

Dear Ms Hollósi,

Thank you for your e-mail. We have analysed your additional questions and I am glad to see that they point towards what seems to be a viable alternative for HU participants.

For your convenience, we have added our replies immediately after each of your questions.

Please do not hesitate to contact us again if you need any further information. Also, would you think it necessary, we would be pleased to meet you and/or other HU national experts to discuss more in detail the Horizon 2020 eligibility conditions for personnel costs.

Finally, I would also like to inform you that we are discussing very similar issues with your colleagues the legal and financial NCPs for Poland (Barbara Trammer and Bartosz Majewski). We understand that some PL Universities are taking steps to align their internal rules with the Horizon 2020 requirement so as to make (part of) their project-bonuses eligible. Perhaps the experience of those Universities can be also of use for your discussions at national level.

Kind regards,

**Reinhard SCHULTE**

Acting Head of Unit



**European Commission**

DG Research & Innovation

J 1 - Common Legal Support Service

## Questions and answers

### **I) Top-up which is part of the normal salary**

I understand that the general remuneration practice of the entity will decide on the question of whether the remuneration of the employees is project-based or not, and that the entities under 1B shall first remove the ineligible elements from the H2020 remuneration, secondly identify which part of the remuneration qualifies as basic remuneration and which part as additional one and then recheck the eligibility conditions for this two parts under H2020. I am also aware that arbitrary bonuses were never eligible under H2020.

**But how should we address a top-up which is not related to work in specific projects but to normal work and is considered as part of the normal salary? (in order to distinguish between project bonuses and extra payments for usual work, I introduced the term of top-up)**

Low basic salary level guaranteed in national law compels public institutions to offer an increased salary via a top-up to attract new employees and retain experienced colleagues. The payment of a top-up is based on national law and is part of the beneficiaries' usual remuneration practice, in addition, the employee is entitled to receive the amount even if (s)he is not working in specific project(s), since this extra payment is covered by the employment contract (i.e. it is never subject to a separate agreement and is indicated as a separate salary element in the employment contract). However, the actual amount of the top-up is not fixed in law or in internal rules but is decided by the management (considering the market value of similar activities and the financial situation of the institution).

Such top-up might be fixed in contracts for an indefinite period (covering project-related and non-project-related periods) and in fixed-term contracts.

Is this top-up eligible in H2020 projects or not? If so, is it also the case where a fixed-term contract is concluded to hire a researcher exclusively for work in a H2020 project (thus, the top-up might seem as a project bonus at first sight, however, the institution can prove that it is its usual practice to pay a similar top-up for researchers who are not involved in specific projects)?

**Answer:** top-up bonuses which are not project-triggered are part of the basic remuneration of the employee. Nevertheless, the beneficiary needs to assess if they are eligible in accordance with the Horizon 2020 rules. In general, a top-up which is a mandatory entitlement for the employee in accordance with national law, the collective labour agreement or the employment contract would be eligible.

This is the case, for example, of a top-up due to dangerous working conditions which is set up in the collective labour agreement, a top-up due to a family allowance fixed in the law, a top-up for a managerial position which is defined in the collective labour agreement, etc. Do not hesitate to send us additional details if you have any specific top-up of general application in Hungary on which you would like to have our opinion.

Similarly, if the employment contract fixes an amount to be paid on top of the basic salary (e.g. a monthly bonus on top of the salary level guaranteed in national law), that top-up would be also part of the eligible basic remuneration if:

- The top-up is the same irrespectively of the participation of the employee in projects; i.e. the person will get the same salary (including the top-up) each month regardless if s/he participates or not on specific projects.
- The top-up has not been set up to artificially increase the cost to be charged to the Horizon 2020 action. This may be the case, for example, if the contract of the person is modified to set up a top-up which applies only to the period of time that s/he works in the Horizon 2020 action. This would not be considered to be the case if the person is a new employee for the entity and the top-up is fixed in its contract for all activities of the person (so no triggered by one or several specific projects).
- It complies with the other cost eligibility conditions (e.g. incurred during the duration of the action, recorded in the accounts, compliant with national law, etc.).

A possible example would be if the salary of the person is fixed in the contract based on the salary grid plus a personal bonus for e.g. years of experience. The salary would become an unconditional entitlement for the employee for her/his monthly work, independently of the type of work carried out.

An employee who only receives this type of top-ups (so not project-based bonuses) would be under case 1A. The beneficiary would calculate its hourly rate using the standard formulas of the grant agreement and including those eligible top-ups.

## **II) Range-scheme**

In addition, there is a different way of paying top-ups: some institutions introduced a remuneration scheme where the everyday work performance of the employees is regularly assessed.

The basic salary of the employees whose work performance has been found excellent is increased by a top-up. This remuneration scheme is based on national law, however, the criteria of the evaluation, the process of the evaluation and the range of the salary increase is specified in internal rules (i.e. the institutions prefer to set an amount ranging from ... HUF to ...HUF instead of indicating a fixed amount, thus the actual top-up to be paid and included into the employment contract is decided by the supervisor within this range). This top-up is not related to work in projects and the researcher is entitled to it during the evaluation period (if the researcher shows weaker performance in the next evaluation round, the entitlement for the top-up will not be renewed), irrespective of the fact whether (s)he is involved in specific project(s) or not.

