

TN1302: BESTPRAC

## Interactive Session 2


# Personnel costs, time recording & bonus payment WG Legal

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## Personnel costs, time recording & bonus payment

- legal framework, definitions & eligibility,
- burden of proof,
- consequences of non-compliance

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## Personnel costs – the legal framework

- Rules of Participation (Art. 27, Art. 32 & 33)
- General Model Grant Agreement and Specific Model Grant Agreements:
  - ERC MGAs, MSC MGAs, SME instrument MGAs and Co-fund MGAs (Art. 5.2, 6.2)

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## Personnel costs - definitions & eligibility

- MGAs **define** the costs including personnel costs and bonus payment **via their eligibility criteria** setting up a **general legal and financial regime** on hiring personnel working on the project, e.g.:

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## Personnel costs - definitions & eligibility cont.

- personnel working under an **employment contract** (or equivalent appointing act) and assigned to the action ('**costs for employees (or equivalent)**'),
- costs **limited to standard remuneration**, i.e. costs included in the remuneration arising from **national law or the employment contract** (or equivalent appointing act), and
- **additional remuneration (bonuses) subject to specific eligibility criteria**

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## Personnel costs - definitions & eligibility cont.

- What is more, personnel costs are **subject to further specific eligibility conditions (limitations)**, e.g.,

*The costs for natural persons working under a direct contract with the beneficiary other than an employment contract*

- under beneficiary's instructions and, on the beneficiary's premises (unless agreed otherwise).
- the result of the work belongs to the beneficiary (IPR issues), and
- the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

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## Personnel costs - definitions & eligibility cont.

- ⇒ Additional efforts are required to assure compliance with the personnel costs eligibility criteria by the beneficiary:
  - ⇒ Selection of appropriate legal basis (form of contract) to hire personnel bearing in mind:
    - ⇒ Relation between the beneficiary and the personnel (the legal bound) resulting from the specific form of contract,
    - ⇒ IPR issues and limitations of remuneration

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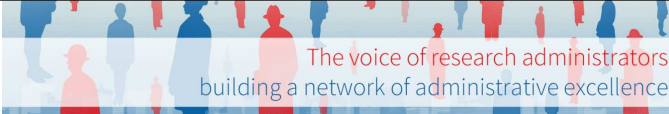
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## Bonus payment – definitions & eligibility

- The MGAs specify **types** eligible personnel costs:
  - **Standard remuneration** (basic salary with „mandatory extras” fixed by law, payments beyond discretion of the employer and NOT project-related
  - *(It requires from the beneficiary in-depth analysis of all remuneration extras to prepare the list of the eligible ones)*
  - **Additional remuneration** (other bonuses paid by the non-profit legal entities only and subject to specific eligibility criteria:

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- **Bonus payment – definitions & eligibility**



**IMPORTANT:**

- ✓ it is part of the beneficiary's **usual remuneration practices** and is **paid in a consistent manner** whenever the same kind of work or expertise is required;
- ✓ the **criteria** used to calculate the supplementary payments are **objective and generally applied** by the beneficiary, regardless of the source of funding used (!) and
- ✓ Relatively low upper limit of the bonus payment

=> **consequences – possible inapplicability of bonus payment**

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## Time recording obligation ...

**results from the obligation to keep records and other supporting documentation (Article 18 MGA) to show that the costs declared are eligible**


**Burden of proof:**

In case of personnel costs, the beneficiaries must keep **time records (or present equivalent alternative evidence)** for the number of hours declared – subject to additional specific eligibility conditions

**EXCEPTION:** For persons working exclusively on the action  
-> sufficiency of declaration signed by the beneficiary as evidentiary support

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## Personnel costs eligibility and the general obligation of compliance

- **General obligation to properly implement projects in compliance with the provisions of the GA and all legal obligations** under applicable EU, international and national law.

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## Possible consequences of non-compliance with the contractual obligations including costs eligibility criteria

- - Rejection of ineligible costs (Art. 42 MGA) and reduction of the grant (Art. 23 MGA), recovery of undue amounts (Art. 44 MGA)
- - Identification of „systematic error” and its consequences;
- Administrative and financial penalties (Art. 45), suspension of payments (Art. 48), suspension of the project (Art. 49),
- - Breach of GA and its earlier termination or of participation for one or more beneficiaries (Art. 50)



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- **CONCLUSIONS:**
  - Since **the eligibility of costs**, including personnel costs, is **subject to interpretation** in the light of **the RoP, AMGA, national law, local** regulations and the beneficiary usual practices, and
  - The **burden of proof** for eligibility of costs is **on the beneficiaries** (and linked third parties)
  - => The most challenging part of meeting the legal (and financial) requirements by the beneficiary is the assurance of compliance with all cost eligibility criteria providing adequate legal, financial and administrative support for each project

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**Thank you for your attention!**

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