



Bundesministerium
für Bildung
und Forschung



NKS Recht und Finanzen
Nationale Kontaktstelle zum
EU-Programm Horizont 2020

Legal and financial issues in Horizon 2020

Bonn, 01.02.2017

National Contact Point Legal & Financial Issues



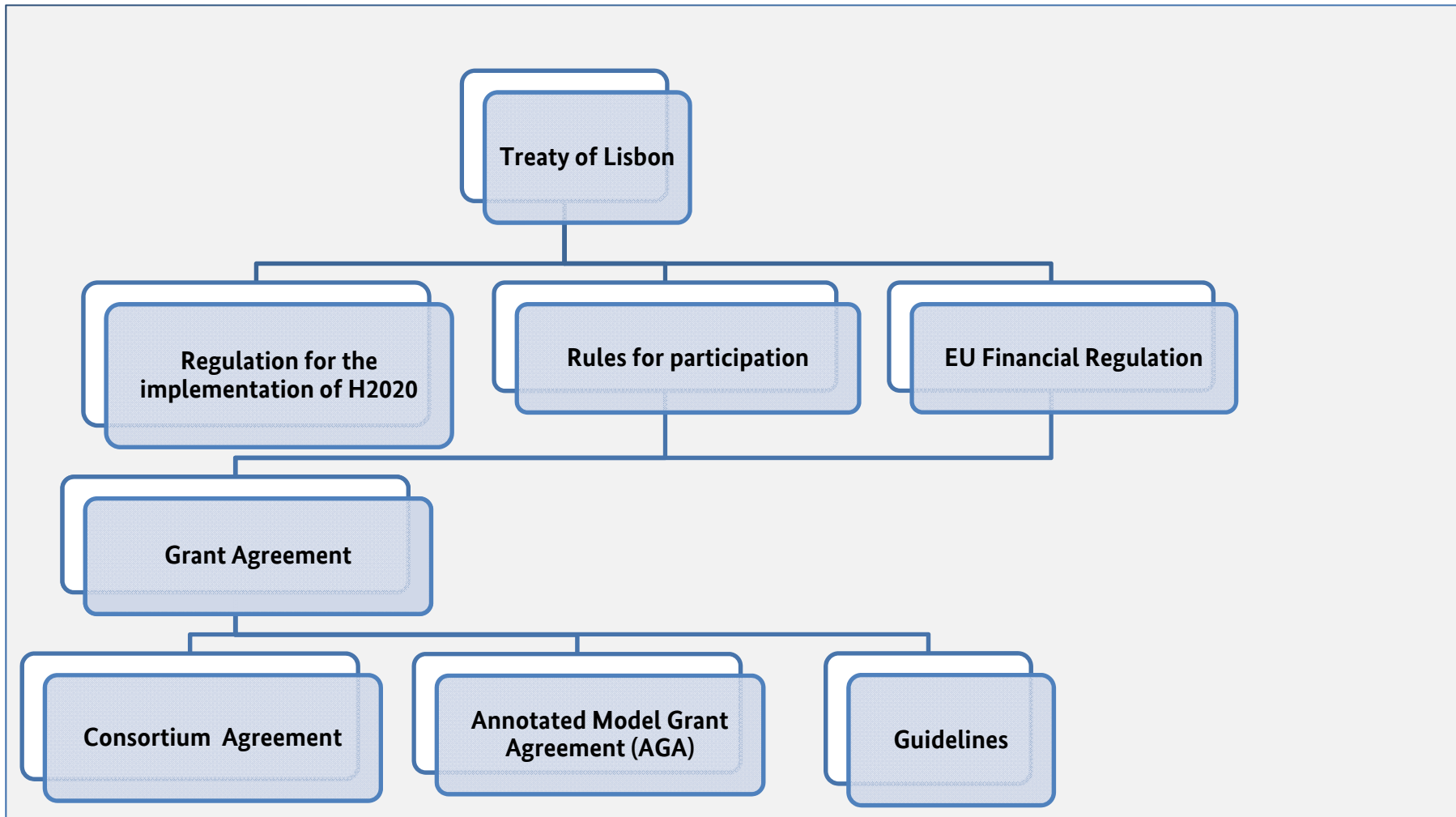
- Located in the EU-Bureau of the BMBF in Bonn and Berlin
- Advice on legal and financial issues in FP7 and H2020 projects
- Seminar series „Legal and financial issues in Horizon 2020“
- Workshops and presentations about legal, financial and administrative issues throughout Germany (on demand)
- Supporting the BMBF's European Research policy strategy

Web: www.nks-ruf.de

Reference documents in H2020



Legal framework– Hierarchy of documents





Eligibility for participation and funding in H2020





General eligibility for participation (Art. 7 RoP)

