

Non-H2020 EC funding Legal, financial and administrative issues

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EU programmes – research & innovation (R&I) activities

'Fully' R&I -Horizon 2020

? R&I- DG Justice; DG Health & Food Safety

'Connected' to R&I –Erasmus+

EU Funding for R&I activities

Horizon 2020

- **H2020- Largest EU Programme *specifically supporting R&I activities* – 9 DGs involved**

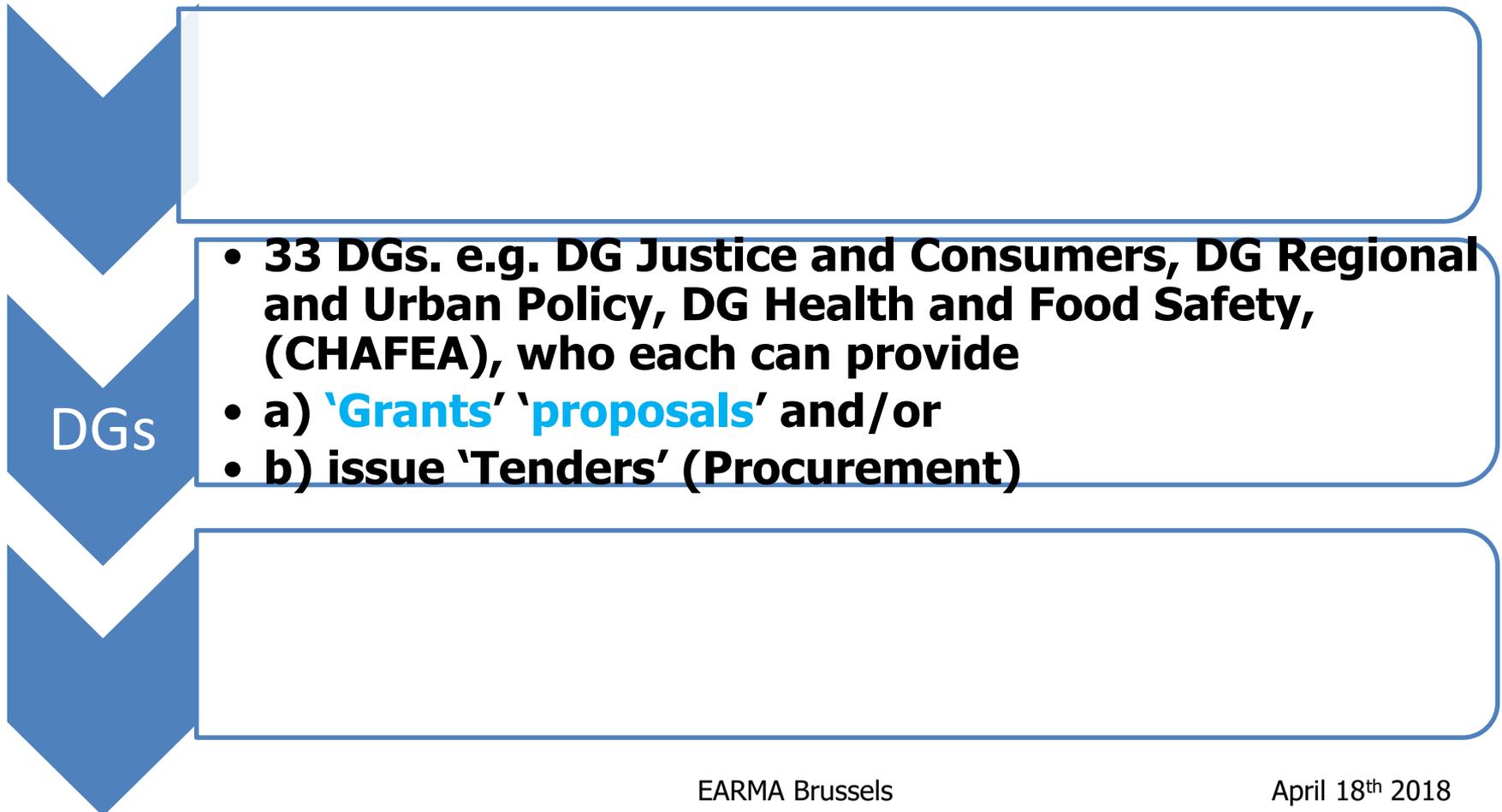
DGs

- **33 DGs. e.g. DG JUST, DG SANTE (CHAFEA), DG EAC (EACEA), DG REGIO, DG HOME who each can provide**
 - a) 'Grants' 'proposals' and/or
 - b) issue 'Tenders'

Agencies

- **Connected to R&I activities – often administered by agencies in member countries e.g. some Erasmus+**

EU Funding for R&I activities



Issues for Research Development Office / Institution?

