NCP Academy Meet & Exchange workshop 16/04/2019

Legal & Financial Rules with International Partners

The Brussels Agency for Business Support
NCP Academy – Partner
What is NCP Academy

• Continuation and expansion of the former NCP Academy support action, Sept. 2018 to Aug. 2020 www.ncpacademy.eu

• Brings together Horizon 2020 NCP Coordinators and Legal and Financial NCPs to implement training on cross-cutting issues for NCP and address quality standards and good practice

• Focus
  • Tools for capacity building on Horizon 2020 Legal & Financial issues
  • Training & Exchange of NCP experiences
  • Developing the NCP system

This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement n° 831752
Context of this workshop

• Programme and rules envisaged from **distinct viewpoints** (Member State/Associated Country or Third Country)

• **Motivation** to take part in H2020 vary: scientific excellence, reputation, networking... funding...

• Applicants do not share same context/challenges but should **work together** toward successful and projects beneficial to all **Rules for participation** of International Partners not well known by MS/AC
Aims of this workshop

• NCPs need to understand rules and challenges from all viewpoints in order to adequately advise their clients
  • MS/AC and TC
  • NCPs, Applicants/Participants, EC

• Legal & Financial NCP want to explore opportunities to simplify Legal & Financial rules under Horizon Europe
After this workshop

You will have

• Exchanged good practices and bottlenecks both from the viewpoint of MS/AC and from the viewpoint of TC
• A better mutual understanding of the respective challenges
• Explored possibilities for simplification under Horizon Europe

The broader community will be informed

• Summary of key findings
• Webinar Thur. **May 16, 2019 at 11am CEST** (summer time)
Non-aims

• Deep understanding of the various processes for requesting / obtaining **funding from the Third Country** (in this M&E workshop, this is only considered as a contextual element)

• **Overview of INCO calls and partnership** opportunities
Methods

• Highly **interactive**

• Build on what we know from the field
  • Member States (8) and Associated Countries (1)
  • Third Countries (5)
  • The **Common Legal Support Services** from EC’s DG RTD

“Diversity is a source of excellence”
Agenda

• What are we talking about?
• Typical INCO Legal and Financial questions received by the EC

Break

• Real cases, focus on specific Articles of the Model Grant Agreement

Lunch

• Main difficulties and how to overcome them: collective exploration

Break

• Key findings and recommendations: plenary session
• End of workshop at 16h latest
Take a flag from the country you represent - Locate yourself (and others) on a “living” world map – Tell your name & organisation
What are we talking about

Tania VAN LOON, Legal & Financial NCP and NCP Academy partner
• Participants from anywhere in the world can take part... but are not always funded

• Individual researchers from any country in the world seeking the opportunity to work in Europe for a certain period of their career can apply for funding through the European Research Council and the Marie Skłodowska-Curie actions
“After all, science is essentially international, and it is only through lack of the historical sense that national qualities have been attributed to it.” Marie Skłodowska-Curie
Country eligible for funding?

Automatically eligible for funding

- Member States

- Associated Countries
  16 (Albania to Ukraine)
  [link](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf)

- Developing countries
  130 (Afghanistan to Zimbabwe)
  [link](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf)

Industrialised countries and emerging economies need to find own funding

Exceptionally, eligible for EC funding IF

- **bilateral agreement** between that country and the EU
- the country is **explicitly identified** in the call for proposal as being eligible for funding

OR

- their participation is **deemed essential by the EC** for carrying out the action ("coordinated call")
“Typical” perspectives

**MS / AC legal entity**
- Funding → **eligibility of costs**
- Rules applicable to Beneficiaries
- Beneficiary retains the sole responsibility for the work and the costs declared!

**Third Country legal entity not Beneficiary**
- **Rules applicable to International Partners** (or other types of Third Party)
- Own / national funding and rules
How can a Third Country legal entity take part

- “Beneficiary”: signs the Grant Agreement (GA)

- Third Party: does not sign the GA
  - Linked Third Party: affiliated or with a legal link to a Beneficiary
  - Sub-contractor: executing some Tasks
  - Contractor: selling equipment, goods or services
  - Providing in-kind contribution
  - Receiving cascading grant

- “International Partner” does not sign the GA
  - New kind of Third Party since 2017
Why rules are so important

• **Standard rules for each type of role and set-up**

• Some contractual conditions are imposed on **ALL parties** (even if you do not sign the Grant Agreement, do not ask funding)

