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

- Treaty of Lisbon
  - Regulation for the implementation of H2020
  - Rules for participation
  - EU Financial Regulation
  - Grant Agreement
    - Consortium Agreement
    - Annotated Model Grant Agreement (AGA)
    - Guidelines
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
- List of Third Countries
- 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

<table>
<thead>
<tr>
<th>A.1 subcontracts, Art. 13 GA with additional options</th>
</tr>
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<tbody>
<tr>
<td>A.2 OPTION: Linked Third Party, Art. 14 GA (ex. Special clause 10)</td>
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<tr>
<td>B. Other contributions of third parties</td>
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<td>B.1 provision of goods, works and services; Art. 10 GA</td>
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<td>B.2 In-kind Contributions against payment, Art. 11 GA</td>
</tr>
<tr>
<td>B.3 In-kind Contributions without payment, Art. 12 GA</td>
</tr>
<tr>
<td>C. FINANCIAL SUPPORT TO THIRD PARTIES</td>
</tr>
<tr>
<td>C.1 Art. 15 GA, Cascading Grants, Prices etc.</td>
</tr>
</tbody>
</table>
Subcontracts - Art. 13

- 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)

• 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)

- **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)

- 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)

- 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)

- 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)

- 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
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:
#h2020-grants-manual-gap
Before grant signature, each beneficiary has to sign the Declaration of honour.

When the grant preparation is finished, it is digitally sealed by the Commission, insuring the integrity of its contents.

The Legal Signatory of the coordinating entity signs the grant electronically.

The Commission signs the grant electronically.

Each beneficiary, through their Legal Signatories, must then sign electronically the "Accession forms" part.

The Grant Agreement is then finalised.
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

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

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
- $\text{grant amount} \div \text{number of reporting periods}$
- 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

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

Pre-financing

€ 1,7 Mio. (- € 0,3 Mio. are paid to the guarantee fund)

1st Interim payment

€ 2 Mio.

2nd interim payment

€ 1,4 Mio. (- € 0,6 Mio. due to the 90% rule)

Payment of the balance

€ 0,9 Mio. (+ € 0,6 Mio. 90% rule + € 0,3 Mio. guarantee fund)
Funding rates Art. 5.2 GA

<table>
<thead>
<tr>
<th>Research and innovation actions (RIA)</th>
<th>Innovation actions (IA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% of the eligible (direct and indirect) costs</td>
<td>70% of the eligible (direct and indirect) costs</td>
</tr>
</tbody>
</table>

Exception: non-profit institutions always receive 100% of the eligible costs
Example: Funding rates

Innovation action for for-profit institutions

<table>
<thead>
<tr>
<th>Eligible costs (per budget category)</th>
<th>EU Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Direct personnel costs</td>
<td>(I) Reimbursement rate (%)</td>
</tr>
<tr>
<td>(B) Other direct costs</td>
<td>(J) Maximum EU Contribution</td>
</tr>
<tr>
<td>(C) Direct costs of sub-contracting</td>
<td>(K) Requested EU Contribution</td>
</tr>
<tr>
<td>(F) Indirect costs</td>
<td></td>
</tr>
<tr>
<td>(H) Total estimated eligible costs</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Actual</th>
<th>Actual</th>
<th>Actual</th>
<th>=0,25* (A+B)</th>
<th>=A+B+C+F</th>
<th>70%</th>
<th>(=H*I)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.000</td>
<td>2.000</td>
<td>500</td>
<td>3.000</td>
<td>15.500</td>
<td>10.850</td>
<td>10.850</td>
</tr>
</tbody>
</table>
**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 and „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

\[ \text{Hourly Rate} = \frac{\text{annual personnel costs}}{\text{number of annual productive hours}} \]

Personnel Costs

\[ \text{Personnel Costs} = \text{hourly rate} \times \text{hours worked on the project} \]
### Annual Productive Hours

<table>
<thead>
<tr>
<th>1720 Hours</th>
<th>Individual</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>- can be used by every beneficiary</td>
<td>- annual working hours according to employment contract, labour agreement or national law</td>
<td>- calculated in accordance with beneficiary's usual cost accounting practice</td>
</tr>
<tr>
<td>- pro-rata adjustment for time contracts</td>
<td>- plus overtime</td>
<td>- consistently applied per group of personnel under similar conditions</td>
</tr>
<tr>
<td><strong>Example:</strong></td>
<td>- minus sick leave and special leave</td>
<td>- number of standard annual productive hours is at least 90% of the standard workable hours</td>
</tr>
<tr>
<td>- 40-hour-week</td>
<td>365 days – weekends</td>
<td>- standard hours are defined in employment contract, labour agreement or national law on working time legislation</td>
</tr>
<tr>
<td>- contract over 32 hours corresponds to 80% of the 40-hour-week</td>
<td>– annual leave – public holidays + overtime – sick and special leave</td>
<td></td>
</tr>
<tr>
<td>- 100*32:40=80%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- annual productive hours: 1376 (=80% of 1720)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Personnel costs: time recording

- No time recording necessary for persons who work full time (100%) for the H2020 project


- Only one declaration per reporting period:
  - Either for the entire funding period or
  - For an uninterrupted period of time that compromises 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

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

EU-contribution: 70,000 € + receipts: 40,000 € = Eligible costs: 100,000 €

No deduction: Reduction of EU-contribution to 60,000 €
## Audits

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First-Level-Audit</strong></td>
<td>- Art. 20.4 (b) (ii) GA  &lt;br&gt; - Certificate on the financial statements issued through an internal audit of the beneficiary</td>
</tr>
<tr>
<td><strong>Second-Level-Audit</strong></td>
<td>- Art. 22.1.3 GA  &lt;br&gt; - External audits by the COM  &lt;br&gt; - Audits by COM staff or external certified accountants  &lt;br&gt; - Possible up to 2 years after the final payment</td>
</tr>
<tr>
<td><strong>Third-Level-Audit</strong></td>
<td>- Art. 22.2, 22.3 GA  &lt;br&gt; - Review of the work of the COM by the European Court of Auditors, OLAF etc.</td>
</tr>
</tbody>
</table>
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