- Open to all legal entities in the EU, in associated states and in third countries
- Open to all international organisations
- Limitations only possible for specific reasons or security concerns in the respective work programme
- Limitation only applicable if it is explicitly mentioned in the respective work programme



Minimum requirements for participation (Art. 9 RoP)

- Consortium includes at least **three** independent **legal entities** from three different **Member States or Associated Countries**
- Exceptions for individual applicants:
 - Calls of the European Research Council (ERC),
 - Coordination and Support actions (CSA),
 - Training and Mobility actions,
 - The SME-Instrument, if the action has a clear European added value,
 - Programme co-fund actions,
 - In justified cases provided for in the work programme or work plan



Funding eligibility of participants (Art. 10 RoP)

- **Excluded from funding are:**
 - Legal persons from industrialised countries (not listed in Annex I of the H2020 work programme e.g. USA, Canada, Japan, Australia, Monaco, Mexico, South Korea) and emerging economies like the **BRIC states** (Brasilia, Russia, India, China)
- **Exceptions:**
 - Eligibility is explicitly mentioned in the programme
 - Participation is essential for the implementation of the project
 - Funding is provided for in a bilateral scientific –technical or other agreement



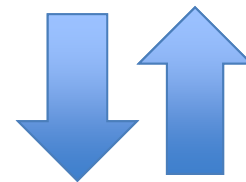
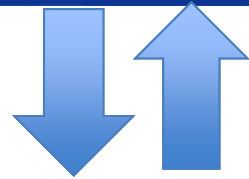
Documents on international participation

- Guideline on Third country participation in H2020
- List of H2020 Associated Countries
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf
- List of Third Countries
http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-3cpart_en.pdf
- EU international cooperation in research and innovation
- H2020 Online Manual
http://ec.europa.eu/research/participants/docs/h2020-funding-guide/cross-cutting-issues/international-cooperation_en.htm
- <http://www.horizont2020.de/einstieg-international.htm> (in German)
- <http://www.eubuero.de/international.htm> (in German)



Third Party Contributions







Third Parties in the project (Art. 10-14 GA)

- Third parties are all institutions that have not acceded to the grant agreement
- Contribute to the project
- Several possibilities to include third parties if their participation is necessary for the project's success
- **Attention: Different conditions for their participation and for the accounting of their costs!**



Overview: different options for the participation of third parties

A.1 subcontracts , Art. 13 GA with additional options

A.2 OPTION: Linked Third Party, Art. 14 GA (ex. Special clause 10)

B. Other contributions of third parties

B.1 provision of goods, works and services; Art. 10 GA

B.2 In-kind Contributions against payment, Art. 11 GA

B.3 In-kind Contributions without payment, Art. 12 GA

C. FINANCIAL SUPPORT TO THIRD PARTIES

C.1 Art. 15 GA, Cascading Grants, Prices etc.



Subcontracts - Art. 13

A. Third party executes project tasks

A.1 subcontracts, Art. 13 GA with additional options

A.2

B. Other contributions of third parties

B.1

B.2

B.3

C. Financial support to third parties

C.1

- Necessary for project implementation (do not concern core tasks of a project)
- Contribute to the project's content (do not only assist with project implementation (Art. 10))
- Selected according to best value for money (13.1), any conflict of interests avoided
- According to national public procurement law!
- Subcontractor issues invoice, charges market prices, includes profit

Subcontracts (Art. 13)

A. Third party executes project tasks

A.1 subcontracts, Art. 13 GA with additional options

A.2

B. Other contributions of third parties

B.1

B.2

B.3

C. FINANCIAL SUPPORT TO THIRD PARTIES

C.1

- Tasks need to be mentioned in Annex I of the GA
- New in H2020: ex post recognition of costs possible if costs are not mentioned in Annex 1, but recognition is at the Commission's discretion
- No subcontract amongst beneficiaries! Prohibited!
- No subcontracts to subsidiary companies (Art. 14)



Linked third parties (Art. 14)

A. Third party executes project tasks

A.1

A.2 OPTION: Linked Third parties, Art. 14 GA (ex. Special clause 10)

B. Other contributions of third parties

B.1

B.2

B.3

C. Financial support to third parties

C.1

- **OPTION:** potential participation of affiliated entities and linked third parties
- Definition of status during grant preparation phase
- Structural and enduring relationship necessary
- Affiliated entities:
 - Def. Art. 2.1(2) RoP; FN 24 GA: affiliated entities, factual and/or legal direct/indirect control...
- Linked third parties
 - Def.: (FN25) ‘**Third party with a legal link to a beneficiary**’ is any legal entity which has a legal link to the beneficiary implying collaboration that is not limited to the action.