• **Your clients need to understand before they commit**

• Not only about **money: reputation, reliability, partners relationships**...
Aspects to consider

• Intellectual property rights: ownership, transfer, licencing of results
• Checks, reviews, audits, investigations, conflict of interest, confidentiality…
• Keeping records, reporting
• Budget, liability for damage, other aspects of practical implementation

• Not only Grant Agreement, also for ex Coordination Agreement
Legal frame
Typical INCO Legal and Financial questions received by the EC

EC DG RTD Common Legal Support Services
Ask someone you do not know who s/he is and where s/he is from
Put the right colour sticker on their badge
Get grouped by 3 colours
Please do not remove sticker, needed in the afternoon

Blue = EC
Green = MS/AC
Yellow = Third country
H2020 partners and NCPs view on rules for participation related to INCO

Rainer L.C. Frost, International Senior Contract Specialist & Michael Leskiw, International Senior Contract Administrator at the Massachusetts Institute of Technology

Ann Van Hauwaert, NCP Coordinator, NCP Flanders, FWO

Ji-Hyeon Kim Vanguers, NCP Coordinator, NCP Brussels, hub.brussels

Martin Baumgartner, Legal NCP Austria, Austrian Research Promotion Agency

Natacha Wittorski, NCP French-speaking community, Fonds de la Recherche Scientifique - FNRS

Nicole Schröder, Legal and Finance NCP Germany, DLR PT

Sara Sarkar, Senior Analyst, Agriculture and Agri-Food Canada
Find the person you put the sticker on their badge this morning. Ask him/her why s/he joined the workshop and tell them why you participate.
Collective exploration of main difficulties and how to overcome them

Horizon 2020 and Horiozn Europe
Principles

- Collective Intelligence
- Conversation/Dialogue
- **Benevolence**
- Feel comfortable to be yourself
- Do your most creative thinking, speaking, and listening
3 Rounds: 20 – 20 – 5 min

• Work in small groups around tables
• **1 question** is given to each table
  Choose 1 rapporteur for each question!
• **Discuss, write / sketch**/ make visible / map key ideas
  post-it / paper / flip charts / colour markers
• **All Participants change tables**
  EXCEPT the Rapporteurs
• Each Rapporteur provide output of its question to
  new participants around the table
• **Each table chooses a new rapporteur** and discusses
  the new question
• 4 tables
• Each table has at least one participant from MS/AC, EC and TC (check your coloured stickers!)
• 2d and 3d questions should focus on the same aspects as 1st question
• You will have to summarize your findings in 3 min!
• Main related Articles are there only for memo. Draw on your experience and questions and open exchange (only 20min so no time to read the annotated MGA!)
Back at 15:20 for plenary
Plenary session: each table 3 min + 2 min comments/questions

- Is there anything missing from this picture?
- Could we do it in a simpler way?
- Do the proposed new rules answer both MS/AC and TC difficulties?
- Do the proposed new rules protect the EU’s legitimate interests?
• Now  Fill in the evaluation form!
• 19/04  All participants get the presentations
  Send your additional comments/suggestions if any
  tvanloon@hub.brussels
• 03/05  hub.brussels provides summary report to all participants
• 16/05  Join & promote our **Webinar 11am CEST**
  [https://www.ncpacademy.eu/upcoming-events/](https://www.ncpacademy.eu/upcoming-events/)
Participation of entities from non-associated 3rd countries in Horizon 2020 projects
1. Participation as a beneficiary

- Horizon 2020 project
  - All beneficiaries sign the Grant Agreement (GA)
  - A) With EU funding
  - B) No EU funding

Non AC Third Country beneficiary
A. BENEFICIARY RECEIVING EU FUNDING

• **Exceptional** eligibility for funding where:

  ✓ the work programme/call explicitly provides for it;

  ✓ participation is **essential** for the action by offering it unique benefits such as:
    - outstanding/unique competence and expertise;
    - access to unique research infrastructure;
    - access to geographical environments etc.