**Is this top-up eligible in a H2020 project or does it qualify as an ineligible element due to the fact that the internal rules set up a range instead of a fixed amount?**

**Answer:** This type of top-up based on performance, but not linked to specific projects, would also qualify as part of the basic remuneration.

To be eligible, the bonus must be decided based on objective criteria. In principle, if the entity has (and applies) internal rules setting the evaluation process (i.e. how the evaluation takes place, what are the conditions to decide who shall receive the top-up, etc.) this top up would be generally eligible as part of the basic remuneration.

Nevertheless, please note that if the internal rules set up a range instead of a fixed top-up (e.g. between 500 and 1000; between 10 % and 50%) but there are no objective conditions to define the precise top-up applicable to the individual person, then the top-up may still be eligible, but normally only up to the level of the lowest top-up that could be paid in that range. The precise situation would have to be assessed on a case-by-case basis in light of the evaluation process established in the internal rules.

### **III) Beneficiaries without internal rules compatible with H2020 provisions**

I am fully convinced that the calculation rule under 1B has not been introduced to create administrative burden for beneficiaries. However, for beneficiaries who are reluctant to set up internal rules compatible with H2020 provisions (e.g. they are involved in very few H2020 projects) and charge, even if their general practice is paying bonuses in national projects, only the salary guaranteed in national law (i.e. a salary specified as a fixed amount per staff category) to the H2020 project, the calculation under 1B is indeed an administrative burden.

**Could you reconsider whether such beneficiaries might benefit from a less complex calculation method?**

**Answer:** With the information provided for that specific case, we would consider that the calculation on the basis of the formula applicable to case 1 B would not entail any additional burden for the beneficiary. On top, it would have the financial advantage of removing the obligation to use the hourly rate of the last closed financial year at the end of the reporting period.

We understand from your explanations that:

- The usual practice of the beneficiary is to pay bonuses for the work in national projects,
- The beneficiary would only take into account the basic salary when calculating the personnel costs for the Horizon 2020 action,
- The beneficiary has no internal rules setting up objective conditions for the project-based bonuses and so it has to use the average of the salary of the previous year to determine the national project reference (NPR).

In this context, we understand that the NPR should be normally higher than the action reference because:

- The NPR (average salary of the previous year) would include bonuses paid for work in national projects; so it would take into account the basic salary + those bonuses;
- Meanwhile, the action reference would only take into account the basic salary.

If this is the case, the full amount of the action reference would qualify as basic remuneration and so the hourly rate to be used for the Horizon 2020 action would directly be the action reference; i.e.:

{annual personnel costs for the person for his/her work in the action

divided by

number of hours worked for the action in the financial year}.

In addition, as explained above, case 1 B is not subject to the obligation of using the hourly rate of the last closed financial year for the financial year on-going at the end of the reporting period. Unlike case 1 A, here the beneficiary would calculate the hourly rate of the on-going financial year using the data for the fraction of the on-going financial year until the end of the reporting period.

#### **IV) Internal rules with objective conditions for H2020 bonuses**

I am particularly grateful for the explanation and clear guidance on how the internal rules should be drafted to be in line with H2020 requirements. Here, only a minor question remained open.

**Would an internal rule be still acceptable if the following phrase was added to the text suggested in your reply: a senior researcher shall receive 3 800 EUR of monthly salary for full time dedication to an international project, unless the financial rules of the specific project do not allow for such payment / accept only a lower amount?**

**Answer:** the condition you suggest may be acceptable as it would still set up objective criteria and would not apply only to EU actions. However please note that:

- The internal rule should still explain what happens if the specific project only allows for a lower amount. For example, in that case the researcher will be entitled to the maximum amount accepted by the project in accordance with the rules of the funder.
- To be a valid reference for the NPR it must have been paid at least once before the submission of the proposal to any employee of the beneficiary in accordance with those rules. Therefore, there is a certain time span between the moment in which the rule is set up and the moment when it can be used as a reference for the eligibility of costs in Horizon 2020 grants.

## V) Internal rules for NPR

Based on the description of AMGA (pages 60-61), it is not clear for me whether the internal rules for NPR should be based on objective conditions or not, therefore I would like to ask for your confirmation in this matter.

Suppose that:

- the internal rules set up a range for NPR: “A senior researcher shall receive a monthly salary between 3 000 EUR and 4 000 EUR for full time dedication to a national project, unless the financial rules of the specific project do not allow for such payment / accept only a lower amount.”
- The institution is able to prove that a senior researcher was paid a monthly salary of 3 800 EUR for full time dedication to a national project before the submission of the H2020 proposal.
- The internal rules set up a fixed monthly salary for H2020 project rate (here I refer to the wording of point IV)

**Would the amount of 3 800 EUR be a valid reference for NPR or is it excluded due to the fact that the internal rules on national project reference lack objective conditions?**

**Answer:** In your example the 3 800 EUR would be a valid reference for the NPR for 'senior researchers'. It would not apply, however, to other employees (e.g. junior researchers, technicians, etc.) as the internal rule is addressed only to senior researchers.