

Dear Krisztina,

First of all, many thanks to you and your colleagues for the constructive discussion on Wednesday afternoon.

The calculation of personnel costs under project-based remuneration is a rather technical subject that has different implications depending on the remuneration practices of the beneficiaries. We very much appreciate your interest and insight about these rules. I am certain that your work on this issue will be very helpful for HU beneficiaries.

We would like firstly to confirm that your summary of the requirements related to internal rules made as introduction of your email of 20 April 2018 correctly reflects the contents of our previous written exchanges. Besides, on the question related to model 2 (well-defined circle of projects), and following your explanations at the videoconference, we confirm our answer already given on 28/11/2018 (see below).

We have now analysed in detail your suggested 'third model' and we think that it is also compatible with the Horizon 2020 provisions. In summary, we understand that the internal rules of the beneficiary would set up a minimum hourly rate that would be paid in all projects, unless the financial rules defined by the funder only allow for a lower one. That minimum hourly rate would apply equally to national projects, EU projects and other international projects. By setting just a minimum hourly rate the beneficiary might decide ad-hoc higher hourly rates for specific projects, without that changing the minimum hourly rate fixed in the internal rules. In that context, the entity may use that minimum hourly rate as the *national project reference* for the Horizon 2020 action if it has paid it at least once before the submission of the proposal in projects funded by a national scheme.

Example:

- Let's suppose that the minimum hourly rate is fixed at 20 € per hour and that it has been paid at least once for work in national projects before the proposal.
- The beneficiary also had a national or international project in which it paid only 15 € because the financial rules of this specific project did not allow for a higher rate.
- The beneficiary had another national project in which it decided to pay 30 € instead of 20 € because the budget of the specific project allowed for it.
- The beneficiary pays 25 € for the Horizon 2020 action.

In this case, the beneficiary may use 20 € as the national project reference. The difference between the hourly rate used for the Horizon 2020 action and that minimum hourly rate fixed in the internal rules would qualify as additional remuneration (i.e. $25 \text{ €} - 20 \text{ €} = 5 \text{ €}$ additional remuneration). As such, it would be subject to the specific cost eligibility conditions applicable to it. Please note that the

fact that the entity paid 30 € in a particular national project cannot be taken into account for the calculation of the national project reference, because that payment would not comply with the level of remuneration defined in the internal rules. The national project reference would remain 20 €.

If you have any additional questions, do not hesitate to contact us again.

Best regards,

Reinhard

Reinhard SCHULTE

Head of Unit



European Commission

DG Research & Innovation

J 1 - Common Legal Support Service

From: Reinhard.SCHULTE

Sent: Wednesday, November 28, 2018 1:02 PM

Dear Krisztina,

thanks for the additional question which we will also address in today's discussion.

As a basis and reference point for the first questions please find below some elements of reply to your first set of questions.

Looking forward to the discussion this afternoon.

Reinhard

Reinhard SCHULTE

Head of Unit



European Commission

DG Research & Innovation

J 1 - Common Legal Support Service

Would you accept a solution where the internal rules fix only unified project bonuses (fixed figures) for a well-defined circle of projects, comprising of both nationally funded and internationally funded projects, e.g. circle of projects that are implemented by an international consortium and funded either from national or international funds (it includes thereby also H2020 projects)?

We confirm that the existence of internal rules extended to all national and international projects of the given institution is not a minimum requirement for the calculation of the national project reference, even if it would be certainly a good practice. An approach where the internal rules for paying extra remuneration are limited to a specific category of projects (e.g. implemented by international consortium) could be accepted. Nevertheless, the beneficiary must avoid any remuneration practice defined ad-hoc to pay bonuses only in Horizon 2020 actions which would call into question the eligibility of these bonuses. In this context, the auditors may pay a particular attention to cases where :

- The remuneration practice is designed for a limited category of projects and has been set out recently (in particular after the adoption of the new definition of ‘additional remuneration’ – Model Grant Agreement amendment adopted on 27 February 2017); and
- The beneficiary does not have, or did not have recently, other projects (excluding H2020 actions) in which the same bonus is paid.