  ✓ In all these cases the beneficiary has to sign the grant agreement + all obligations of the GA will apply.
B. BENEFICIARY NOT RECEIVING EU FUNDING (I)

Certain GA provisions do NOT apply (Art. 9 MGA):

- **Provisions linked to EU funding,** such as on:
  - grant amount;
  - eligible costs;
  - financial reporting;
  - record keeping;
  - rejection of costs/payments;
  - financial checks

- **Certain provisions regarding results:**
  - no requirement to notify the Commission if no protection is sought and no linked Commission right to assume ownership;
  - no Commission right to object to transfers of ownership or grants of exclusive licenses.
BENEFICIARY NOT RECEIVING EU FUNDING (II)

• All other provisions continue to apply (Art. 9 MGA):

  ✓ Provisions linked to the scientific and technical implementation of the action e.g.:
    - joint technical responsibility;
    - provide requested technical reports;
    - allow technical checks, reviews, audits, investigations or evaluations of the action’s impact

  ✓ Remaining provisions regarding results and background e.g. beneficiaries must
    - disseminate their results asap unless it goes against their legitimate interests (for peer-reviewed scientific publications regarding results open access rules must be respected);
    - give other beneficiaries access to their background or results under certain conditions if they need it to implement their part of the project or exploit their own results
BENEFICIARY NOT RECEIVING EU FUNDING (III)

✓ Applicable jurisdiction:

✓ - Belgian courts for non-EU beneficiaries;

✓ - Arbitration for non-EU beneficiaries not receiving EU funding and which under
✓ their national law cannot be subject to the jurisdiction of Belgian courts
B. BENEFICIARY NOT RECEIVING FUNDING (IV)

Other horizontal provisions **continue to apply**, for example:

- promoting the project and give visibility to EU funding;
- maintaining confidentiality of confidential information, respect data protection rules;
- liability for damages (if a beneficiary would cause damage to the Commission, it must compensate the Commission except in case of force majeure);
- applicable law (GA is governed by applicable EU law supplemented if necessary by Belgian law);
2. Involvement as a third party: International Partner

**WHO?**
Legal entities which are **not** eligible for EU funding and are established in non-associated third countries.

**NEW from February 2017**

Horizon 2020 project

**International Partner**

**Does not sign Grant Agreement**

**No EU funding**
C. INTERNATIONAL PARTNERS (Article 14a GA)

Beneficiary C must:

- Extend certain obligations to the international partner (e.g., relating to scientific & technical reporting/record keeping, promoting the project, verification of proper implementation)
- Ensure it can comply with its obligations regarding results

International Partner:

- Is linked to a beneficiary
- Does not sign GA
- Is identified in the GA and carries out work as specified in the technical annex
- Not eligible for EU funding, thus needs its own (non EU) budget
- Its costs are estimated in GA but no financial reporting
- Only needs a Participant Identification Code
- (PIC number)- for statistical purposes
3. Other types of third parties

- Use of in-kind contributions provided by third parties (Art. 11 & 12 GA);

- Work in the project as sub-contractors (Art. 13 GA);

- Linked third parties, i.e. affiliated entities and third parties with a legal link to a beneficiary (Art. 14 GA);

**However:** Under article 23(5) of the H2020 RfP the costs of a linked third party can be eligible if the third party would have been eligible for funding if it were a beneficiary!
4. Joint Actions (I)

- Result of joint or coordinated calls for proposals

- Launched in parallel by EU and a non-associated third country agency

  ✓ JOINT CALLS: applicants prepare a joint proposal which is submitted to both the EU and the third country agency; the proposals are evaluated and selected through joint evaluation and selection procedures;

  ✓ COORDINATED CALLS: applicants submit separate proposals (to the EU and the third country agency) with a summary of the work to be done under the coordinated proposal. The Commission/Agency only evaluates proposals for the EU action; however, the evaluation may be coordinated (i.e. include experts from the third country or same expert panel, apply the same evaluation criteria etc.)
4. Joint Actions (II)

- For both types EU beneficiaries sign a GA with the EU, while the third country participants sign with their funding agency;

- The description of the action (Annex 1 of the GA) contains the research carried out under the EU action (but also includes detailed explanations about the research to be carried out under the third country action);

- Participants of the two actions must conclude a coordination agreement to link the actions and ensure a smooth and successful project implementation;

- Coordination agreement must NOT contain any provision contrary to GA or EU legislation.
5. A framework for cooperation between projects

- Special non-binding framework to facilitate cooperative research activities with a third country institutions as ‘research partners’ (through Implementing Arrangements - e.g. with US, Canada).