Linked third parties (Art. 14)

A. Third party executes project tasks

A.1

A.2 OPTION: Linked Third parties, Art. 14 GA (ex. Special clause 10)

B. Other contributions of third parties

B.1

B.2

B.3

C. Financial support to third parties

C.1

- Executes project tasks
- Needs to have its own PIC
- Declares its own costs according to Art. 6.3
- **New: joint and several liability possible**



Providing goods, works and services (Art. 10)

A. Third party executes project tasks

A.1

A.2

B. Other contributions of third parties

B.1 Providing goods and services, Art. 10 GA

B.2

B.3

C. Financial support to third parties

C.1

- Third parties can provide goods, works and services possible, if these are needed for the project
- Services must not contribute to the content of the project
- Are only supportive actions
- In FP 7: minor services
- examples: audits, translations, publications, creating webpages etc.



Third parties provide resources– against payment/ free of charge (Art. 12, 11 GA)

A. Third party executes project tasks

A.1

A.2

B. Other contributions of third parties

B.1

B.2 In-kind Contributions against payment, Art. 11 GA

B.3 In-kind Contri- butions free of charge, Art. 12 GA

C. Financial support to third parties

C.1

- Third parties may provide in-kind contributions against payment or free of charge, if those contributions are necessary for project implementation
- No commercial interest of the third party
- Contributions have to be named in Annex I of the GA
- **New in H2020:** ex-post recognition of costs possible if costs are not mentioned in Annex 1. However, recognition is at the discretion of the commission



Third parties provide resources– against payment/ free of charge(Art. 12, 11 GA)

A. Third party executes project tasks

A.1

A.2

B. Other contributions of third parties

B.1

B.2 In-kind
Contributions against
payment, Art. 11 GA

B.3 In-kind Contri-
butions free of charge,
Art. 12 GA

C. Financial support to third parties

C.1

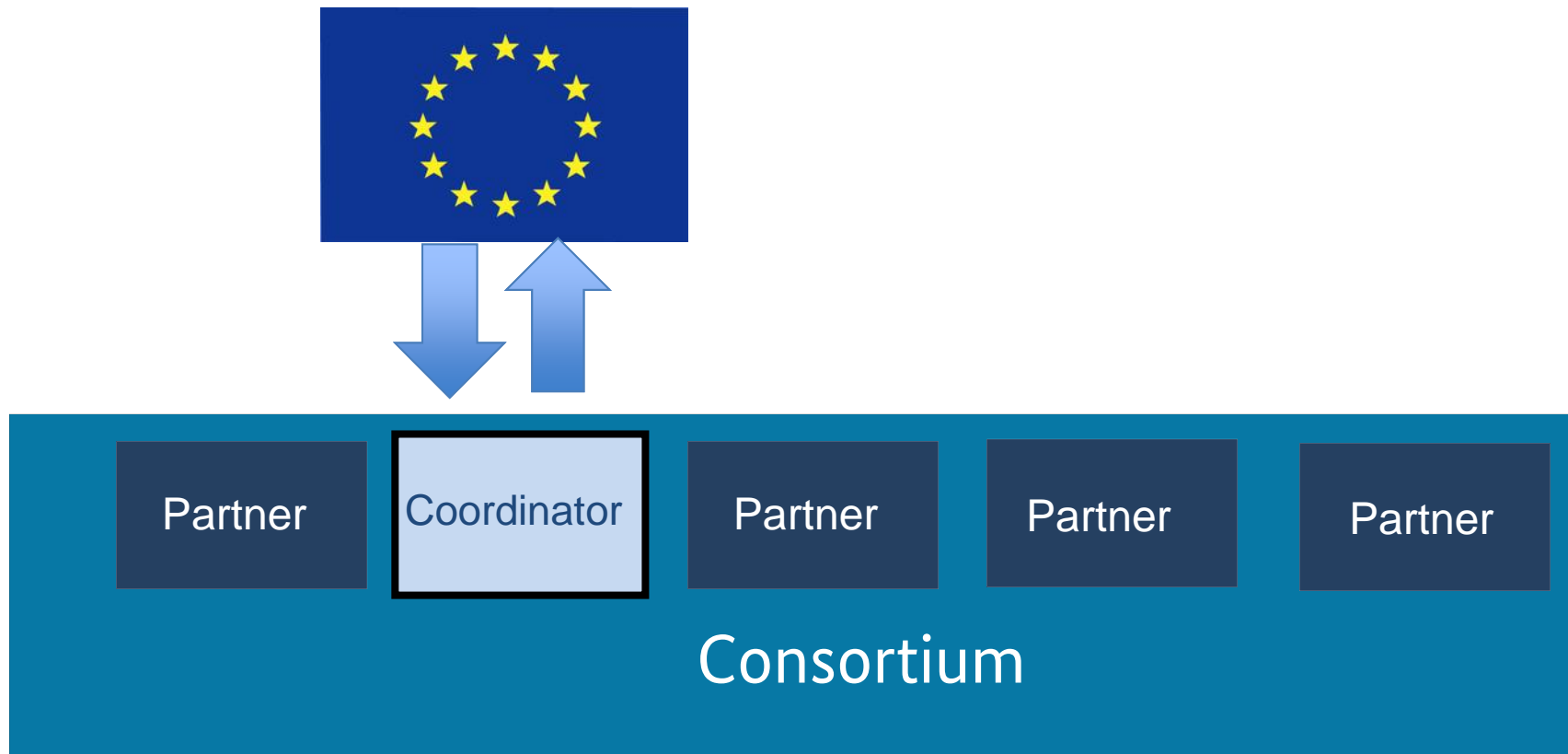
- Beneficiary reimburses the actual costs to third party, charges costs to the project
- Eligible actual costs acc. 6.1,6.2 GA (e.g. personnel, equipment, infrastructure, goods, works and services etc.)
- **But: beware of non-profit rule if contributions free of charge are declared as actual costs**



