

BESTPRAC FAQs:

Administrative, financial and legal questions resulting from the provisions of the Model Grant Agreement / Consortium Agreement in Horizon 2020

Ellen Schenk (WG1 Administration leader, e.schenk-braat@erasmusmc.nl)

Vanessa Ravagni (WG2 Finance leader, vanessa.ravagni@unitn.it)

Diana Pustula (WG3 Legal leader, Diana.Pustula@adm.uw.edu.pl)

Version 07.11.2016

This document reflects frequently asked questions on the Horizon 2020 Model Grant Agreement and Consortium Agreements by participants of the COST Targeted Network BESTPRAC (TN 1302). The questions have been addressed and replied by BESTPRAC Working Group (WG) 1, 2 and 3 members at the BESTPRAC meeting in Vilnius, Lithuania on September 22, 2016. The purpose of this document is to assist participants in H2020 EU-funded projects, in particular BESTPRAC participants.

When reference is made to the Horizon 2020 Annotated Model Grant Agreement (AGA), this relates to version V2.1.1 dated 1 July 2016.

This document is provided for information purposes only and its content is not intended to replace consultation of any applicable legal sources or the necessary advice of a legal expert, when appropriate. Neither the authors of this document or any BESTPRAC WG member can be held responsible for the use made of this document.

Financial: Personnel costs

1. **Calculation of personnel costs: A PostDoc researcher is part-time employed on the project and is receiving a salary laid out in his contract. At reporting time if we calculate his staff cost by either of the three possible ways laid out in the Grant Agreement, the numbers will not match because we need to take a closed financial year as a basis. Our institution chooses to use the 1720 working hours/year calculation method (after careful consideration all three methods), which works well for long-term full-time employees, but it poses problems in the following cases:**
 - a. XY.1 is a case when the actual working hours are higher than the productive hours based on the 1720 method » the calculated personnel costs based on the 1720 method results to be higher than the actual salary costs of the individual.
 - b. XY.2 is a combined case when the actual working hours are lower than the productive hours based on the 1720 method - due to days off, in addition last year's lower hourly rate is used » the calculated personnel costs based on the 1720 method results to be lower than the actual salary costs of the individual.

Of course we will not claim more money than the employee cost the project and we will sit down and calculate the same cases with the other two methods (institutional average working hours, exact working hours for the employee). How should we deal with this?

Answer: In article 6.2 of the AGA (Version 2.1.1 – 1 July 2016) it is written “The total number of hours declared in EU or Euratom grants, for a person for a year, cannot be higher than the annual productive hours used for the calculations of the hourly rate.” Of course, in projects researchers never work exactly the same number of hours as the fixed number of annual productive hours (1720) or alternatively the standard annual number of productive hours. Some researchers work more and some less. So in the presented case, if the researcher works more than 1720 hours, only 1720 hours can be charged to the project. If the researchers works less than 1720 hours, he can charge the actual number of hours. It should be noted that in this case, the calculated hourly rate based on 1720 productive hours is lower than the actual hourly rate. The difference between the real costs incurred and the reported costs can only be covered by the overhead.

2. Personnel cost/ additional remuneration: how does it work?

Answer: Additional remuneration is an additional contribution of the employer to the salary of the employee under certain criteria. It is an eligible cost only for non-profit organisations under the following conditions:

- It is eligible under the national legislation;
- Part of the beneficiary's usual remuneration practices;
- Paid in a consistent manner whenever the same kind of work or expertise is required;
- criteria used to calculate the supplementary payments are objective;
- Applied by the beneficiary, regardless of the source of funding used;
- Costs are eligible up to the ceiling of 8,000 euro per 1 FTE per year.

As a BESTPRAC example, at the University of Ljubljana any employee can receive an additional bonus up to 20% of the basic salary for exceeding the expected work results and increased workload. In case of international competitive projects, the bonuses for the researchers are defined according to their responsibility in the project.

3. Personnel cost: Can each beneficiary use the annual productive hours of the organisation even though these can be less than the average set by the Commission?