• **How does it work:**

  ✓ Cooperation will take place outside the Horizon 2020 GA, so no tasks may be assigned to the third country partner under the GA;

  ✓ Each research partner works under the rules of its own organisation but should be NO conflict with EU rules or Horizon 2020 GA or rules of the third country partner organization;

  ✓ Third countries organisations are funded by the third country and NOT from the Horizon 2020 framework programme.
Thank you for your attention!
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NCP Academy Meet & Exchange workshop 16/04/2019

Presentation of Real Cases related to the implementation of Legal & Financial rules of proposals/projects with International Partners

Massachusetts Institute of Technology
Rainer LC Frost
Michael Leskiw
Context:

• MIT researchers:
  • Want to collaborate with EU colleagues
  • Need funding for direct & indirect research costs
  • Are interested in actions eligible for cost reimbursement

• MIT: Private – Non-profit – Institute of Higher Education
  • No government affiliation: USA federal, state, or local
  • No government “base budget”

• MIT cannot currently participate in Horizon 2020
  • Except MSC Global Fellowships
  • Next 3 slides show issues preventing MIT participation
Analysis

• MGA Article 30.3:
  • OPTION 1: “The [REA] may — [for] four years — object to a transfer of ownership or the exclusive licensing of results…”
  • OPTION 3: “Not Applicable.”

• Conflicts with US Government laws & MIT Policy, which:
  • Require MIT personnel to assign IP to MIT
  • Require MIT to own IP
  • Require no restrictions on MIT’s ability to dispose of IP

(For MSC Fellowships, REA elects OPTION 3 for all MIT-hosted grants)

• Question: Could EC consider OPTION 3 for other funded actions?
Analysis

• MGA Articles 41.1: “beneficiaries have full [joint and several liability] for implementing the action”
• & 46.2: “beneficiaries must compensate the [EC] for any damage it sustains from implementation of the action”
• Conflicts: Risk of unbudgeted liabilities—3rd party non-performance, 3rd party harm, 3rd party IP infringement
  • As a non-profit, MIT cannot pay unlimited damages, must limit exposure to those things within our control
• Questions – Could the EC consider:
  • Narrower, project-specific definition of damages?
  • Allowing consortium beneficiaries to contractually allocate risk?
Analysis

• **MGA Article 6.2E**: Indirect costs: 25% of eligible direct costs

• **Conflict**: US regulations require MIT to negotiate an indirect cost rate (MIT does not charge other sponsors a lower rate than the US)
  • Researchers must make up shortfall from non-sponsored funds
  • Globally, governments impose inconsistent rules on indirect costs

• **Questions**:
  • Could MIT seek under-recovery funding from consortium members?
  • If US respects H2020 indirect rate when it awards research grants to EU entities, would the EC reciprocate?
Conclusions

• MIT researchers (many EU citizens) want to collaborate with their EU colleagues.

• MIT participates in MSC awards. We thank the REA for their willingness to negotiate a solution so MIT can host these extraordinary fellows.

• MIT is reimbursed for ~$1.7B in research costs annually, in agreement with foreign governments, industry (all sizes), foundations, and the US.

• Question:
  Can you help us find a solution to enable private nonprofits from third countries, such as MIT, to reach agreement as a funded beneficiary?
International Cooperation Questions from Stakeholders in Flanders-Belgium
If you want to involve USA as full beneficiary, you have to prove that they have a unique expertise, how does this work? Do you have to explain this in the proposal?

The risk of including this USA partner or not including this partner can be described in the proposal under “critical risks- relating to project implementation, that the stated project's objectives may not be achieved. Detail any risk mitigation measures. Please provide a table with critical risks identified and mitigating actions (table 3.2b)”
What if evaluators do not evaluate the participation of the international partner as necessary - Will they propose to involve another partner or rather give a negative score?

If after evaluation it has been concluded that the partner is NOT necessary then this can give a lower score in the implementation section. Evaluators will not propose to take a new partner since this is the decision of the consortium.
What if evaluators do not evaluate the participation of the third country as necessary - what happens with the requested budget?

Not clear to me....

Is it possible that the evaluators reject the project for this reason? Or

Is it possible that they propose the third country to bring their own budget? But will the evaluators then subtract this amount of the total budget proposal?
Can you involve a USA partner in a project as a third party providing in-kind contribution against payment?

