Legal and Financial Issues in H2020
BESTPRAC Training School
September 27, 2016
Katarina Rohsmann, FFG
OVERVIEW

✓ Minimum requirements for participation
✓ Funding instruments and funding rates
✓ Grant Agreement and Consortium Agreement

✓ Working group 1: presentation of findings

✓ The H2020 project cycle

✓ Working group 2: presentation of findings

✓ The project budget

✓ Working group 3: presentation of findings

✓ Cost categories
✓ Eligibility of costs
Standard minimum conditions:
• at least three legal entities
• independent of each other
• from different EU Member States or Associated Countries

(see http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf)

Coordination and Support Actions (CSA), ERC etc.:
• at least one legal entity (check call text)

Additional criteria
• may be specified in Work Programme (check call text)
 THIRD COUNTRY PARTICIPATION

- Partners from Third countries may participate
- Developing countries receive funding automatically
- Industrialised states, BRIC and Mexico only receive funding if...
  - funding is provided for in a bilateral S&T agreement
  - the call for proposals clearly states eligibility
  - their participation is deemed essential for the action
1. Biotech Research Holding (Germany) – *the coordinator*
2. Biotech Research Corp. (Hungary): 100% owned by Biotech Research Holding
3. BioForward Ltd. (UK)
4. Academy of Sciences (Serbia)
5. Moscow Center for Biological Research (Russia)
6. University of Bangladesh (Bangladesh)

- *Does the consortium fulfil the minimum requirements?*
- *Are all partners eligible for funding?*
- *What if BioForward Ltd. goes bankrupt?*
### FUNDING INSTRUMENTS AND FUNDING RATES

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Funding rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and Innovation Action (RIA)</td>
<td>100%</td>
</tr>
<tr>
<td>Innovation Action (IA)</td>
<td>70% / 100%</td>
</tr>
<tr>
<td>Coordination and Support Actions (CSA)</td>
<td>100%</td>
</tr>
<tr>
<td>European Research Council (ERC)</td>
<td>100%</td>
</tr>
<tr>
<td>Marie Skłodowska-Curie Actions (MSCA)</td>
<td>100%</td>
</tr>
<tr>
<td>Fast Track to Innovation</td>
<td>70% / 100%</td>
</tr>
</tbody>
</table>

- Innovation Actions, Fast track to innovation: 100% for ‘non-profit organisations’
- The total costs (direct and indirect costs) are multiplied with the funding rate
THE GRANT AGREEMENT

**Chapter 1: General**
- Single article: subject of the agreement

**Chapter 2: Action**
- Action, duration and budget

**Chapter 3: Grant**
- Amount, reimbursement rates, eligible costs

**Chapter 4: Rights and obligations**
- To implement the action: resources, in-kind contributions, subcontracts
- Grant administration: reporting, payments, audits
- Background and results: access rights, protection of results, exploitation, dissemination
- Others: gender equality, ethics, confidentiality

**Chapter 5: Division of roles**
- Roles and responsibilities, internal arrangements

**Chapter 6: Rejection, reduction, penalties etc.**
- Rejection, reduction, recovery and penalties
- Suspension and termination of the action

**Chapter 7: Final provisions**
- Accession, entry into force, amendments, applicable law

Annex 1: Description of the action
Annex 2: Estimated budget
Annex 3: Accession Forms, 3a & 3b
Annex 4: Financial statements
Annex 5: Certificate on the financial statements
Annex 6: Certificate on the methodology

derived from the proposal


Different versions exist for certain funding instruments (e.g. ERC, MSCA)
1. Maximum grant amount

The maximum grant amount set out in this Article can NOT be exceeded.

⚠️ The maximum grant amount can NEVER be increased — even if the eligible costs of the action are higher than planned.

The maximum grant amount is not the ‘final grant amount’ and is not a ‘price’ due to the beneficiaries.

2. Reimbursement rates

**How much?** The ‘reimbursement rate’ for RIA actions is normally 100% of the total eligible costs; for IA actions it is normally 70% of the total eligible costs.