Answer: Yes, this is possible. Based on usual accounting principles you could use a lower number. For example: in France 1607 annual productive hours is based on local law. Every institute should have included this in its internal regulation.

Note: the annual productive hours should be 90% minimum, at least, of the workable hours.

4. Timesheets: What are the details that are to be requested by the EC in timesheets as regards the different activities a person may have?

Answer: BESTPRAC WG2 members use the following system:

- Timesheets with full worked hours not allocated to specific activities and/or WPs
- Timesheets with full worked hours allocated to specific activities and/or WPs

For further details, please refer to the BESTPRAC WG2 Financial Guide.

5. Increase of person-months (PMs): To what extent can the PMs be increased for one partner (keeping the same activities) within the same estimated budget?

Answer: The AGA does not describe to what extent the PMs can be increased, and according to the AGA generally an increase or decrease of PMs does not fall within the list of cases asking for the amendment of the Grant Agreement. However, if PMs (substantially) deviate, it is strongly advisable that the principal investigator notifies the Coordinator and the Project Officer (PO), providing justification for the deviation of PMs and eventually receiving approval of PO in written form (for e.g. possible EU audits after the project).

Financial: Other costs

6. Depreciation of equipment: The AGA states that only the part of the equipment's "full capacity" actually used for the action may be declared. This differs from FP7 practice ("full use"). How should the full capacity be determined? Are there experiences of reporting these costs in H2020?

Answer: According to note 22 of Article 6 of the AGA (Version 2.1.1 – 1 July 2016, page 79), full capacity means "the number of productive hours/days/months corresponding to the full potential use of the equipment by the beneficiary. This includes any time during which the equipment is usable but not used, but take due account of real constraints such as the opening hours of the entity, repair and maintenance time, etc." Thus, conceptually, the main difference between "full use" and "full capacity" is that "full capacity" includes stand-still time of the equipment, whereas "full use" does not.

Example: It is assumed that the equipment needs an operator, so the maximum amount of hours it can be exploited is 8 hours per day (corresponding to normal daily working hours of the operator). 0.5 hours per day are necessary for opening, maintenance and repair. The equipment is exploited 2 hours a day for an H2020 project and 4 hours a day for an ESIF project. The daily depreciation is EUR 100. Thus:

Number of daily hours corresponding to "full capacity": $7.5 (8 - 0.5)$

Number of daily hours corresponding to "full use": $6 (2 + 4)$

Depreciations charged for the H2020 project: $EUR 2.67 (2/7.5*100)$

Note: the internal methodology outlining the calculation of maximum amount of productive hours of the equipment as well as number of hours needed for opening, repair and maintenance has to be consistently applied across the projects of whole institution.

7. Equipment: Can the beneficiary's own equipment be an eligible cost (depreciation and service costs)? How will this be claimed?

Answer: It is allowed to charge the use of own equipment on the project, provided that the depreciation period has not been completed yet and that only the use for the project is claimed. In general, the national depreciation rules have to be applied during the project period. However, it is not always easy to define "full time" or "part time" use of equipment. Some universities have a standardised system for monitoring the times of use of equipment (time sheet for equipment"). Alternatively, the costs are often covered by the indirect costs.

8. Eligibility of equipment maintenance costs: Is maintenance of scientific equipment eligible (for e.g.: old equipment already bought before the project that needs small parts to be changed + calibration). If eligible, is the full cost eligible as OTHER COST category?

Answer: Maintenance costs are often covered by the indirect costs. While in the AGA (Version 2.1.1 – 1 July 2016) no general rule on the eligibility of maintenance costs is provided, maintenance costs are several times mentioned to be an eligible direct cost:

- In the chapter on "Capitalised and operating costs of large research infrastructure: Types of costs — Cost forms — Conditions for eligibility – Cost calculation" (page 86 of the AGA, Version 2.1.1 – 1 July 2016) it is written (on page 87): Only the following operating costs can be claimed as direct costs: .../... maintenance and repair contracts (including calibrating and testing) specifically awarded for the functioning of the research infrastructure; .../...
- Page 102 of the AGA (Version 2.1.1 – 1 July 2016): "Maintenance costs" is an eligible category of costs to calculate the "total access costs" in the framework of determining "the amount per unit of access" for research infrastructure use: costs of contracts for maintenance and repair (including specific cleaning, calibrating and testing) specifically awarded for the functioning of the installation (if not capitalised)
- On page 103 of the AGA (Version 2.1.1 – 1 July 2016): in case of the "Specific cost category – costs for clinical studies": are eligible costs: .../... direct costs of the medical equipment used for the study, including:.../... costs of service contracts necessary for their functioning (including specific cleaning, maintenance and repair) .../...