• Answer from the RES:
A beneficiary may use in-kind contributions provided by third parties against payment in accordance with Article 11 of the grant agreement (GA). Third parties providing in-kind contributions against payment under Article 11 GA are not subject to the eligibility conditions to participate or to receive EU funding provided for in the Horizon 2020 Rules for Participation. Nevertheless, the involvement of third parties in the action cannot be used to circumvent the Horizon 2020 Rules for participation and/or the applicable Work Programme, that is, to provide financing to a legal entity that would not otherwise have been eligible for funding (see also pp. 125-129 in the Annotated Model Grant Agreement (AGA) available at http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf). In any event, the specific case of the concerned institute from USA should be discussed with the Commission/Agency, in regard of the requirement that third parties providing in-kind contributions have to be described and justified in the technical annex, and have to be approved by the Commission/Agency.
Can you involve a non-EU partner as subcontractor?

Answer from the RES:

Provided that contracts or subcontracting comply with Articles 10 and 13 of the GA, there is no particular condition regarding the location of the contractors or subcontractors, except in the case that the option for the pre-commercial procurement (PCP) or procurement of innovative solutions (PPI) is activated under Article 13 in the particular GA. In this specific case, the beneficiaries must ensure that the majority of the research and development work done by the subcontractor(s) (including the work of the main researchers) is located in the EU Member States or associated countries (‘place of performance obligation’).
In a call where Chinese partners are eligible through own national funding – can the partner ask a different budget to the Chinese government than what has been requested in the H2020 proposal?

• One specific condition is that the amount of funding applied to MOST from the Chinese applicants shall not exceed the budget indicated by the Chinese partner in the corresponding Horizon 2020 proposals.

• Source: FAQ lijst
  http://ec.europa.eu/research/iscp/index.cfm?pg=china
Where can I find the possible funding mechanisms of third countries in Horizon 2020 proposals?

- Link to countries with co-fund agreements:
  http://ec.europa.eu/research/iscp/index.cfm?pg=participate
NCP Academy Meet & Exchange workshop 16/04/2019

Presentation of Real Cases related to the implementation of Legal & Financial rules of proposals/projects with International Partners

NCP Brussels
Ji-Hyeon Kim Vanguers
Coordinator, Infrastructure, Swafs, Widening
Description of situation

• Iran eligible for funding – Iranian researches willing to participate
• EU-Iran Joint Statement and Working Group on Science, Research, Technology and Innovation
• Conference and Info Day on Nov. 28th
• Specific topics targeting cooperation with Iran
• US Treasury Department restored sanctions on a number of key Iranian sectors and activities on Nov. 5th
• Payment transfers at risks of not reaching Iranian beneficiaries
Analysis

• WP 2018-2020 General Annexes - List of countries eligible for funding
• GA Art. 21.7 Payments to the coordinator — Distribution to the beneficiaries: Coordinator must distribute the payments to the beneficiaries without unjustified delay

• Ongoing projects
• Projects under construction
PoCOsteo – The Story

The Challenge

• As a consequence of the ageing of the society, osteoporosis is becoming a major health concern in many parts of the world

• Until now, no adequate tools for early detection of individuals at risk of osteoporosis are available

The Solving Approach

• Development of a Point-of-Care tool for osteoporosis prevention, detection and treatment

• Validation of the tool in 2 hospitals (Graz and Tehran)

• Preparation of a business plan for the commercialization of the tool
# PoCOsteo – Project Details

- **Full Title**: *PoC in-office device for identifying individuals at high risk of Osteoporosis and osteoporotic fracture*
- **Instrument**: RIA - Research and Innovation action
- **Countries**: 7 partners from 6 countries (ES, DE, UK, AT, IR, BE)
- **Coordinator**: UNIVERSITEIT GENT, Belgium
- **Local Partner**: TEHERAN UNIVERSITY OF MEDICAL SCIENCES, Teheran, Iran
- **EU contribution**: 4 Mio. €
- **Duration**: October 2017 – September 2021
- **Website**: https://pocosteo.mijnweblayout.be/about-2/
URBiNAT – The Story

The Objective

• Regeneration and integration of deprived districts in urban development through Nature-Based Solutions (NBS)

• The main goal is the full physical, mental and social well-being of citizens

The Solving Approach

• Active involvement of communities in the design and implementation of healthy corridors

• Crossing citizens’ knowledge with professional and scientific practices

• The social, economic and urban impacts will be measured and replicated by the URBiNAT Observatory
URBiNAT – Project Details