In exceptional cases fixed in the work programme/call, a lower reimbursement rate than the two mentioned above may apply.

The eligible costs of non-profit beneficiaries/linked third parties participating in innovation actions may be reimbursed at 100%.

As a general principle there is only one funding (reimbursement) rate per action, the same for all activities and all beneficiaries of the action (one project — one funding rate).
THE CONSORTIUM AGREEMENT

Mandatory agreement between the Beneficiaries, covering e.g.
- internal organisation of the consortium (governance structure, decision making…) – no “default rules”!
- financial rules (e.g. distribution of pre-financing)
- IPR arrangements (may deviate from GA “default rules”) 
- defaulting parties
- settlement of internal disputes
- confidentiality arrangements

• e.g. based on the DESCA model
• should be signed before the start of the project
• may not contradict the Grant Agreement (including its annexes)
THE PROJECT CYCLE

- **project idea**: proposal writing and evaluation
  - evaluation results: max. 5 months after call deadline
- **proposal writing**: preparation of GA + CA
  - max. 3 months
- **implementation**: project implementation (GA + CA in force)
  - max. time to grant: 8 months
- **final financial reporting**: final financial reporting, balance payment, audits

**Financial Information**
- Project budget, financial information in the proposal
- Financial rules in GA and CA
- Implementation of financial rules, periodic financial reporting, payments, audits
### PART A: BUDGET TABLE
(FULL PROPOSAL)

**Research and Innovation actions**

<table>
<thead>
<tr>
<th>No</th>
<th>Participant</th>
<th>Country</th>
<th>(A) Direct personnel costs/€</th>
<th>(B) Other direct costs/€</th>
<th>(C) Direct costs of subcontracting/€</th>
<th>(D) Costs of indirect contributions not used on the beneficiary’s premises/€</th>
<th>(E) Indirect Costs /€</th>
<th>(F) Indirect Costs /€ =0.25(E+C+F)</th>
<th>(G) Special unit costs covering direct &amp; indirect costs /€</th>
<th>(H) Total estimated eligible costs /€ = (A+B+C+D+F+G)</th>
<th>(I) Reimbursement rate (%)</th>
<th>(J) Max. EU contribution /€ = (H*I)</th>
<th>(K) Requested EU contribution /€</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>0</td>
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<td>0.00</td>
<td>100</td>
<td>0.00</td>
<td>0.00</td>
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</tbody>
</table>

- **overheads:** 25% flat-rate, except subcontracting
- **only if explicitly mentioned in call text**
- e.g. clinical studies

- **Austriaische Forschungsförderungsgesellschaft | Sensengasse 1 | 1090 Wien | www.ffg.at**
PART A: BUDGET TABLE
(STAGE 1)

- Only the total requested amount for the action must be indicated
- No major deviations allowed between stage 1 and 2
3.4 Resources to be committed
Please provide the following:
a table showing number of person/months required (table 3.4a)
a table showing ‘other direct costs’ (table 3.4b) for participants where those costs exceed 15% of the personnel costs

4.2: Third Parties involved in the action
include information on subcontractors, Linked Third Parties and third parties providing in-kind contributions (must be indicated in Annex 1 of the Grant Agreement in order to be eligible costs)
**SUMMARY OF STAFF EFFORTS**

**TABLE 3.4a**

Please indicate the number of person/months over the whole duration of the planned work, for each work package, for each participant. Identify the work-package leader for each WP by showing the relevant person-month figure in bold.

<table>
<thead>
<tr>
<th>WPn</th>
<th>WPn+1</th>
<th>WPn+2</th>
<th>Total Person/ Months per Participant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Participant Number/Short Name</strong></td>
<td></td>
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<tr>
<td><strong>Participant Number/ Short Name</strong></td>
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<tr>
<td><strong>Participant Number/ Short Name</strong></td>
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</tr>
<tr>
<td><strong>Total Person/Months</strong></td>
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</tr>
</tbody>
</table>

1 PM: 1/12 of the annual productive hours
Table 3.4b: ‘Other direct cost’ items (travel, equipment, other goods and services)

Please complete the table below for each participant if the sum of the costs for’ travel’, ‘equipment’, and ‘goods and services’ exceeds 15% of the personnel costs for that participant.