9. Eligibility of computer costs: Are computers bought for hired staff considered as indirect costs (as in FP7 most of the time but subject to PO interpretation) or are they eligible as direct costs?

Answer: Discussions about IT Equipment (e.g. desktop computer, Laptops, etc) should take place at the proposal stage when the budgets are being finalised. IT equipment are treated as in FP7. These are normally Indirect Costs except for specific circumstances whereby these equipment can be fully justified to the PO that this is vital in the completion of the project.

Financial: Other issues

10. Internal invoicing: There was a presentation about this in WG2 in Sofia – the information would be of interest also to WG1, and also the recent developments (ECs response to the joint statement) could be shared.

Answer: H2020 AGA Version 2.1.1. "Internal Invoice", p. 85 does not change the H2020 eligibility conditions of "internal invoice": "all internally invoiced costs need to be declared under the budget category that corresponds to the invoiced resource (e.g. personnel, equipment, other direct costs, etc.) and must fulfil the eligibility conditions set out in Article 6.1 and 6.2". This leads to problems, especially at universities, when it is not possible for the beneficiary to calculate the actual costs, or when the calculation and/or presentation of the actual costs cause an internal effort that is too big to justify the benefits of charging these costs to the project. For more information, please refer to section 4.3 of the BESTPRAC WG2 Guide to Best Practice – Financial Issues.

11. Full payment of allocated living/mobility/family allowances in Marie-Sklodowska-Curie Actions: There are many budget items within a salary (e.g. social security, contingencies, settlement etc.) and these items shall be all paid to the researcher in order to obtain a match with the amount allocated to the researcher in the Annex II of the grant agreement regarding the living allowance, mobility allowance and family allowance. It would be useful to know examples from different countries on how all budget items of a salary are paid to the researcher so that at the end of the employment contract all the allocated amount have been transferred to the researcher (i.e. avoid any underpayment). It would also be useful to know how to deal with all the budget items adjustments when the researcher leaves before the end date of the employment contract.

Answer: A general answer is not possible, because the regulations vary from country to country, and regional employment contracts have to be followed. Compared to national salary regulations for PhD students, the allowances do and do not cover the actual salary costs. For instance, there is no underpayment issue in Cyprus, while for PhD students in the Netherlands the 4th mandatory and most expensive year is to be covered by additional sources, and the allowances are lower than the regular PhD salary in Norway. In some countries salaries rise during the project duration according to union contract agreements, in others not because they are fixed. The gap between the funding and the amount of the salary has to be covered by the institute.

Another problem is that PhDs usually take 4 years, but the project's runtime is only for 3 years. In Belgium, a fellow has no guarantee to be employed till in year 4, it depends on the professor. In the Netherlands, it is guaranteed to be paid for 4 years. In some countries, the candidate is employed as a researcher in the last year, not as a PhD, which might help with some regulations like timely limited contracts or amounts to be paid.

Mostly the allowances are combined into one salary, except for mobility allowances. If some money out of the mobility allowance is left at the end, it is then paid to the researcher. This could be tax free in some states, or under a lot of tax in other countries. In Norway, only Living Allowance (LA) and Mobility allowance (MA) are paid together, while Family allowance (FA) is paid on top of the salary, nothing is tax free. In Belgium, LA and part of the MA are paid as fellowship. The remainder of the MA is paid (tax-free) to the fellow. If there is a remainder at the end of the contract, this will also be paid to the fellow).