The Model Grant Agreement in H2020



Contractual relation between Commission and Consortium



Model Grant Agreement

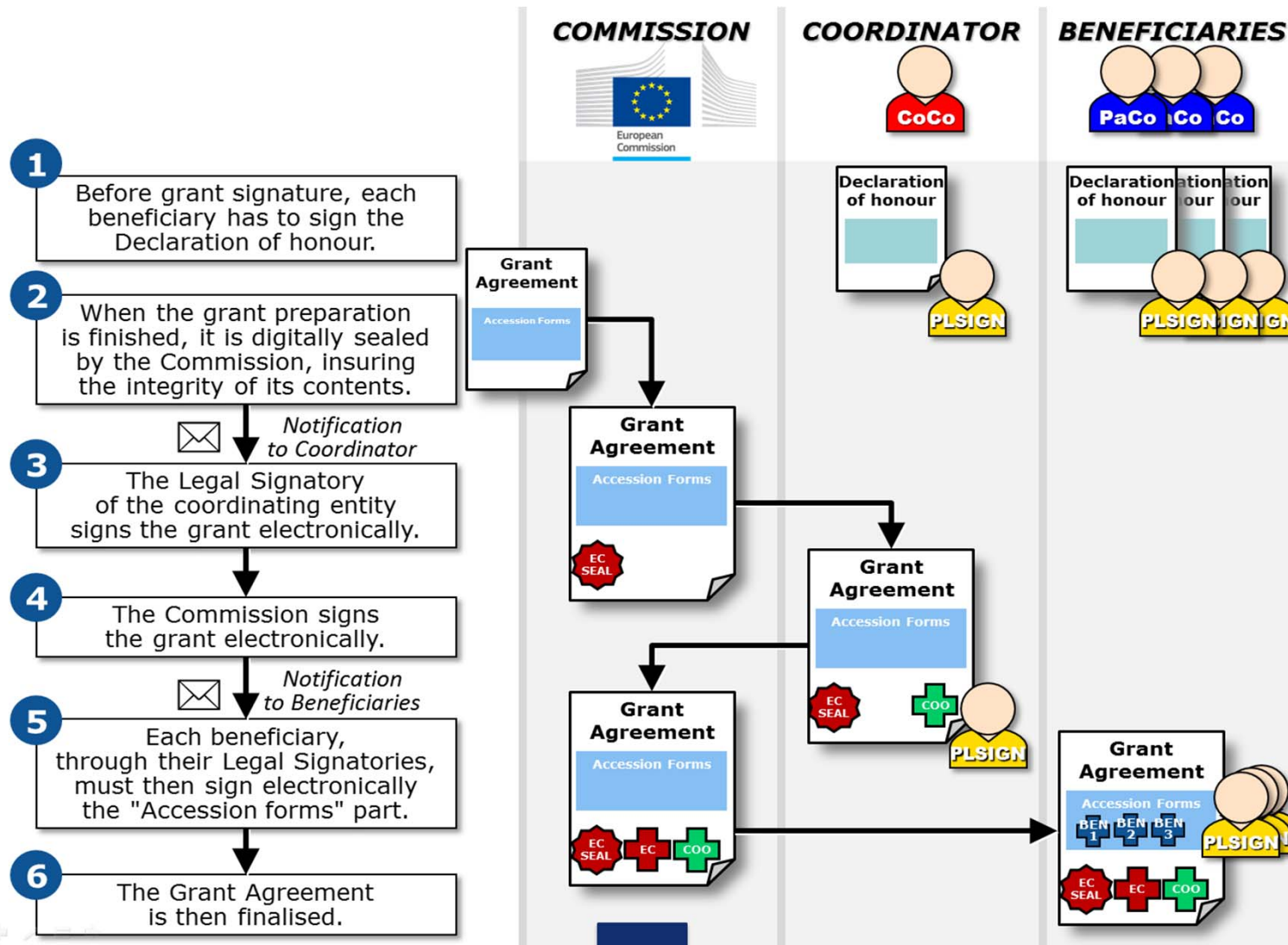
- Same rules and regulations for all programmes in H2020
- Specific exceptions for ERC, MSC, SME, CO-FUND
- More comprehensive than the FP 7 model (FP7 GA + Financial Guide)
- Different versions for one and many beneficiaries (Mono and Multi-Beneficiary)
- Different options in the agreement text applicable to specific situations
- Annotated documents published in the Reference section of the Participant Portal
- http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