- 33 Directorates General in the EC some of which provide grants or tenders . http://ec.europa.eu/about/ds_en.htm
- Primary objectives of the programmes are often to support policy objectives, education or training and **not to carry out research?**
- Legal and financial rules vary, co-funding is usually required and financial joint and several liability is often an issue.
- Grant agreements are often not easy to obtain so checking of the legal and financial rules is difficult before submission.
- Submission systems and background information required varies. Reporting requirements different.

Examples of some programmes

Focus on legal issues

Conclusions and recommendations

DG REGIO (Regional and Urban Policy) European Regional Development Fund INTERREG

Objectives

- **Research and innovation action** : partners can work on strengthening research and innovation infrastructures and capacity.

Issues

- Model Grant Agreement –multibeneficiaries Article II.8.3 Rights of use of the results and of pre-existing rights by the Union “
- Financial return not good: cofounding (15-25%) eg may be difficult to get enough PI time and time sheet requirements. No pre-financing-. each project must pre-finance its activities until the approval of the six-monthly progress reports. Indirect costs low (15%) with listing of types of office and administrative
- Burdensome reporting.
- Comment on TCD issues

DG JUST (Justice and Consumers) Justice Programme

Promotes

- **judicial cooperation**
- **judicial training**
- **effective access to justice**
- **initiatives in the field of drugs policy**

Types of actions funded

- **Training activities** (staff exchanges, workshops, development of training modules,...)
- **Mutual learning**, cooperation activities, exchange of good practices, peer reviews, development of ICT tools...
- **Awareness-raising activities**, dissemination, conferences,...
- Support for main actors (key European NGOs and networks, MS authorities)
- **Analytical activities** (studies, data collection, development of common methodologies, indicators, surveys, preparation of guides)

DG JUST (Justice and Consumers) Justice Programme Issues

Example: project involved drug synthesis and analysis

Issues

- **Various options in the grant agreement – option 2 Financial joint and several liability with a cap on repayable sum**
- **20% co-funding requirement**

PI was advised of issues including co-financing and possible joint and several financial liability.

Coordinator confirmed option 2 would apply

Could not meet the 20% co-funding requirement

PI withdrew

DG SANTE (Health and Food Safety)

3rd Health programme

- Objectives:

Promote health, prevent diseases and foster supportive environments for healthy lifestyles taking into account the 'health in all policies' principle

Protect Union citizens from serious cross-border health threats

Contribute to innovative, efficient and sustainable health systems

Facilitate access to better and safer healthcare for Union citizens

- Issues

Co-financing rule: you need to have your own financial resources (or financial resources of third parties). Funding rate **60 - 80 %** of the eligible costs.

Non-cumulate rule: each action may give rise to the award of only one grant to any one beneficiary

DG SANTE (Health and Food Safety)

3rd Health programme: Issues

CHAFEA – Consumers, Health, Agriculture, and Food Executive Agency - manages this programme

Grant agreement used by CHAFEA since 2014 now gives an option for a partner to limit possible recovery to its own debt. Nevertheless the **coordinator is always fully liable for repaying debts of the consortium** (under the Agreement), even if it has not been the final recipient of those amounts.

Co-funding requirements are often a difficulty

Indirect costs = 7%

Example: Clinical PI sought involvement in Clinical European Reference Network. Cofunding in other EU countries provided by state health service. TCD could not be involved because of financial liability. Cofunding difficult

DG ENV (Environment) LIFE programme

Objectives

- contribute to the **implementation, updating and development of EU environmental policy**

Activities

- Focuses on **pilot projects or demonstration projects** with EU added value (**research and infrastructure are not eligible for funding**).
- Shape **best practice** and **inform policy**.
- Ideally they should have a legacy and be self-sustaining (by NGOs or community groups formed for the implementation of the project).

Issues

- Projects funded in Ireland on environmental innovation and nature conservation. However projects are not research oriented.
- These Irish LIFE projects represent an investment of €130 million, of which €58 million has been contributed by the EU for 58 projects funded since 1992

What are the possible legal issues?

- Liability –
 - Financial joint and several liability
 - Liability for recoveries
 - Liability for damages
- Liability of Coordinator only
- Governing law of agreement
- Declaration of Honour
- IP (Intellectual Property) warranty



DG Justice

Justice Programme & Rights, Equality and Citizenship Programme (JUST/REC MGA — Multi) -Version 2.0 30 September 2016

Issue –Financial Joint and Several liability

28.1.1.

