

Additional questions from Poland

1. Objective conditions/National project reference

As indicated in the Annex to your reply “*Finally, please note that to decide the national project reference you do not need to assess if bonuses paid in national projects were based in objective conditions*”.

We understand that this comment refers to the project reference based on the average salary of the previous year and also to the situation when the national project reference is based on the internal rules of the organisation. Could you kindly confirm. Our doubts are caused by the example included which concerns only the project reference based on the average.

At the same time we would like to stress out our understanding that for bonuses charged for H2020 action objective criteria are necessary and we will continue encouraging Polish beneficiaries to define appropriately their internal rules. Our question refers directly to the national project reference.

Reply: We confirm that for the purpose of determining the national projects reference (NPR) the beneficiary does not need to assess if the bonus paid in national projects was based on objective conditions. This applies both when the NPR is determined using the average salary of the previous year and when it is based on the internal rules of the beneficiary. An example of this situation would be the case where the internal rules allowed for the payment of a bonus for projects but they did not include objective criteria to determine the amount of that bonus.

Please note that this does not imply that the basic remuneration resulting from that NPR becomes automatically eligible. In that sense we need to make the distinction between:

- A. the purpose of establishing a 'national projects reference'; 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 cost eligibility condition that applies both to bonuses (or part of them) that qualify as basic remuneration and to bonuses that qualify as additional remuneration.

In this respect, the beneficiary may identify the basic remuneration by comparing the remuneration paid in the action with the NPR paid in accordance with the internal rules, even if those rules did not have objective conditions. However, if that 'basic' remuneration paid for the Horizon 2020 action includes a bonus not based on objective conditions (e.g. the internal rules have not been updated to include those conditions), then such bonus would be ineligible even when it qualifies as basic remuneration.

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2. Objective conditions /National project reference based on the internal rules

It is the usual situation in many Polish organisations that the limits for the supplementary remuneration are defined in the regulation (e.g. “*The supplementary remuneration for the academic teacher may not be higher than 300% of the basic salary*”) and the exact amount to be paid for the particular employee is decided by the management of the organisation. The criteria to do so are usually not written down. In many cases the amounts are based on the rules of national fund providers.

If it is NOT necessary for deciding the national project reference to assess if bonuses paid in national projects were based in objective conditions or not, we understand that it is possible to establish the national project reference based on regulations like cited above (e.g. up to 300%) and the amounts which were paid for projects within the national schemes in past.

The issue is that as the exact amounts paid were decided by the management or follow the eligibility rules of national funders, they may differ a lot. In practice it is problematic to decide which level should be applied as the national reference. Our question is: would the highest amount paid in the past to the staff category the person belongs (taking into account type of project /work that is closest to the H2020 action) be acceptable? Could you kindly comment on that.

As mentioned before we will be encouraging the beneficiaries to rearrange their regulations and define the objective conditions for project supplementary payments, but in order to trigger that process it is very important that they have, based on present circumstances, the possibility to decide the national project reference in order to get possibility of paying additional amounts in H2020 projects.

Reply: Yes, it is possible to use as NPR (based on the internal regulations) in your example the highest amount which was paid before the submission of the proposal in the staff category the person belongs to for work in similar national projects. This would be so irrespectively if the internal regulations included objective criteria (but provided that the internal regulations explicitly set up a frame for those bonuses).

However, and as explained above, if the beneficiary intends to use its internal rules for the reference of basic remuneration it needs to have 'objective criteria' in the internal rules for the bonuses that it wants to charge to the Horizon 2020 action.

'Objective criteria' refer to elements that are not subject to discretionary decisions (i.e. the bonuses must not be paid to the employee at the sole discretion of the management).

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3. Civil law contracts/National project reference

Based on your explanation we understand that even if the civil law contract does NOT fulfil the conditions of Article 6.2.A.2 , the beneficiary may also use amounts paid under those contracts to determine the national project reference in case that under national grants it is authorised to remunerate staff participating in the research projects via civil law contracts.

But we believe that this possibility applies only to the situation when the national project reference is based on the internal rules of the organisation and does not apply when the national project reference is based on the average of the previous year. Those civil law contracts which do not fulfil the provisions of article 6.2.A.2 can't be included into calculation based on the average. Is our understanding correct?

Reply: Your understanding is correct. As explained in the Annotated Grant Agreement (AGA) in that case the NPR is calculated using '*the average remuneration of the employee in the previous financial year.*'

In that context, if the civil-law contract does not fulfil the conditions of Article 6.2.A.2, then:

- the person does not qualify as an employee under that contract, and
- the payments under that contract do not qualify as '*remuneration of the employee*'; neither as '*personnel costs*'.

Consequently, the amounts paid under those contracts cannot be included in the calculation of the NPR based on the average of the previous year.

4. National project reference based on the average

As indicated in the Annex to your reply “*For the purpose of calculating the national project 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*”

We understand that the internal regulations concerning remuneration paid in the project will not be checked in this case? Would it be acceptable if the remuneration is paid based on the employment contract (equivalent) or civil law contract fulfilling the provisions of article 6.2.A.2, but decided only on discretion of the management, without existence of any adequate internal regulations?

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Reply: The possibility to calculate the national project reference on the average of the previous year is not an option *per se* but is the alternative offered to beneficiaries who precisely do not have any applicable national law or internal rules.

Therefore, in order to use the average, the beneficiary should not have either relevant applicable national law or internal rules setting the remuneration for national projects. In that context, the salaries paid could be included in the average even if they were decided only on the discretion of the management and this with the exceptions explained in our previous reply (i.e. remuneration for work in H2020 action, civil law contracts not fulfilling article 6.2.A.2, dividends, etc.)

5. As indicated in the Annex to your reply *"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 project reference..."*

Is it obligatory that this information is written into the contract, may it be acceptable if it is clearly indicated somewhere else, for example in the project proposal or provisions of the national fund provider?

Reply: Generally speaking, it is expected that, if this information exist somewhere else and it is applicable to the contract, this information would be repeated again in the contract.

Yet, it may be possible that the contract does not explicitly provide for this information but rather refers to other documents that specify rules applicable to it. For instance, it may be possible that the contract does not provide for an explicit duration (i.e. starting date and end date mentioned) but rather refers to the duration of the project approved by the national fund provider (e.g. the contract is for the duration of project X). To be acceptable, the reference must be made to an official document which cannot be unilaterally modified by either the beneficiary or the person.

Conversely, if there are absolutely no cross-references available in the contract allowing for determining with clarity this information, it would not be possible to calculate the national projects reference on that basis.