Signature of the Grant Agreement

- PLSIGNs of the coordinator and of all partners sign the Declaration of Honour
- Coordinator (PLSIGN) and the Commission sign the Grant Agreements electronically
- With the signature of the coordinator and the COM the agreement enters into force acc. to Art. 58 GA
- Other partners accede to the agreement through Annex III a, b within 30 days of its entry into force
- If partners do not accede to the GA, the agreement can be terminated (Art. 50.3;56 GA)
- Attention: short time to grant!

Manual:

http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#h2020-grants-manual-gap





Consortium Agreement





Consortium Agreement, Article 41.3 GA

- Consortium Agreement obligatory
- Exception: if work programme explicitly asks for other arrangements
- Has to be signed **before** GA is signed (according to work programme)
- Private-law agreement between partners of the consortium
- Content agreed upon by the partners, not controlled by the COM
- PO might ask to see Consortium Agreement
- Regulates relations between consortium partners



Provisions for the Consortium Agreement (Artikel 41.3 GA)

- Internal arrangement of the consortium
- Management and access to the Participant Portal
- Distribution of EU contribution
- Additional regulations regarding rights and obligations regarding background and results
- settlement of internal disputes
- liability, indemnification and confidentiality arrangements between the beneficiaries



Financial Issues



Principle Rules: EU-Financial Regulation

Article 125 EU-Financial Regulation:

- Transparency and equality
- *Co-financing rule*
- *No-profit principle*
- *No double financing*
- No double funding allowed. However, actions receiving funding from the EU budget can be supported in H2020 as long as the funding does not cover the same costs.
- **In general the usual cost accounting practices of the beneficiary apply**



Financial management

- Use documents throughout the entire process
- Consult your (research) support offices early about your planned budget
- Check the eligibility of all your costs in good time
 - Calculate the personnel costs
 - Find out about your institution's depreciation rules
- Budgets of all beneficiaries and modes of redistribution of funds have to be regulated in the Consortium agreement.



Financial management

Dealing with the European Commission

- Take the rules seriously!
- Contact your project officer / financial officer in case of doubt
 - not all cases are clearly regulated
 - COM has broad discretion
- Accounting errors may lead to recovery of funds
- Audits of the COM are possible at any time



Financial management

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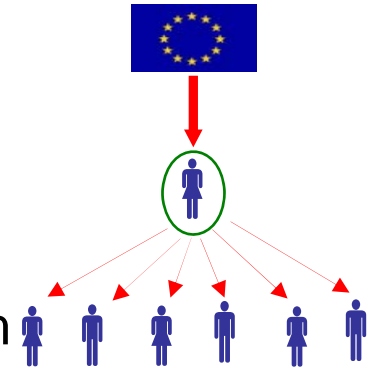
General questions are answered quickly by Europe Direct while more specialised questions are forwarded to the relevant service.

Participant Portal, e.g. forgotten passwords, access rights and roles, technical aspects of submission of proposals or reports etc. For such questions please contact the **IT helpdesk**.

<http://ec.europa.eu/research/index.cfm?pg=enquiries>

Payment method

- All funds are paid by the COM to the coordinator
- The coordinator forwards the funds immediately to the partners of the consortium
 - Exception: other arrangements in the consortium agreement, e.g. tranche payments
- Consortium is autonomous in its management of the funds
 - Budget transfers between partners and cost categories possible (Art. 4.2 GA)
 - Amendment necessary if Annex I needs to be changed (e.g. if cost category was not included in Annex I)





Payment method

PRE-FINANCING

INTERIM PAYMENTS

PAYMENT OF THE BALANCE



Payment method

Pre- financing

Interim
payments

Payment of
the balance

Art. 21.2 GA

When:

- either 30 days after coming into force of the grant agreement (Art. 58 GA)
 - or 10 days before the project start (Art. 3 GA)
 - The later date is decisive

How much:

- 100% of an average interim payment
- = grant amount ÷ number of reporting periods
- 5% of the grant amount is deducted from the pre- financing sum and transferred to the guarantee fund



Payment method

Pre-
Financing

Interim
Payments

Payment of
the balance

Art. 21.3 GA

When:

- 90 days after receiving the periodic report
 - Periodic reports have to be filed 60 days after the end of a reporting period
 - Reporting periods end every 18 months on average (Art. 20.2 GA)

How much:

