions we are receiving on Horizon 2020.

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: 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 occacions?

Antwort:

Thank you for your question. We would like to apologise for the delay in replying.

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: 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 subsstantiate 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:

Thank you for your message.

Please find here below the replies to your questions:

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: 14.08.2017

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?

Best regards

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,

4.4 Externe SprecherInnen/Moderation

Antwort: 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. An 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

5 Personalkosten und Zeitaufzeichnungen

5.1 Jahresproduktivstunden allgemein

5.1.1 Unterschiedliche Optionen kombinieren (1)

Antwort: 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 appy 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: 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?

Many thanks in advance for your feedback,
Best regards,

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: 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?

Best regards,

Antwort:

Thank you for your message.
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 choses 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: 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?

Many thanks in advance,

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: 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?

Thank you and best regards

Antwort:

Dear,

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 at: http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Kind regards,
Legal and financial helpdesk

5.1.6 Jahresproduktivstunden des Vorjahres

Antwort: 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?
Thank you very much for clarifying this issue.

Kind regards

Antwort:

Dear,

Thank you for your question. 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), http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf, 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

5.2 Jahresproduktivstunden: Option 1 („1720 Stunden“)

5.2.1 Auswirkungen einer Überstundenpauschale auf Option 1

Antwort: 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 then 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 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: Mai 2017

Dear RES,

When using option 1 for annual productive hours (1720 hours) to calculate the hourly rate, is it neccessary to calculate the personnel costs using the numer 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 practicioners are convinced that they still have to take into account the actual numer 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?
I would be very greatful if you could help us to clarify this matter.

Kind regards,

Antwort:

Dear,

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):

http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Kind regards,
Legal and financial helpdesk

5.3 Jahresproduktivstunden: Option 2 („Individuell“)

5.3.1 Berechnung der individuellen Jahresproduktivstunden

Antwort: 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 estipulate 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: 25.03.2014

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: 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 detemine if the 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:

Thank you for your message.

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:
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Best regards,

Legal and Financial Helpdesk

5.4.3 Nachfrage zur Antwort „Berechnung allgemein…“ vom 21.5.2014

Antwort: 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 chosing 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:

Thank you for your message.

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: 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 estipulate 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: 30.1.2014

Dear RES,

could you please outline the Commission's policy concering 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:

Thank you for your message.

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: 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?

Thanks a lot & best regards

Antwort:

Dear,

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 (see http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf).

Kind regards,
Legal and financial helpdesk

5.5.3 Auswirkungen einer Überstundenpauschale auf die Personalkosten

Antwort: 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:

Thank you for your message.

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: 02.02.2017

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:

Thank you for contacting the Legal and Financial Helpdesk.

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.

Please do not hesitate to contact us if you have any further questions.

Kind regards,

Legal and financial helpdesk

5.7 Dokumentation der Personalkosten

5.7.1 Projektbezogene Zeitaufzeichnungen ausreichend

Antwort: 21.02.2014

Dear RES,

could you please decribe 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:

Thank you for your message and for your interest in European Union (EU)research funding. 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: 14.04.2015

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 (available at: http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf).

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: 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:

Thank you for your message.

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: 28.04.2015

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:

Thank you for your question.

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: 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: 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 mimimum 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: 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 itsself/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:

Thank you for your message.

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: 17.09.2015

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?

Regards,

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 at http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf.

Kind regards,

Research Enquiry Service-Legal and financial helpdesk

5.9.4 “Secondment” vs. kommerzielle Arbeitskräfteüberlassung

Antwort: 3.09.2015

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.

Regards,

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 at:
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf.

Kind regards,
Research Enquiry Service - Legal and financial helpdesk

5.9.5 Personalkostenberechnung bei 100%-Tätigkeit für ein Projekt

Antwort: 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 (http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf).

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

5.10 Monatliche Berechnung der Personalkosten

5.10.1 Monatliche Berechnung nur in einzelnen Projekten möglich?

Datum: 25.08.2016

Quelle: https://ec.europa.eu/research/participants/portal/desktop/en/support/faqs/faq-3244.html (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.

6 Subcontracting

6.1 Subcontracting auch bei Teilen von Tasks?

Antwort: 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:

Thank you for your message.

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 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

7 Sonstige direkte Kosten

7.1 Kosten von Geräten und Infrastruktur

7.1.1 Berechnung von Maschinenstunden

Antwort: 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 € / 1720 usable hours = 10 € per hour * 50 hours of use for the action = 500 €
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

7.1.2 Dokumentation von Maschinenstunden

Antwort: 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:

Thank you for your question. Please excuse our delay in responding.

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

7.2 Reisekosten

7.2.1 Stornierung einer Dienstreise wegen Erkrankung

Antwort: 7.1.2014

Dear RES,

one of our customers aproached us with the following question: What if a project manager must cancel business trip to a proejct 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:

Thank you for your message.

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 at
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf .

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: https://www.ffg.at/sites/default/files/downloads/service/h2020-faq_res_stand_2016-03-22.pdf).

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

7.2.2 Bustickets ohne Preis- und Datumsangabe

Antwort: 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:

Thank you for your question.

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

8 Sonstige Güter und Dienstleistungen

8.1 Preisvergleich

8.1.1 Bestes Preis-Leistungsverhältnis bzw. niedrigster Preis I

Antwort: 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:

Thank you for your questions.

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 or 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

8.1.2 Bestes Preis-Leistungsverhältnis bzw. niedrigster Preis II

Antwort: 24.06.2015

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

9 Linked Third Parties

9.1 Mitgliedschaft im selben Verein

Antwort: 24.06.2015

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?

Best regards

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

10 Geistiges Eigentum

10.1 Schutz der Ergebnisse

10.1.1 Mitteilungen nach Projektende

Antwort: 7.4.2014

To whom it may concern,

while reading through the MGA and the information material the question is who will be able to/ who should send the information concercing 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:

Thank you for your message.

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, at:
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Best regards,

Legal and financial helpdesk

10.1.2 Schutz nur in einzelnen Staaten

Antwort: 7.4.2014

To whom it may concern,

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

10.2 Verwertung der Ergebnisse

10.2.1 Dokumentation der Verwertung

Antwort: 1.7.2014

To whom it may concern,

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 futher 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:

Thank you for your question and for your interest in the EU research funding. Please excuse our delay in answering which is due to the high number of questions we are receiving on Horizon 2020.

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 at:

http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Kind regards,

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

Antwort: 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:

Thank you for your message. We apologise for the delayed reply.
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

11 Checks/Audits/Reviews

11.1 Fristen

11.1.1 Frist für “Checks” (Art. 22.1.1)

Antwort: 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:

Thank you for your message. We apologise for the delay in replying due to the current heavy workload. Please find below the reply to your question:

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

12 Participant Portal: LEAR/LSIGN/FSIGN

12.1 Allgemeines

Antwort: 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:

Thank you for your message.

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

13 Konsortiumsinterne Fragen

13.1 Zeitpunkt des Abschlusses des Konsortialvertrags

Antwort: 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:

Thank you for your message.

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: 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:

Thank you for your message.

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,

14.2 “Additional Activities”

Antwort: 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:

Thank you for your message.

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 (see http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf), 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