
ANNEX

Replies to the questions from the PL Legal and Financial NCPs

Introduction

As a preliminary remark we confirm you that civil law contracts do not qualify as personnel costs unless the factual working relationship between the person and the entity fulfils the conditions of Article 6.2.A.2 (natural persons working under a direct contract). Otherwise, those costs qualify instead as purchase of services or subcontracting, depending if the work covered by the contract is or not a task of the action as described in Annex 1.

Also, I would like to confirm that the cost eligibility conditions set up by national funders for their calls cannot be considered as a regulatory requirement for the purpose of defining the *national projects reference*. They are not a law or equivalent regulatory requirement.

Similarly the simple reference in the internal rules of the beneficiary to the funder's rules cannot be considered as a sufficient basis to use the internal rules to determine the *national projects reference*. In other words, stating that the remuneration will follow the cost eligibility rules of the funder cannot be regarded as a usual practice for remuneration in national projects. By contrast, it would be acceptable that the internal rules fix a remuneration practice which applies to national projects except when it is not compatible with the rules of the national funder.

For example: the internal rules could provide that the hourly rate for work in national research projects will be 180 % of the basic salary, unless the national funder accepts only a lower amount. It may happen then that under a given national project only 140 % is eligible and, so, only 140 % is paid to employees participating in that project. This situation would not prevent the beneficiary to consider that 180 % is the *national projects reference* in Horizon 2020, for as far that it has paid that 180 % in at least one project funded by national schemes.

Finally, please note that to decide the *national projects reference* you do not need to assess if bonuses paid in national projects were based in objective conditions. For example if the beneficiary calculates the national project reference based on the average salary of the previous year it may include all bonuses the person received for work in national projects, regardless if they had or not objective criteria for deciding the precise level paid to the individual.

By contrast, the beneficiary needs to have objective criteria in their internal rules for the bonuses that it charges to the Horizon 2020 action. This is a horizontal rule that applies both to bonuses (or part of them) that qualify as basic remuneration (i.e. because they are below the *national projects reference*) and to bonuses qualifying as additional remuneration. We would strongly suggest you to continue encouraging Polish beneficiaries to define in their internal rules objective conditions triggering the bonuses. If there are no objective conditions, the related bonuses may be rejected even when they qualify as basic remuneration. For example, it may be possible to define a fixed bonus (e.g. x % of the basic salary) depending on the staff category of the person, its level of responsibility in the project, the characteristics of the project or other objective elements. Please note that if the internal rules set up a range instead of a fixed bonus (e.g. between 500 and 1000; between 10 % and 50%) but there is no

objective conditions to define the amount to be paid to any individual, then the bonus may still be eligible, but only up to the level of the lowest bonus paid to any individual in that group.

1. National reference salary level

Question: Will the amounts paid in national projects, based on the supplementary civil law contracts, be accepted for establishing the national reference salary level?

Regarding civil law contracts, there are two possible situations:

Case 1. The contract fulfils the conditions of Article 6.2.A.2 – natural persons working under a direct contract.

Case 2. The contract does NOT fulfil the conditions of Article 6.2.A.2.

In case 1 both the remuneration paid under those contracts and their productive hours would be considered as part of the personnel costs. By contrast, in case 2 they would have to be treated instead as subcontracting or purchase of services; and so excluded from the personnel costs.

However, if under national grants it is authorised to remunerate staff participating in the research projects via civil law contracts, then the beneficiary may also use amounts paid under those contracts to determine the *national projects reference*.

Nevertheless, as you know the *national projects reference* must be determined as an hourly rate. In that context, note that if the civil law contract does not set out the number of hours to be worked, the productive hours corresponding to that contract would be a pro-rata of 1720. For example:

A contract with a total remuneration of 6 000 EUR which runs from 1 January to 31 March and does not set up the time to be worked:

Hourly rate resulting from that contract = $6000 / (1720/12 * 3) = 6000 / 430 = 13.95$

If the contract does not establish neither the hours worked nor the duration of the contract then that contract cannot be used to calculate the *national projects reference*, because it is not possible calculate its hourly rate.