- Eligible costs* funding rate
- Up to 90% of the total grant amount



Payment method

Pre-
financing

Interim
payment

Payment of the
balance

Art. 21.4 GA

When:

- 90 days after receiving the final report
- Final report has to be filed 60 days after the last reporting period ended (Art. 20.4 GA)

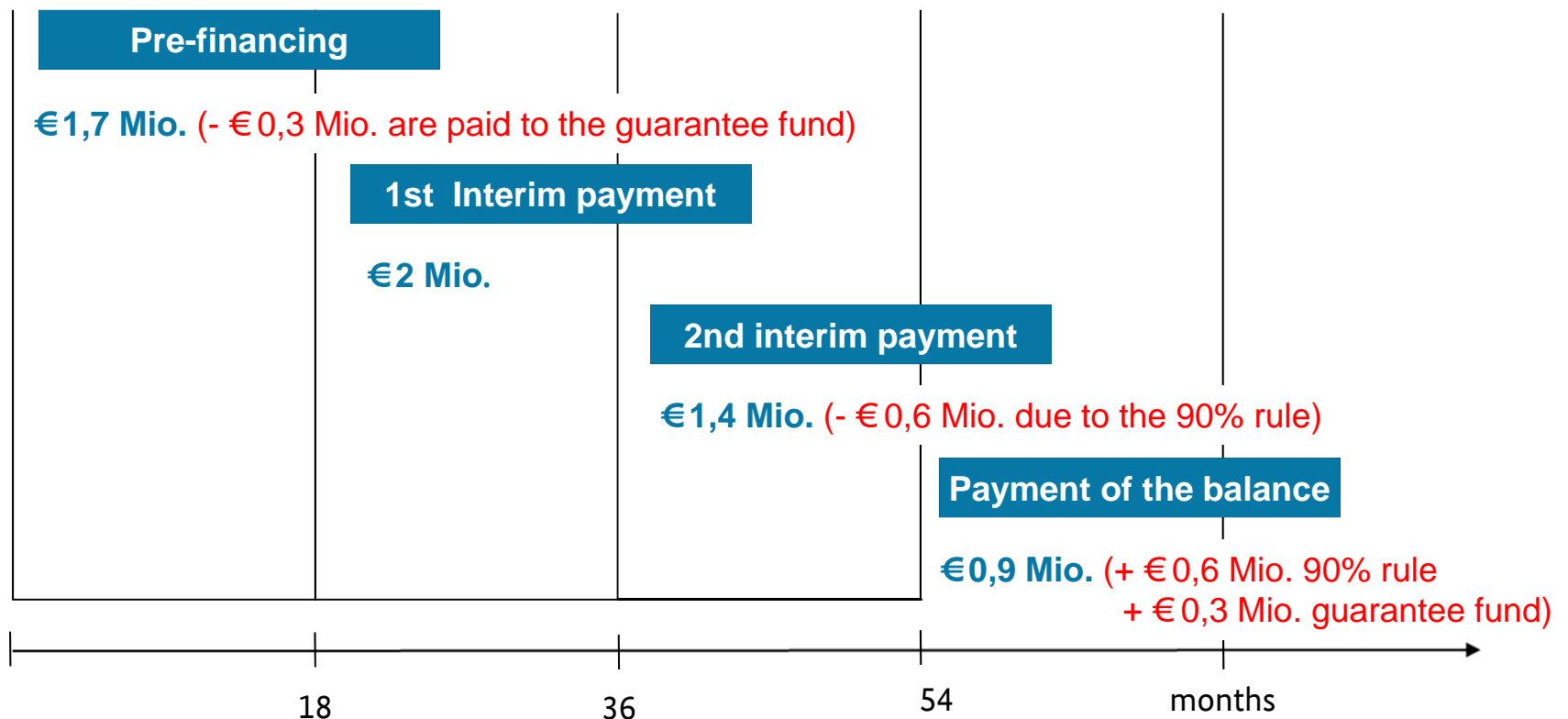
How much:

- Payment of the balance
- 10% of retained grant amount from Art. 21.3 GA
- 5% from the guarantee fund



Payment method

Example: Project budget 6 Mio. €, Project duration 4,5 years





Funding rates Art. 5.2 GA

One single funding rate per action

Research and innovation actions (RIA)	Innovation actions (IA)
100% of the eligible (direct and indirect) costs	70% of the eligible (direct and indirect) costs
	Exception: non-profit institutions always receive 100% of the eligible costs



Example: Funding rates

Innovation action for for-profit institutions

Eligible costs (per budget category)					EU Contribution		
(A) Direct personnel costs	(B) Other direct costs	(C) Direct costs of sub- contracting	(F) Indirect costs	(H) Total estimated eligible costs	(I) Reim- bursement rate (%)	(J) Maximum EU Contri- bution	(K) Requested EU Contri- bution
Actual	Actual	Actual	=0,25* (A+B)	=A+B+C+F	70%	(=H*I)	
10.000	2.000	500	3.000	15.500	10.850	10.850	10.850