And should the institution prove that these amounts were actually paid at least once before the submission of the H2020 proposal for work in a national project – can these amounts be charged to H2020 projects [as basic remuneration]?

Indeed, the Horizon 2020 Annotated Grant Agreement (AGA) explains in page 55 that, for a bonus to be included in the hourly rate for national projects reference (as part of the basic remuneration), it must have been actually paid at least once before the submission of the H2020 proposal for work in a national project. In this context, national project refers to projects funded under national schemes. So, in your example, to qualify as basic remuneration the beneficiary would have to have paid the bonus at least once in a project funded by a national scheme and belonging to the specific category of projects covered by the internal rules (e.g. implemented by an international consortium), and this before the submission of the H2020 proposal.

Regarding your remark about the use of a range for the bonus scheme in internal rules, we would like to clarify that the example given in the AGA intends only to show how to establish “the national project reference” based on the internal rules. As already explained in our analysis made on 22 November 2017, a distinction has to be made between the purpose of establishing the ‘national projects reference’, whose purpose is to allow identifying which part of the remuneration qualifies as “basic”, and the eligibility of the basic remuneration itself, for which having objective criteria is a general eligibility condition.

In other words: on the one side, it is correct to say that, for the calculation of the ‘national projects reference’ what has been paid (within the range) at least once before the submission of the H2020 proposal would be used. If, for example, the internal rule sets a range between 1000 and 2000 € extra per month and the beneficiary paid 1800 in a national project before the submission of the H2020 proposal, the bonus would be considered as part of the ‘basic remuneration’ of the beneficiary up to 1800 €.

On the other side, the eligibility conditions for basic remuneration have to be fulfilled and one of those conditions is (see AGA page 47) :

'exclude arbitrary bonuses (i.e. bonuses which are not part of the beneficiary's usual remuneration practices and/or which are not based on objective conditions).'

Therefore, the beneficiary would have to be able to demonstrate on the basis of which objective conditions it decides to pay (e.g.) 1800 € extra to one researcher but only 1000 € extra to another. If it cannot, the part exceeding the lower amount of the range (in our example 800 € → 1800 – 1000) may be declared ineligible because arbitrary.

From: Hollósi Krisztina <krisztina.hollosi@nkfih.gov.hu>

Dear Reinhard,

I do not want to surprise you and your colleagues with an unexpected extra question tomorrow during our Skype meeting therefore I decided to write it down and send it to you in advance.

This extra question is linked to the possible models for internal rules regulating project bonuses. I am aware that replying this question might require extra consideration from your team and therefore this question will not be answered tomorrow. Nevertheless, I would be grateful if you could extend your written reply following our Skype discussion to this aspect as well.

In my inquiry I described two models for internal rules:

- 1) Model 1 covers all project bonuses paid by the institution by specifying a range scheme for projects funded from national sources and a fixed figure for projects funded from international funds. (This model was accepted earlier by your team)
- 2) Model 2 covers only project bonuses paid in a well-defined circle of projects (while project bonuses paid outside this circle are not unified by the institution). The circle of projects covered by the internal rules would be defined by objective criteria (e.g. only projects of excellence programme or projects to be implemented by international consortia would fall under the scope of the regulation) irrespective of the fact whether these projects are funded from national or international sources. (I asked your team to check the validity of this concept in my previous e-mail the content of which will be discussed tomorrow)

The third model that I would like to test with your team is the following: would you accept a solution that covers all project bonuses paid by the institution by specifying a minimal hourly rate that should be paid to researchers as an extra payment unless the financial rules of the specific project do not allow for any extra payment or accept only a lower hourly rate? This approach could give a green light to the reimbursement of a minimal hourly rate set by the institution in any project and to pay a higher hourly rate in national projects where the budget of the specific project provides an opportunity for it.

I am looking forward to our Skype meeting and thank you for your understanding for this extra question.

Best regards,
Krisztina

From: Hollósi Krisztina
Sent: Friday, April 20, 2018 3:55 PM

Dear Vincent,

Thank you again for my being able to turn to you directly. I hope that we will be able to clarify whether there is a misunderstanding on our side and whether we can be less strict in our instructions towards the Hungarian clients.