<table>
<thead>
<tr>
<th><strong>Full Title</strong></th>
<th><em>URBiNAT - Healthy corridors as drivers of social housing neighbourhoods for the co-creation of social, environmental and marketable NBS</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Instrument</strong></td>
<td>IA - Innovation action</td>
</tr>
<tr>
<td><strong>Countries</strong></td>
<td>27 partners from 12 countries (PT, FR, BG, IT, BE, SI, DK, SE, ES, DE, IR, CN)</td>
</tr>
<tr>
<td><strong>Coordinator</strong></td>
<td>CENTRO DE ESTUDOS SOCIAIS, Portugal</td>
</tr>
<tr>
<td><strong>Local Partner</strong></td>
<td>IRAN CHAMBER OF COMMERCE, INDUSTRIES, MINES AND AGRICULTURE, Teheran, Iran</td>
</tr>
<tr>
<td><strong>EU contribution</strong></td>
<td>13 Mio. €</td>
</tr>
<tr>
<td><strong>Duration</strong></td>
<td>June 2018 – May 2023</td>
</tr>
<tr>
<td><strong>Website</strong></td>
<td><a href="https://urbinat.eu/">https://urbinat.eu/</a></td>
</tr>
</tbody>
</table>
Solution or conclusion

• No evidence the issue was solved for projects under construction
• Linked third party (Art 14.a) to be involved in one of the ongoing projects

• Impact of the rule on project Coordinators
• Impact of the rule on potential participants
• Impact on the participation of Iranian partners and the implementation of the cooperation agreement EU-Iran
NCP Academy Meet & Exchange workshop 16/04/2019

Presentation of Real Cases related to the implementation of Legal & Financial rules of proposals/projects with International Partners

Martin Baumgartner
Austrian Research Promotion Agency
Description of situation

• Coordinator AT org., partner US university

• US university’s personnel costs not accepted by EC = “system for charging personnel costs to the project does not comply with the applicable rules....an effective time-recording system is a requisite for the eligibility of the costs.”

• => EC asked for carrying out an alternative assessment;
Analysis

**Relevant rule:** Grant Agreement + time recording criteria (AGA)

**Who was involved?**
- EC PO and legal officer
- Legal department AT Org.
- Legal NCP AT
Solution / conclusion

• US Org. left project

Conclusion
✓ lot of communication!
✓ reallocation of work and budget

Time-sheets still an issue (not only for third countries)
L&F questions in International Cooperation
A real case in MSCA

Natacha Wittorski
NCP L&F, Fonds de la recherche scientifique-FNRS
Marie Skłodowska-Curie actions

- Supporting researcher **training and career** development
- Funding excellent research, **bottom-up**
- Promoting researcher **mobility**
- Stimulating **international, inter-sectoral and interdisciplinary** cooperation
- Impacting researcher **careers**, organisations, structures

European Researchers' Night
MSCA-RISE and secondment of researchers from TC institutions in beneficiary in Europe (MS-AC)

• Partner organisations established in third countries are expected to continue paying the researcher's salary (or any other type of remuneration) during his stay abroad

• The host organization in Europe pays him a Staff member unit cost Top-up allowance person/month of 2100 € per month to support travel, accommodation and subsistence costs

• Secondment of min. 1 month, max. 12 months, can be split in several stays
Challenges

• How to pay the money to the researcher (who is not staff member of the beneficiary)?
  • Risk of being qualified as revenue by the Belgian tax authorities

• Visa
  • To apply for a visa for a stay longer than 3 months in Belgium, need to prove « sufficient revenue » in the country of origin
Current solution = secondment limited to 1 month

• No repetition of the payments
• Ok for visa

BUT
• Duration of the secondment not adapted to the project’s needs
• Unfair for researchers with multiple secondments (travel included in 2100 €)
NCP Academy Meet & Exchange workshop 16/04/2019

Presentation of Real Cases related to the implementation of Legal & Financial rules of proposals/projects with International Partners

DLR PT, Nicole Schröder (LLM)
Description of situation

• What happens if a beneficiary not receiving funding does not fulfill its tasks according to annex 1 of the Grant Agreement?

• In a running project one of the third country beneficiaries not receiving EU Funding lost its national funding and couldn’t carry out its project tasks anymore. Its task was essential for the project.