Eligible Costs (Art. 6.1 GA)

- **Actual costs**
- Incurred **during the duration of the action** (exception: final reports and audit certificates)
- must be indicated in the estimated budget set out in **Annex 2**;
- they must be incurred in connection with the action as described in **Annex 1** and necessary for its implementation
- Identifiable and verifiable
- Accounted for according to the beneficiary's usual accounting principles and cost accounting practices
- According to **national law**
- they must be reasonable, justified and must comply with the principle of sound financial management, in particular regarding efficiency and effectiveness
- Non-deductible VAT. (= institution not entitled to reclaim VAT)



Ineligible Costs (Art. 6.5 GA)

- costs related to return on capital or return generated by an investment
- debt and debt service charges
- provisions for future losses or debts
- doubtful debts
- currency exchange losses
- bank costs charged by the beneficiary's bank for transfers from the Commission/Agency
- excessive or reckless expenditure
- costs declared under another EU or Euratom grant (double funding)
- costs incurred during the suspension of the implementation of the action
- deductible VAT. (= institution eligible to reclaim VAT)



Indirect costs

- Art. 6.2.E GA
- Are not directly linked to the project action and cannot be charged directly to the project
- Reimbursement in form of/by a flat rate:
 - **25% of the direct eligible costs**
 - **Without subcontracts** und „**in-kind-contributions**“ of third parties not on the beneficiary's premises
- examples:
 - rents, electricity, heating, office equipment, furniture, phone costs, postage, printing and copy costs, administrative costs (e.g. technical staff)



Direct costs

- Art. 6.2 GA
- Are directly linked to the implementation of the action and can be directly charged to the project
- examples:
 - **personnel costs** – Art. 6.2.A GA
 - **Subcontracting** – Art. 6.2.B GA
 - **other direct costs**
 - Travel costs – Art. 6.2.D.1 GA
 - equipment/ infrastructure/ other assets – Art. 6.2.D.2 GA
 - other goods, works and services – Art. 6.2.D.3 GA



Personnel costs: contracts

- Direct employment contract (temporary or permanent) with the beneficiary according to national law and working under a direct contract
- Other contracts may be eligible if the person:
 - Works under the beneficiary's instructions
 - On the **beneficiary's premises**
 - **The result** of the work carried out must **belong to the beneficiary**
 - The costs are **not significantly different** from costs for personnel performing similar tasks under an employment contract with the beneficiary.
 - The remuneration must be for the hours worked, not for a specific output/product



Personnel costs: remuneration

- Basic remuneration and complements
- Including social security contributions and taxes
- Including additional payments if:
 - They are mandatory according to national law or collective labour agreement
 - Based on objective criteria, and are not at the discretion of the employer
 - Are part of the basic remuneration
 - Are not linked to a specific product
 - Examples: holiday pay, Christmas bonus, 13th month's salary; complement for hazardous work or night shifts



Calculation of Personnel Costs

Hourly Rate

$$= \frac{\text{annual personnel costs}}{\text{number of annual productive hours}}$$



Personnel Costs

$$= \text{hourly rate} * \text{hours worked on the project}$$



Annual Productive Hours

1720 Hours	Individual	Standard
<ul style="list-style-type: none"> - can be used by every beneficiary - pro-rata adjustment for time contracts <p><u>Example:</u></p> <ul style="list-style-type: none"> - 40-hour-week - contract over 32 hours corresponds to 80% of the 40-hour-week - $100 \cdot 32 : 40 = 80\%$ - annual productive hours: 1376 (=80% of 1720) 	<ul style="list-style-type: none"> - annual working hours according to employment contract, labour agreement or national law - plus overtime - minus sick leave and special leave <p>365 days – weekends – annual leave – public holidays + overtime – sick and special leave</p>	<ul style="list-style-type: none"> - calculated in accordance with beneficiary's usual cost accounting practice - consistently applied per group of personnel under similar conditions - number of standard annual productive hours is at least 90% of the standard workable hours - standard hours are defined in employment contract, labour agreement or national law on working time legislation



Personnel costs: time recording

- No time recording necessary for persons who work full time (100%) for the H2020 project
- Model declaration:
http://ec.europa.eu/research/participants/data/ref/h2020/other/legal/templ/tmpl_decl_excl-work_en.pdf
- Only one declaration per reporting period:
 - Either for the entire funding period or
 - For an uninterrupted period of time that comprises at least one full month (e. g. 15 January until 15 April)
- Declaration has to be dated and signed by the employee
- If doubts about the exclusivity arise, working time should be recorded