<table>
<thead>
<tr>
<th>Participant Number/Short Name</th>
<th>Cost (€)</th>
<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other goods and services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ELIGIBILITY CONDITIONS FOR ACTUAL COSTS

✓ Incurred by the beneficiary
✓ incurred during the duration of the action (except travel costs for kick-off meeting and costs for final reporting)
✓ indicated in the estimated budget of the action
✓ identifiable and verifiable
✓ necessary for the action as described in the GA
✓ in compliance with national laws on taxes, labour and social security
✓ in compliance with beneficiary's usual accounting practice (may not contradict the rules of the Grant Agreement)
✓ reasonable, justified, sound financial management

N.B.: Non-refundable VAT is eligible
OVERVIEW ON PERSONNEL COSTS

**ACTUAL PERSONNEL COSTS**
- Calculation method defined in the model grant agreement

**UNIT COSTS**
- Calculated by the beneficiary according to its usual accounting practices ('average personnel costs')
- Fixed by Commission for SME owners and natural persons without a salary
CALCULATION OF PERSONNEL COSTS (YEARLY BASIS)

**personnel costs** = **hourly rate** × **hours worked for the project**

**Calculation of the hourly rate:**

- **Annual gross salary**
  
  - **Annual productive hours**
  
  (3 options)

**Annual gross salary:**
- **basic salary**
- **social security contributions**
- **taxes and duties**
- **other mandatory components of the basic salary**

≠ **bonuses, extra payments for participating in the project...**
Option 1: „1720 fixed hours“:
standard number which may be used by any beneficiary (pro-rata for part-time employees)

Option 2: „Individual annual productive hours“:
calculation: ‘annual workable hours’ of the individual employee + overhours – absences (sick leave etc. – not [bank] holidays)

Option 3: „Standard annual productive hours“
calculated according to the usual accounting practices must correspond to at least 90 % of the „standard annual workable hours“

No more hours than the „annual productive hours“ may be charged on all EU-funded projects per person and year
Only for calculation of personnel costs on a yearly basis:

- If the financial year is not closed at the time of reporting, the beneficiary must use the hourly rate of the last closed financial year available
- No adjustments!

Salary rises lead to financial losses.
CALCULATION OF PERSONNEL COSTS (MONTHLY BASIS)

If parts of the remuneration are generated over a period longer than a month, the beneficiaries may include only the share which is generated in the month (irrespective of the amount actually paid for that month).

Each beneficiary must use only one option (per full financial year or per month) for each full financial year for all H2020 projects.
'STANDARD' AND 'ADDITIONAL' REMUNERATION

**Standard remuneration**
- **Basic remuneration**
  - **Mandatory complements**
    - resulting from law, collective agreement or working contract
    - mandatory **fixed** complements (e.g. holiday pay, complement for hazardous work)
    - mandatory **variable** complements (e.g. for merit or performance) not triggered by the work in specific projects

**Additional remuneration**
- **Bonus payments**
  - only eligible for **non-profit organisations**
  - payed for additional work or expertise
  - **strict requirements** – see Annotated Grant Agreement
PERSONNEL COSTS – DECISION TREE

See: Annotated Model Grant Agreement, p. 52
TYPES OF PERSONNEL COSTS

- A.1: Costs for employees (or equivalent)
- A.2: Costs for natural persons working under a direct contract (observe requirements – legally impossible in some countries)
- A.3: Costs for personnel seconded by a third party against payment
- A.4: Costs of SME owners
- A.5: Costs of ‘beneficiaries that are natural persons’

*NOT personnel employed by a temporary work agency*

Details: see Annotated Grant Agreement
TIME RECORDS

- Only the **hours worked for the project** must be recorded
- Exception: persons working exclusively on one project
- Time records are the **proof** that the **personnel costs** have incurred - if the time recording system is not deemed to be 'reliable', *all* personnel costs may be rejected