• No more additional EC budget possible. No budget left in the project.
Analysis

• Describe the relevant rules for participation / Articles of Grant Agreement / Consortium Agreement / Coordination Agreement / other legal aspects from H2020 and/or from the Third Country’ national regulations (Art. 9, 41 GA, consortium agreement)

• Mention who was consulted to discuss the case (NCPs, law offices, ECs Portal, Enquiry Services,...)
| Option 1 — IS NOT coordinator and does not have third parties receiving EU funding |  |  |  |  |  | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Option 2 — HAS linked third parties receiving EU funding | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Option 3 — IS coordinator and does NOT have linked third parties receiving EU funding | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |

* with the possible exception of additional exploitation obligations, which is a suboption to be activated where applicable
MULTI-BENEFICIARY: ARTICLE 41 — DIVISION OF BENEFICIARIES’ ROLES AND RESPONSIBILITIES

• **41.1 Roles and responsibilities towards the [Commission][Agency]**

• The beneficiaries have full responsibility for implementing the action and complying with the Agreement.

• The beneficiaries are jointly and severally liable for the technical implementation of the action as described in Annex 1. If a beneficiary fails to implement its part of the action, the other beneficiaries become responsible for implementing this part (without being entitled to any additional EU funding for doing so), unless the [Commission][Agency] expressly relieves them of this obligation.

• The financial responsibility of each beneficiary is governed by Article 44.
Solution or conclusion

• In case of breach of any of their obligations, their participation may be terminated and any of the other Chapter 6 measures (except for rejection of costs or recovery) may be taken.

• Examples:
  • 1. A beneficiary not receiving EU funding does not carry out the tasks attributed to it in Annex 1. At the end of the action, only part of the action is implemented the Commission may, at the payment of the balance, if the action tasks were not properly implemented, reduce the grant awarded in accordance with Article 43.
  • 2. In addition, the beneficiary has breached fundamental ethical principles it may be excluded from all contracts or grants financed by the EU or Euratom for a maximum period of five years (see Article 45).

• Best practice: The Commission/Agency will assess the consequences of breach of obligations or improper implementation by beneficiaries not receiving EU funding at action level (not at beneficiary level). Therefore, beneficiaries are advised to foresee this situation — before signature of the GA — in the consortium agreement. (p.130 AGA)
Solution or conclusion

• Describe if and how the case was solved –> changed the partner, budget shifting, amendment of the GA and accession of new partner

• If solved, do you consider this as a good practice to be generalised – keep flexible in your project and be prepared for the unforeseeable

• If not solved, what is the impact of the existing rule on (potential) Horizon 2020 projects -> you have to foresee this possibility in your consortium agreement or cope with it according to the GA rules
NCP Academy Meet & Exchange workshop 16/04/2019

Presentation of Real Cases related to the implementation of Legal & Financial rules of proposals/projects with International Partners

Agriculture and Agri-Food Canada (AAFC)
Dr. Sara Sarkar
Description of situation

• AAFC researcher was invited to participate in a Societal Challenge 2 (Food Security, Sustainable Agriculture and The Bioeconomy) Horizon2020 project proposal by EU partners

• Partners include public institutions from France, Germany, Ireland, the Netherlands, Italy, Spain, Austria and others as well as private companies

• We knew going in that intellectual property protection might be an issue, but were hopeful that this could be put in place at the agreement stage
Analysis

• Canada was required to sign up to the Electronic portal by signing a Declaration of Honour
  • Issue: EC required the appointment of a contact at the highest level of government instead of at senior management level
• As “International Partner” through article 14.a of the Grant Agreement, Canada was not required to sign the Grant Agreement, but participate as a third party via MOU with the project coordinator and sign the Consortium Agreement.
  • Issue: MOU is required by EU partner to be legally binding
  • Issue: Consortium Agreement makes reference to Grant Agreement clauses that are not acceptable to Canada e.g. Brussels law and financial audits
Analysis (cont’d)

• Consulted: EC Research IT Helpdesk, Project Coordinator, AAFC Office of Intellectual Property, AAFC Legal Affairs, Global Affairs Canada NCP, Global Affairs Canada Legal Affairs, other science-based departments
Current status

• Partners are proceeding with collaboration but the case has not been solved.

• The impact of the existing rules on existing H2020 projects is that they are in limbo and currently not protected. For future H2020 projects, there is a real risk that AAFC will not be able to participate.
## Current Status of AAFC-H2020 agreements

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