Personnel costs: time recording

- Recording through e.g. timesheets (electronic or on paper)
- Proof of actual work hours
- Signing at least once a month by employee and line management
- **Content**
 - Title and project number according to GA
 - Beneficiary's name
 - Date, name and signature of employee
 - name and signature of line manager
 - Working hours per day
 - Relationship to the actions or work packages in Annex 1
 - Description of tasks



Travel costs

- Art. 6.2.D.1 GA (subsistence allowances, travel costs, accommodation costs)
- Are eligible costs according to Articles 6.1 (a) (i) – (vii) GA
- The travel for which costs are claimed must be necessary for the action
- Costs must be incurred during the project duration
- be in line with the beneficiary's usual accounting practices
- Travels by staff working on the project
- Travels by external experts whose participation in the project is set out in Annex 1



Depreciation costs

- Art. 6.2.D.2 GA,
- Is an eligible cost according to article 6.1 (a) (i) – (vii) GA
- Additional conditions (Artikel 6.2.D.3 und 10.1 GA):
 - Best value for money
 - Purchased especially for the project
 - exception: possible to continue depreciation of (previously owned) equipment if depreciation time is not completed at project start
- Depreciation according to usual accounting practices and in accordance with international standards (e.g. IAS, IFRS)
- Exception: reimbursement of full purchase price if provided for in the work programme



Depreciation costs

- Depreciation costs can never be higher than the purchase price
- Depreciation period can never be longer than the equipment's useful life
- If equipment is not exclusively used in the project: need to record degree of usage and time (e.g. through lab books or other documentation)
- In certain cases initial costs (e.g. installation, delivery, site preparation) can be eligible costs (e.g. large research infrastructures)
- Renting or leasing equipment is possible:
 - Renting or leasing rates are eligible
 - Rates must not exceed depreciation costs of purchased equipment



Works, goods & services

- Art. 6.2.D.3
- According to general rules for eligible costs acc to Article 6.1 (a) (i) – (vii) GA
- Additional requirements (Article 6.2.D.3 and 10.1 GA):
 - Purchase **specifically** for the project
 - Best value for money (framework contracts possible)
- Costs in this budget category are amongst others:
 - consumables
 - Dissemination activities including Open Access
 - IPR (e.g. patent rights or licencing fees)
 - Certificates on the financial statements and certification on the methodology
 - translations



Third parties

Article GA	Kind of third party	Eligible costs	Annex 1	Indirect costs	Selected by
Art. 10	Goods, works and services	price (incl. profit)	No	Yes	Value for money
Art. 11, 12	In-kind contributions	Actual costs	Yes	Yes	-
Art. 13	Subcontracts	price (incl. profit)	Yes	No	Value for money
Art. 14	Linked third parties	Actual costs	Yes	Yes	Link with beneficiary
Art. 15	Financial support to third parties	Only if foreseen in the call	Yes	No	Condition from Annex 1



Receipts

Income generated by the action – Art. 5.3.3 (a)

- e.g. income from conference fees, sale of equipment etc. (limited to eligible costs)

financial contributions by third parties – Art. 5.3.3 (b)

- Given specifically to be used for the action

in-kind contributions free of charge – Art. 5.3.3 (c)

- Given specifically to be used for the action
- if they have been declared as eligible costs in Annex 4



No receipts

Income is not:

- Revenues through exploitation of project results (e.g. licensing fees)
- Financial or in-kind contributions of third parties at the discretion of the beneficiary
- Financial contributions of third parties to cover non-eligible costs (e.g. cover exchange losses)
- Financial contributions amongst beneficiaries (are neither eligible costs nor income)



Example: Receipts



- No profit rule
- Receipts has to be recorded in the interim and final reports
- Receipts is taken into account at the final payment. It is calculated on the level of the overall budget, not on the level of individual beneficiaries



Audits

First-Level-Audit – Art. 20.4 (b) (ii) GA

- Certificate on the financial statements issued through an internal audit of the beneficiary

Second-Level-Audit – Art. 22.1.3 GA

- External audits by the COM
- Audits by COM staff or external certified accountants
- Possible up to 2 years after the final payment

Third-Level-Audit – Art. 22.2, 22.3 GA

- Review of the work of the COM by the European Court of Auditors, OLAF etc.



National Contact Point Legal & Financial issues

Financial Questions

Alexandra Burgholz

Tel. 030-67055-737

Bastian Raue

Tel. 0228 3821-1397

Liane Lewerentz

Tel. 0228-3821-1652

Anika Werk

Tel. 030-67055-738

Legal Questions

Alexandra Burgholz

Tel. 030-67055-737

Nicole Schröder

Tel. 030-67055-788

Christin Kulke

Tel. 0228-3821-1565

Liane Lewerentz

Tel. 0228-3821-1652

General enquiries Legal & Financial issues

Monika Schuler

Tel. 0228-3821-1633

Internet

<http://www.eubuero.de/ruf.htm>

www.horizont2020.de

E-Mail: Firstname.Lastname@dlr.de