**Minimum requirements:**

- title and number of the action
- beneficiary’s full name
- full name, date and signature of the person working for the action
- number of hours worked for the action
- supervisor’s full name and signature
- reference to task or work package
A purchase of goods, works or services that are identified in Annex 1 as action tasks

- Tasks to be implemented and estimated costs must be set out in the proposal
- Based on ‘business conditions’: best value for money or lowest price
- Subcontracting to affiliates: only allowed if 'usual provider' or framework contract
- No indirect costs on subcontracting
EXAMPLE: SUBCONTRACTING VS. OTHER DIRECT COSTS

Reply by the Research Enquiry Service:

“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).”
Travel costs and related subsistence allowance:
• must be necessary for the action and
• in line with the beneficiary‘s usual practises on travel

Equipment, infrastructures and other assets:
• only the depreciation costs are eligible
• only the part of the equipment‘s „full capacity“ used for the project can be charged (must be recorded)
• rent/lease eligible if not exceeding depreciation costs
Costs of other goods and services:

- the beneficiary carries out a task itself and is supported by third party (unlike subcontracting)
- best value for money or lowest price

- e.g. consumables and supplies, dissemination costs, rent for meeting rooms, IRP-related costs, certificates on the financial statements
Research Enquiry Service on the calculation of machine hours:

- **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:**
  
  \[
  17200 \text{ €} / 1720 \text{ usable hours} = 10 \text{ € per hour} \times 50 \text{ hours of use for the action} = 500 \text{ €}
  \]
A project manager seeks external support to set up the project website (estimated cost: 5,000 EUR). According to the internal policies, three offers are required for each order of over 500 EUR. The project manager thinks: „I have had very good experiences with ABC websites, I definitely want to commission them again. It’s a loss of time to request more offers“. 
INTERNALLY INVOICED COSTS

• Definition: use of certain resources (e.g. ‘core facilities’) is shared between different units of the same organisation, costs of their use are declared through internal invoices

• Costs must be declared under the corresponding budget category

• Use and usage (number of hours) for the project must be mentioned on the invoice

• Global amounts (all-in average costs) are not eligible

• Costs must be actual – no average costs

• Price must not include overheads or profit
COSTS OF LINKED THIRD PARTIES

- Only affiliates and organisations with a legal link to the beneficiary can be a Linked Third Party
- Legal relationship: broad, not specifically created for grant
- Linked Third Parties carry out work in the project and report their own costs
- Rules regarding eligibility of costs, funding rates and third country participation apply
- Name and tasks of the Linked Third Party must be indicated in the proposal
The Start-Up Centre for Applied Technologies (founded in 1992) in L is jointly owned by the Municipality of L and the University of L (50% each). The partnership agreement of the two owners specifies the business purpose as following: “…support the transition of research projects of the University into businesses, exploit the University‘s research results…”
REPORTING AND PAYMENTS

Reports must be submitted within **60 days** after the end of the RP:

- **periodic technical** report
- **periodic financial** report:
  - Individual financial statements
  - Summary financial statement
FINANCIAL REPORTING IN THE PARTICIPANT PORTAL

Click to complete 'use of resources' to add details

Other direct costs only need to be explained if they exceed 15% of the personnel costs
CERTIFICATE ON THE FINANCIAL STATEMENTS (CFS)

- Required at the end of the project if funding per partner (or Linked Third Party) exceeds 325,000 EUR (only actual costs and 'average personnel costs')
- may be performed by any qualified auditor
- costs are eligible as other direct costs
- template/further info: Annex 5 of the Grant Agreement
### 1st LEVEL VS. 2ND LEVEL AUDIT