Contracts/amounts might also vary in a single institution, somebody might e.g. get more money for commuter tickets, because he/she is living far away, another employee gets less money.

If a researcher leaves before the end of the action, he/she has to give at least 1 month notice. This should be enough time to settle remaining funds to either side. A shift of the remaining budget to another country might impose difficulties, because the money left might equal 12 months of payment in one country and only 10 in another country.

Recommendation: It is recommended to explain all regulations, insurances, social security etc. very clearly and from the beginning to the fellow, in order to avoid misunderstandings or wrong assumptions. The fellows should be sent to the HR or finance department and have everything explained. Researchers should also stay in contact with finances / HR because as the payment might vary it is important for them to know if the funding is enough or not.

12. MSCA IF: The unit costs are divided into two groups: researcher unit costs and institutional unit costs. Our researcher receives a MSCA IF grant and is going to the USA for two years. How is the overhead divided, who should receive the overhead? When reporting the costs that have been made, it is stated in the AGA: The beneficiary must keep adequate records and other supporting documentation to prove the number of units declared and that the costs for the recruited researcher (living allowance, mobility allowance, family allowance) have been fully incurred for the benefit of the researcher. One unit is defined as one person-month. The funding is also calculated on the fixed unit costs. If for any reason, the training and networking costs were not fully used, can it be used for other months or is shifting costs possible? Our researcher will be going to the USA, everything he documents will be in USD. What currency should use when reporting: USD or EUR?

Answer: The receiving partner in the EU gets the overhead. If the fellow is then seconded to another institute/country, you need to negotiate in every case. The overhead might be at least partly be transferred to the institute to where the fellow is seconded, but there is no fixed rule. Some universities also send bills for the amount of overhead.

If funding is left, local rules should be followed. In some countries, the remaining funding can be used e.g. for salaries, while in other MSCA countries this is not possible. It is important to note that tuition fees are eligible costs in MSCA.

With respect to reporting, the currency always has to be Euro (see also question 13).

13. Currency exchange rate: How is the currency exchange rate calculated at institutional level? The exchange rate fluctuates and is different the one when the money is received from the one when the expenses are performed and from the one when the expenses are justified.

Answer: Every organization has one base currency. A conservative exchange rate is used for all the budgets from the proposal stage. This helps with exchange rate losses which are managed better. According to H2020 AGA, Art. 20.6 "Currency for financial statements and conversion into euro": "Beneficiaries [and linked third parties] with accounting established in a currency other than the euro must convert the costs recorded in their accounts into euro, at the average of the daily exchange rates published in the C series of the Official Journal of the European Union, calculated over the corresponding reporting period. If no daily euro exchange rate is published in the Official Journal of the European Union for the currency in question, they must be converted at the average of the monthly accounting rates published on the Commission's website, calculated over the corresponding reporting period."

14. Budget modification: Within what limits can the beneficiary modify the budget unilaterally and within which budget categories?

Answer: It is advised that the project officer is contacted for any budget modifications. A partner can modify its own budget (or shift budgets between beneficiaries) without permission from the Commission as long as the work described in Annex 1 is completed.

If one beneficiary has no budget for equipment, it can allocate budget for equipment without asking the Commission. Subcontracting costs can also be added in a partner's budget, but it is advised to contact the project officer upfront to avoid rejection of costs. Unit costs can be converted to actual costs as long as the unit costs are higher than actual costs.

15. In kind contribution: What is meant by in kind contribution and when it can be accepted? Examples of in kind contribution that can be claimed.

Answer: "In-kind" contribution can be defined as a contribution of your own resources but not in the form of money. A beneficiary can receive "in-kind" resources from a third party free of charge or against payment and in the same way, our institution can provide "in-kind" contributions for another institution (beneficiary in an EC project) free of charge or receiving money for it.

When a beneficiary receives "in-kind" resources these can be declared as eligible costs if these contributions fulfil general conditions for costs to be eligible (article 6 of the AGA, Version 2.1.1 – 1 July 2016). Normally means workable hours or use of equipment or infrastructures.