Similarly, please note that if the project remuneration is paid on the basis of a lump sum bonus (i.e. a fixed extra salary under the employment contract but not linked to the hours worked) the same calculation above would apply for the *national projects reference*. In practice, to calculate the *national projects reference* the lump sum bonus would have to be divided by a pro-rata of 1720 hours corresponding to the period covered by the bonus (e.g. monthly lump sum bonus would be divided by 143.33; which is $1720/12$).

Question: If the amounts paid in past are in line with the new internal regulations introduced by the beneficiary, may they be accepted by the EC as amount actually paid at least once for work in a national project before the submission of the H2020 proposal? Or in order to be taken into account they must be paid after the internal regulation is introduced?

We can only take into account the internal rules applicable at the moment when the payments were done. It is not possible to accept internal rules retroactively unless they are applied also retroactively within the entity (i.e. the remuneration of employees is regularized retroactively in accordance with the new internal rules).

Question: How about if there is practice of beneficiary to pay additional amounts which are not written down in any internal regulation? In such a case if beneficiary write down this practice into internal rules will it be possible for this beneficiary to use as a reference amounts paid before the regulation was written down?

Unfortunately not. The same logic that in the question above applies to this case. We can only take into account the internal rules applicable at the moment when the payments were done.

Question: May mentioned above kind of civil law contracts be included into the calculation of total annual personnel costs of a person?

Only costs qualifying as personnel costs can be taken into account to calculate the *national projects reference* based on the average of the previous year. Therefore, those civil law contracts which do not fulfil the provisions of article 6.2.A.2 cannot be included in the calculation.

Question: If the organisation introduces internal regulations and the amounts paid before are in line with these regulations, may they be included into the total annual personnel costs of a person?

For the purpose of calculating the *national projects reference* based on the average of the previous year the new internal regulations are not relevant. In general, all the remuneration received by the person qualifying as personnel costs can be included in the calculation of the average except:

- remuneration paid for work in Horizon 2020 actions;
- remuneration paid based on civil law contracts which do not fulfil the provisions of article 6.2.A.2 (because it would not qualify as personnel costs);
- dividends paid to the person and any bonus paid based on commercial targets or fund raising targets (e.g. bonus for obtaining a grant).

2. "Premia na Horyzencie"

Question: Could you please confirm, that “Premia na Horyzencie” (PnH) may be the part of the reference on the level of remuneration in H2020?

Amounts paid on the basis PnH may not be used for the *national projects reference*. The reason is that *national projects reference* must correspond to the amount the beneficiary would pay for time worked in projects funded by national schemes. However, in the case of PnH, and although the funding scheme is national, it does not remunerate work in national projects. Instead, the PnH complements the salaries paid for work in Horizon 2020 actions. Therefore, PnH does not fulfil the conditions to be used as the *national projects reference*.

Question: is it possible to include “Premia na Horyzencie” (PnH) funds to the average remuneration of the employee in the previous financial year (option where it’s not possible to find the proper reference in national funding scheme)?

When the hourly rate for national projects has to be calculated based on the average remuneration of the employee in the previous year, the beneficiary must remove the following items from the calculation:

- the remuneration paid to the person in that year for work in Horizon 2020 actions, and
- the number of hours worked in Horizon 2020 actions by the person in the year.

PnH are paid to the researchers to complement the salary they receive for work in the Horizon 2020 project. Therefore, the PnH may **not** be included in the calculation of the average for the purpose of calculating the *national projects reference*. Otherwise the calculation would be biased as the hours worked in Horizon 2020 action would be removed in full in the denominator, but part of the remuneration paid for those hours would be kept in the numerator (the PnH).

3. In house consultants

Question: If the civil-law contract fulfils the requirements of H2020 programme can we declare these costs as personnel?

We understand that the case you describe is that of persons who are NOT employees of the beneficiary but who work for it under a direct contract (i.e. not to persons who have at the same time an employment contract AND another contract with the same entity).

In that case, the costs of that person may be declared as personnel cost if:

- The contract is between the beneficiary and the natural person (i.e. not with another legal entity which employs or which is owned by that natural person).

- The factual working relationship between the beneficiary and the natural person fulfils the conditions of Article 6.2.A.2 – Natural persons working under a direct contract.

The fact that the natural person issues an invoice to the beneficiary for its remuneration has no impact on the assessment, for as far as the invoice is issued at the name of the natural person, not at the name of a different legal entity.