(c) [OPTION 1 if the Commission requires ‘unconditional joint and several liability’ of other beneficiaries: by holding the other beneficiaries jointly and severally liable — up to the maximum grant amount set out in Article 5.1]

[OPTION 2 if the Commission requires ‘limited joint and several liability’ of other beneficiaries (with individual ceilings): by holding the other beneficiaries jointly and severally liable — up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (as last amended; see Annex 2)]

[OPTION 3 if Commission accepts individual financial responsibility: not applicable];

DG Regio (Regional Urban Policy)

- Proposals
- **Model Grant Agreement –Multibeneficiaries- Nov 2016**
- Special Conditions: Article 1.xxSPECIAL PROVISIONS ON THE FINANCIAL RESPONSIBILITY FOR RECOVERIES
- As an exception to point (c) of the third paragraph of Article II.26.3, the beneficiaries are jointly and severally liable for repaying any debt under the Agreement up to the maximum amount of the grant. The beneficiaries are also jointly and severally liable for interest on late payment, when applicable.

Erasmus+

Mobility Projects -Key Action 1

- Multibeneficiary Grant Agreement (MGA)

Coordinator submits on behalf of consortium to own implementing agency.

Result that governing law of the agreement is of that country rather than EU/Belgian law.

If dispute, then no guarantee proceedings are in English; lack of knowledge of the governing law?

Declaration of Honour

- Implementation of project, "*poorly, partially or late*"– recovery of amount from coordinator.
- **Note: Recovery from coordinator**

DG Environment

- Grants:
- Call for proposal "*Implementation of the Second Cycle of the Marine Strategy Framework Directive: achieving coherent, coordinated and consistent updates of the determinations of Good Environmental Status, initial assessments and environmental targets*" - "DG ENV/MSFD Second Cycle"
- Model of standard Grant Agreement
plus 'Declaration of Honour'

Declaration of Honour

- Multibeneficiary Agreement – MAY BE REQUIRED
- The undersigned X authorised to represent the consortium declares that:
- each applicant is fully eligible in accordance with the criteria set out in the specific call for proposals;
- the applicants have the financial and operational capacity to carry out the proposed action;
- declares that none of the applicants have received any other Union funding to carry out the action subject of this grant application and commits to declare immediately to the Commission any other such Union funding it would receive until the end of the action.
- **The applicant[s] may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.**
- NOTE: Absolutely essential to obtain signed Declaration of Honour from each of other beneficiaries if you are authorised to represent consortium

IP Conditions and Warranty

Jean Monet Chair - Warranty

- Clause 8.2 stipulates that where pre-existing industrial and IP rights are used during the implementation of the Grant –
- shall ensure that it has all these rights and Clause 8.3 (g) it shall *'warrant that the agency or the Union has the right to use and pre-existing rights which have been included in the results of the action.'*

DG Regio MGA Nov 2016

II.9.2 Pre-existing rights: If the Commission sends the beneficiaries a written request specifying which of the results it intends to use, the beneficiaries must: (a) establish a list specifying all pre-existing rights included in those results; and (b) provide this list to the Commission at the latest with the request for payment of the balance. **The beneficiaries must ensure that they or their affiliated entities have all the rights to use any pre-existing rights during the implementation of the Agreement.**

Note Special Conditions: EU right to edit/rewrite/modify the content of the Results

Participant Guarantee Fund (PGF)

- Present for FP7- now in H2020 - "The Fund"
- Legal basis: Rules for participation H2020 of 11/12/13
- *Article 38 ("the Fund") is hereby established and shall cover the risk associated with non-recovery of sums due to the Union under actions financed through grants by the Commission under Decision No 1982/2006/EC and by the Commission or Union funding bodies under "Horizon 2020" according to the rules set out in this Regulation.*
- Article 38 (5) "Participants in actions under Horizon 2020 whose risk is covered by the Fund *shall make a contribution of 5 % of the Union funding for the action.* At the end of the action the amount contributed to the Fund shall be returned to the participants, via the coordinator."

Participant Guarantee Fund (PGF)

STATISTICS of PGF FP7/H2020 (as of 31.01.2016)

Contributions 2 764 498 876 EUR

Reimbursements 1 018 137 915 EUR

Interventions 44 798 650 EUR

Interests available 62 848 583 EUR for interventions

Source ["H2020 Participant Guarantee Fund H2020 COORDINATOR'S DAY 24 FEBRUARY2016"](#) presentation- Alba MARINO ENRIQUEZ and Mario PICARELLA

Conclusions (Research Office Perspective)

- PI does not understand that their research ambitions may not be facilitated by the aim of the programme
- Submission requirements include many details not usually required
- Co-funding and lower overheads are not understood
- Post award delivery and implementation burden is severely underestimated
- No consistency in contractual requirements – financial joint and several liability may not be covered by university insurances; IP provisions differ;
- Declarations of Honour – if authorised to represent the consortium must get signed DoH from all partners

Conclusions and Recommendations

- Consistency of approach to contractual and financial provisions in Research and Innovation activities – whether H2020/FP9 or spread across DGs and other implementing bodies.
- Appraisal for a common approach to indirect costs (25%?)
- Extended use of Participant Portal for submission of non-H2020 programmes.
- Extension of Horizon 2020 –Participant Guarantee Fund (PGF) to include ‘grants’ from other DGs and implementing agencies.