Examples of in-kind contributions:

- Benefits in kind associated to direct personnel costs: costs of benefits in-kind provided by the beneficiary to its personnel (e.g. costs of a company car made available to certain categories of employees for their own use) or of benefits equivalent to financial ones (e.g. costs of lunch vouchers) may be accepted as eligible if they are justified and registered as personnel costs in conformity with the beneficiary's usual remuneration practices.
- Costs related to public officials (associated to direct personnel costs): for public bodies, the costs related to public officials paid directly from central, regional or local government budgets may be considered eligible, if they fulfil the conditions set out in Article 6. In this case, the public officials will be considered as in-kind contributions provided by a third party (the government) free of charge (see Article 12).
- Free use of equipment.

To be claimed we must distinguish in-kind contributions free of charge from "in-kind contributions against payment" (articles 11 and 12 of the AGA, Version 2.1.1 – 1 July 2016). In addition, in-kind contributions provided free of charge, if they have been declared as eligible costs (i.e. not money, but an in-kind contribution free of charge given by a third party (a donor) specifically for being used for the action covered by the GA) are considered as "receipts".

As additional examples to clarify definition of "in-kind" often in projects funded by other DG's different from DG Research it is required to provide up to 40% of total costs as in kind contribution. This "in kind contribution" can be justified for instance by personnel working hours dedicated to the project and recorded by timesheets.

In addition, in the JTI IMI the contribution from companies participating in the project is always and only through "in kind" contribution. They cover this "in kind" contribution with workable hours or available infrastructures or equipment that they make available and measurable. They do prepare even financial statements with these costs without claiming any financial contribution from IMI.

Legal: IP

16. IP rights: Who is the ultimate owner of the IP rights of the project?

Answer: The results are owned by the beneficiary that generates them and so are the Intellectual Property Rights attached to that beneficiary project output. Project results generated by a single beneficiary belong to that beneficiary only which can claim the economic benefits from its exploitation (transfer/licensing etc.). In case the results are generated jointly by two or more beneficiaries and it is not possible to establish the respective contribution of each beneficiary or to separate the results for the purpose of protection, the results in question are also owned jointly. In case this is not agreed in the CA/joint ownership agreement, the MGA default regulation applies (see Article 26.2 of the AGA, Version 2.1.1 – 1 July 2016).

Any beneficiary owning the results may transfer ownership of its results and IP rights attached thereto to another beneficiary/-ies or to third parties. In such a case, however, it must be ensured by such a beneficiary that certain legal obligations specified in the Grant Agreement (see Article 30.1 of the AGA for details, Version 2.1.1 – 1 July 2016) apply to the new owner.

In certain cases (see especially Articles 26.4 and 27.2 of the AGA, Version 2.1.1 – 1 July 2016), the EU/Euratom/the Agency may assume ownership of the results to protect the results.

Legal: Other issues

17. Return of funding: Can project participants be liable to pay back funding to the EU if a project does not reach its goals?

Answer: It may happen that the beneficiaries do not reach the project goals as planned (especially as far as scientific projects are concerned) and they will **not** have to return the money to the EU **as long as they properly implement the project** (according to this general **obligation** specified in Article 7 of the AGA). The beneficiaries must implement it **as described in Annex 1 (technical implementation)** to the Grant Agreement **and** in compliance with the provisions of the Agreement (including the proper financial implementation - eligibility of costs) and all legal obligations under applicable EU, international and national law. **Otherwise, the grant may be reduced** proportionally to the improper implementation of the project or to the seriousness of the breach (e.g. fraud, systemic irregularities or submission of false information – even up to 100%) (see Article 43 of the AGA, Version 2.1.1 – 1 July 2016). Such breaches resulting from the **lack of consistency with the description and work plan of the project** may also lead to, at the time of interim payment, at the payment of the balance or afterwards, in particular **following** checks, reviews, audits or investigations, as appropriate, any of the **other measures** described in Chapter 6 of the AGA, such as:

- **rejection of ineligible costs** in full declared in the periodic/final report to be deducted from the amount of the eligible costs declared (if rejected before payment of the balance) or recovered (if rejected after the payment of the balance) (AGA, Article 42);
- **recovery of undue amounts** – the Commission/Agency will claim the undue amounts paid to the beneficiary after termination of its participation in the project, either at the payment of the balance or afterwards (AGA, Article 44);
- **administrative and financial penalties** for substantial errors, irregularities or fraud or being in serious breach of its obligations under the Agreement or (b) has made false declarations about information required under the Agreement or for the submission of the proposal (or has not supplied such information); The financial penalties will be between 2% and 10% of the maximum EU contribution of the beneficiary's total project share; (AGA, Article 45).