I will summarize our present understanding on the requirements related to internal rules on project bonuses and I will refer to the relevant parts of the written consultation with CSC to explain the logic behind our instructions. I hope it can help reveal the possible inconsistency in the logical chain.

- as far as national reference is concerned, we do not need to assess whether bonuses paid in national projects were based on objective criteria or not. It is the bonus charged in H2020 in case of which objective criteria are required.
See CSC reply of 22 November 2017 (II. National project reference based on the average of the previous year)
'Nevertheless, please note that the national reference is only used to define the threshold between basic and additional remuneration. Yet, for a bonus to be an eligible cost in Horizon 2020 (whether as basic or as additional remuneration) it must be based on objective conditions. In that sense we need to make the distinction between:
 - A. *the purpose of establishing a 'national projects reference' (NPR); which is to allow identifying which part of the remuneration qualifies as 'basic' (i.e. part paid up to the NPR) and which part as 'additional' (i.e. part paid above the NPR);*
 - B. *the eligibility of the basic remuneration; i.e. having objective criteria is a general cost eligibility condition arising from Article 6.1(a)(vii) of the H2020 MGA that applies both to bonuses (or part of them) that qualify as basic remuneration and to bonuses that qualify as additional remuneration.'*
- to align this two approaches in one institutional regulation (i.e. keep flexibility for national projects and meet the requirement of objective criteria in H2020 projects), we make distinction between national projects and international projects in internal rules (since we are not allowed to sharply distinguish between H2020 projects and other projects in the internal rules by setting objective criteria only for H2020 bonuses and applying 'arbitrary bonus' for any other project).
See CSC reply of 22 November 2017 (IV. Internal rules with objective conditions)
'Answer: a rule that applies only to Horizon 2020 actions cannot be accepted. By contrasts it could be possible to set out objective conditions in the internal rules of

the beneficiary which apply to (for example) international projects. That would include, but would not be limited to, Horizon 2020 actions.

Following your example, it would be possible to establish in the internal rules that a senior researcher shall receive 3 800 EUR of monthly salary for full-time dedication to an international project. This would be considered as an objective condition acceptable for Horizon 2020 provided that it is consistently applied for the participation of researchers in all international projects.'

- our understanding is that a project bonus is based on objective criteria only if the extra remuneration is specified as an exact figure (e.g. for full time dedication → 60 % of the salary, EUR 1.000 per month) – of course, the internal rules shall answer the “who” and “what” questions as well (I refer here to your presentation, slide 51)
- if we apply a range instead of a fixed figure (e.g. *'between EUR 500 and 1000; between 10 % and 50%'*) and *'there are no objective conditions to define the precise' figure of bonus 'applicable to the individual person'*, the bonus is eligible *'normally only up to the level of the lowest' figure 'that could be paid in that range'* (e.g. EUR 500; 10% in this case). See CSC reply of 18 December 2017 (II. Range scheme).
Higher figure decided by the superior within a range can only be charged to a H2020 project, if the extra payment *'is not linked to the participation in specific projects'*, but is based on a well-regulated overall performance evaluation and constitutes an *'unconditional salary entitlement for the employee until the moment when the next evaluation takes place'*. See CSC reply of 13 March 2018.
- even if we specify a range for national projects and a fixed figure for international projects in internal rules, there is still room for exceptions; thus the amounts set in the rules will not apply to projects where the financial rules of the specific project do not allow for such payment or accept only a lower amount, provided that in the latter case the internal rules lay down that the maximum payable amount under such financial rules is dedicated to the researcher. See CSC reply of 18 December 2018.
- Based on the above, we instruct our clients to draft internal rules that specify a range scheme for national projects and a fixed figure for international projects. We also encourage them to define different staff categories with adjusted hourly rates/monthly salary within this scheme. To present the logic behind, we share the following example (agreed with CSC) with them by explaining that real internal rules should cover also other staff categories (e.g. assistant, junior researcher), the amounts should reflect their institutional practice and project bonuses paid in H2020 should be linked to the working time. See CSC reply of 22 November and 18 December (IV. Internal rules with objective conditions for H2020 bonuses and V. Internal rules for NPR)
 - o 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. In the latter case the researcher shall be entitled to the maximum amount accepted by the project in accordance with the rules of the funder.