<table>
<thead>
<tr>
<th></th>
<th>1st. level audit (CFS)</th>
<th>2nd. level audit (EU audit)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When</strong></td>
<td>at the end of the project</td>
<td>up to 2 years after balance payment</td>
</tr>
<tr>
<td><strong>Why</strong></td>
<td>funding exceeds 325.000 € (actual costs + average personnel costs)</td>
<td>selection by EC (risk-based audit strategy, focus on fraud prevention)</td>
</tr>
<tr>
<td><strong>Who is audited</strong></td>
<td>Beneficiaries and Linked Third Parties</td>
<td>Beneficiaries and <strong>all types of Third Parties</strong> (subcontractors etc.)</td>
</tr>
<tr>
<td><strong>…and by whom</strong></td>
<td>Qualified, independent auditor or independent Public Officer</td>
<td>DG RTI's Common Audit Service or audit firm appointed by DG RTI</td>
</tr>
<tr>
<td><strong>How</strong></td>
<td>Terms of reference and Agreed-upon procedures (Annex 5 GA)</td>
<td>According to audit programme defined by DG RTD (more comprehensive than CFS; focus on financial implementation but may include technical/other aspects)</td>
</tr>
<tr>
<td><strong>Consequences</strong></td>
<td>• Rejection of costs, reduction of the grant, recovery, suspension of payments,</td>
<td>• Rejection of costs, reduction of the grant, recovery, suspension of payments,</td>
</tr>
<tr>
<td></td>
<td>suspension/termination of the project</td>
<td>suspension/termination of the project</td>
</tr>
<tr>
<td></td>
<td>• In very serious cases: penalties, criminal persecution</td>
<td>• In very serious cases: penalties, criminal persecution</td>
</tr>
<tr>
<td></td>
<td>• in case of systematic/recurrent errors: <strong>extension of findings</strong></td>
<td>• in case of systematic/recurrent errors: <strong>extension of findings</strong></td>
</tr>
</tbody>
</table>
2ND. LEVEL AUDIT: PROCEDURE

- **Initial contact** with responsible auditors to agree on dates and logistics for audit visit
- **Formal “Letter of announcement”** of audit including detailed annex with information and documents to be provided prior and during audit visit
- **On-site examination** (~ 4-5 days): opening meeting, checks/analysis, closing meeting
- **Assessment after on-site visit**
- **Draft audit report**
- **Contradictory audit procedure** (30 days for comments)
- **Final audit report**
- **EC decides about possible consequences**
• (Try to) avoid errors in the first place!
  Read guidance documents, ask for advice…

• Prepare well
  have all necessary documents at hand and in order, all relevant persons are present, dedicated room for the audit…

• Be proactive and provide explanations as soon as possible (don‘t wait for the audit report)
### AUDITS: FP7 VS. H2020

<table>
<thead>
<tr>
<th>FP7</th>
<th>H2020</th>
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</thead>
<tbody>
<tr>
<td><strong>1st. level audits</strong></td>
<td></td>
</tr>
<tr>
<td>Whenever the 375.000 € threshold was reached</td>
<td>Only at the end of the project</td>
</tr>
<tr>
<td>Threshold: 375.000 €</td>
<td>Threshold: 325.000 € (actual costs + average personnel costs)</td>
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<tr>
<td><strong>2nd. level audits</strong></td>
<td></td>
</tr>
<tr>
<td>Up to 5 years after end of project</td>
<td>Up to 2 years after balance payment</td>
</tr>
<tr>
<td>No contradictory process</td>
<td>90 days contradictory procedure</td>
</tr>
<tr>
<td>Communication via the coordinator</td>
<td>Commission may contact beneficiaries directly</td>
</tr>
</tbody>
</table>
H2020 MOST COMMON ERRORS EXPECTED (ACCORDING TO EC)

1. Direct costs apportioned, not measured

2. Time sheets (we hope no more hourly rates)

3. Best value for money (subcontracting and purchase of goods)

4. Basic vs additional remuneration

5. In-house, near off-site, semi-permanent, teleworking consultants

5+. Same old friends: no papers, UAP, depreciation "in one shot"
WHEN IN DOUBT…

Have a look at the H2020 Online Manual:
http://ec.europa.eu/research/participants/docs/h2020-funding-guide/index_en.htm

Look for information in the Annotated Grant Agreement:

Ask your legal and financial NCP:
http://ec.europa.eu/research/participants/portal/desktop/en/support/national_contact_points.html

Contact the Research Enquiry Service:
THANK YOU FOR YOUR ATTENTION

Katarina Rohsmann
Expert for legal and financial issues in the EU framework programme

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