- 18. Request of several offers in order to fulfil the condition of best value for money (Article 10 of the Grant Agreement): In the Grant Agreement it is stated "The best value for money principle does not require competitive selection procedures in all cases. (However, where a beneficiary did not request several offers, it must demonstrate how best value for money was nevertheless ensured.)". However, it is not clear when or under what conditions several offers should be requested. For instance, what is the lower limit from which I shall request several offers?**

Answer: For the lower limit when the several offers for best value for money should be applied consult your national legislation and internal rules within your organisation given that the procurement procedures and limits vary from country to country. In any case, the conflict of interest must be avoided.

The AGA includes an option (Article 10.1.1, footnote 23, Version 2.1.1 – 1 July 2016) for setting certain specific rules for contracts with a higher value than EUR 60,000. In such a case the option could include a minimum number of offers received in order to fulfil the condition of best value for money.

Administrative issues

- 19. Notifications from the Participant Portal: who gets which notifications and why?**

Answer: The participant portal provides an extensive explanation of the different roles (e.g. LEAR, LSIGN, FSIGN, PLSIGN, FSIGN, Coordinator Contact, Participant Contact, Team Member). Please check http://ec.europa.eu/research/participants/docs/h2020-funding-guide/user-account-and-roles/roles-and-access-rights_en.htm for further details.

Administrative/Financial/Legal issues

- 20. Linked Third Party: It would be very helpful to hear how other universities and their Linked Third Parties have (in practice) implemented the projects including such co-operation. How have the obligations regarding reporting been carried out? What are the different steps that are walked through before the beneficiary submits the financial reports in the electronic exchange system? How about the scientific reporting? What are the best practices on that? What kind of contractual arrangements have been put into practice? I am under the impression that some universities and e.g. their university hospital (two different legal entities) have enforced some kind of umbrella agreements / frame agreements for this purpose, and it would be nice to know more about these different possibilities.**

Answer: Linked third parties in H2020 are regulated in Article 14 of the AGA (Version 2.1.1 – 1 July 2016). Linked third parties are entities that participate in the execution of tasks in the project. They perform part of the work in the project. The main characteristics that define these linked third parties are as follows:

- They must be linked to the beneficiary durably, beyond the period of implementation of the action
- They declare costs in accordance with the provisions of Article 6 of the AGA.
- The linked third party performs certain tasks in the action and is responsible for them against the beneficiary
- Tasks attributed to a linked third party are stated in Annex 1 to the Grant Agreement, and usually are carried out in the third party own facilities
- The work is done under control, instructions and organization of the linked third party that carried out the action with its own staff

- Each linked third party has its own financial statements, but these statements must be submitted by its beneficiary via the electronic exchange system (since linked third parties do not have access; see Article 20 AGA).
- For this purpose, linked third parties must send their signed financial statements on paper to their beneficiary. The beneficiary must keep the originals (see Article AGA 18.1.2 last option).
- Linked third parties as visible in the participant portal during the execution of the project.
- Linked third parties must to be stated in Table 4.2 of the proposal
- Linked their parties are responsible on their technical report
- Examples of related third parties to the beneficiary are **Joint Research Units (JRU)**: laboratories or infrastructures owned by two or more legal entities created for the purpose of conducting research. The JRU has no separate legal personality of its members but forms a single research unit where staff and resources provided by the various members are pooled for the benefit of research. To qualify as a JRU must meet the following conditions:
 - Existence of a scientific and economic unit
 - Fixed period
 - Recognized by a public authority