- 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.

It is also explained that even if the institution has such internal rules, it should be 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 to be able to charge this amount to the H2020 project.

However, I wonder if my possible misunderstanding of CSC instructions lies with the fact that EC – in contrary to how I understand it, based on the terminology used in AMGA ('projects receiving external funds', 'usual practice') – does not in fact expect that the internal rules extend to all national and international projects of the given institution.

Notably, would you accept a solution where the internal rules fix only unified project bonuses (fixed figures) for a well-defined circle of projects, comprising of both nationally funded and internationally funded projects, e.g. circle of projects that are implemented by an international consortium and funded either from national or international funds (it includes thereby also H2020 projects)? And should the institution prove that these amounts were actually paid at least once before the submission of the H2020 proposal for work in a national project – can these amounts be charged to H2020 projects? This solution implies that there will be national projects that will not be covered at all by internal rules since they do not require international consortium. In such projects the institutions would be only bound to the specific financial rules of the funding programme (specified in call papers) that use an 'up to' regulation and allow for a more flexible decision (i.e. the superior decides on the precise amount to be paid to the given researcher within the limitation and the amount can be task-based).

Also, our conversation on the Romanian scheme was very interesting.

- Based on my understanding of the CSC instruction, an 'up to' scheme (e.g. bonus between 0 and 4 000 €) *'would not be a valid reference' even 'for the NPR'. 'In that situation, the beneficiary would still have to use the average of the previous year's salary to define the NPR.'* See CSC reply of 22 November 2017 (IV. Internal rules with objective conditions)

At the same time the AMGA itself gives an example for internal rules with 'up to' scheme (*'may get an extra salary of up to 50 % for the time it works for those projects'*) on p. 60. We interpret this 'up to 50%' rule in a way that the time spent on the project is the objective criteria that specifies the exact amount of the bonus here (e.g. if the researcher spends 10% of his/her working time on the project, (s)he will get 5% extra), thus this example does not contradict the instruction we have received from CSC and does not give floor to internal rules with completely flexible approach where the superior decides on the precise amount between 0 and 50%, without taking into account objective criteria.

Therefore, we believe that the following argumentation is not in line with H2020 requirements: the beneficiary has an internal rule based on which a senior

researcher may receive up to EUR 4.000 for its participation in a specific national project (however, the rule does not specify how the precise amount is calculated, i.e. for 0,5 FTE dedication it might be paid EUR 2.000 or 3.000 or ...); if EUR 4.000 has been paid once before the submission of the proposal, it can be automatically charged to a H2020 project.

Are we too strict if we do not accept such argumentation and would like to see objective conditions?

- As far as I know, the Romanian scheme is rather a range scheme with well-defined staff categories and close minimum-maximum amounts. However, if I read it together with the CSC reply of 18 December 2017 referred above, such project bonuses are eligible only up to the level of the minimum amount if there are no objective conditions to define the precise figure. Am I right in this interpretation? Could you help me what objective conditions are built into the Romanian scheme?

All in all, and provided that my understanding of the written consultation is proper, Hungarian beneficiaries would be able to use the advantages of the project-based remuneration scheme only if it is not required that the internal rules extend to and are applied in all type of projects managed by the given institution. If the institutions should only align the bonus scheme of certain funding programmes (being similar to H2020 due to the fact that they are either excellence programmes or require setting up an international consortium) including nationally funded ones and H2020, we could take a step forward in this matter.

Once again thank you for your generous offer for being open for such post-Campaign enquiries and please accept my apologies for the long description (I did not want to neglect any detail that could explain our possible misunderstanding in the interpretation of the rules).

I would like also to inform you that the written consultation with CSC is published on our website (EC interpretation 1, 2 and 3):

<https://nkfih.gov.hu/hivatalrol/horizont-2020/europai-bizottsag-jogi>

<http://www.h2020.gov.hu/horizont2020-program/kutato-i-berek>

Many thanks for devoting your time to this issue.

Best regards,

Krisztina