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EUROPEAN COMMISSION

Brussels, 24 January 2011
C(2011) 174 final

COMMISSION DECISION

of 24 January 2011

on three measures for simplifying the implementation of Decision No 1982/2006/EC of the European Parliament and of the Council and Council Decision No 970/2006/Euratom and amending Decisions C(2007) 1509 and C(2007) 1625

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)¹,

Having regard to Council Decision No 970/2006/Euratom of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)²,

Having regard to Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)³, and in particular Articles 19(8) and 31(3) thereof,

Having regard to Council Regulation (Euratom) No 1908/2006 of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007 to 2011)⁴, and in particular Articles 18(7) and 30(3) thereof,

Whereas:

- (1) In its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 29 April 2010 entitled "Simplifying the implementation of the research framework programmes"⁵,

¹ OJ L 412, 30.12.2006, p. 1.

² OJ L 400, 30.12.2006, p. 60.

³ OJ L 391, 30.12.2006, p.1.

⁴ OJ L 400, 30.12.2006, p.1.

⁵ COM(2010) 187 final.

the Commission proposed a series of actions designed to simplify the current rules on the implementation of those programmes.

- (2) In the Communication the Commission put forward simplification measures concerning the acceptance of average personnel costs methodologies, in particular, the use of scale-of-units to determine the value of the work carried out in Seventh Framework Programmes by owners of small and medium-sized enterprises (SMEs) or other natural persons not receiving a salary and the establishment of an internal committee in order to achieve a uniform interpretation and application of the legal and financial rules in the implementation of the Seventh Framework Programmes.
- (3) Article 31(3) of Regulation (EC) No 1906/2006 and Article 30(3) of Regulation (Euratom) No 1908/2006 provide that in order to be considered eligible, costs incurred in the implementation of an indirect action must be actual. For that purpose, average personnel costs may be declared if they are consistent with the management principles and accounting practices of the participant and do not differ significantly from the actual costs.
- (4) Article II.14.1 of the model Grant Agreement adopted by Commission Decision C(2007) 1509 of 10 April 2007 and Article II.14.1 of the model Grant Agreement for 'frontier' research actions adopted by Commission Decision C(2007) 1625 of 16 April 2007 (hereinafter "the model Grant Agreements") provide that beneficiaries may opt to declare average personnel costs if based on a certified methodology approved by the Commission and consistent with the management principles and usual accounting practices of the beneficiary.
- (5) Commission Decision C(2009) 4705 of 23 June 2009 sets out interim acceptability criteria for average personnel costs methodologies. Those criteria are a pilot approach towards the gradual implementation of average personnel costs.
- (6) The results of that pilot approach have revealed that the requirements of the Commission were not in line with the usual accounting practices of a significant number of beneficiaries, in particular industrial partners, due to the restrictive criteria set out in Decision C(2009) 4705. This leads to a situation where those beneficiaries have to establish parallel accounting systems solely for the participation in Seventh Framework Programmes projects, which creates additional administrative costs.
- (7) The European Parliament Resolution of 23 April 2009⁶ on discharge in respect of the implementation of the European Union general budget for the financial year 2007 calls on the Commission to allow beneficiaries to use average personnel costs per cost-centre and to refrain from requesting individual costs of persons actively involved in a specific research project when not in line with the usual accounting practice of the beneficiary. This request is repeated in the European Parliament Decision on discharge in respect of the implementation of the European Union general budget for the financial year 2008⁷ and in the Parliament report on simplifying the implementation of the Research Framework Programmes⁸. Also, the European Court of Auditors, in its

⁶ OJ L 255, 26.9.2009, p.36.

⁷ DEC/2009/2068 (awaiting publication in Official Journal).

⁸ European Parliament report on simplifying the implementation of the Research Framework Programmes (2010/2079(INI)).

annual report concerning the financial year 2009⁹, states that the Commission has recognised that the acceptability criteria which it laid down for accepting certification of the cost methodology are too stringent for most beneficiaries and that the criteria do not correspond to common accounting practices in the industry, such as the use of average personnel costs by cost-centres, and in research organisations.

- (8) In its Conclusions of 12 October 2010¹⁰ the Council asked the Commission to accept the use of average personnel cost methodologies without delay, based on revised and more flexible acceptability criteria.
- (9) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the National Parliaments of 19 October 2010 entitled "The EU Budget Review"¹¹ identifies the general acceptance of the accounting practices of participants, including average personnel costs, as a key measure for simplification. The Commission considers that actual personnel costs are those resulting from the payroll records and statutory accounts of the beneficiary at entity level. Therefore, the methodology applied for the use of average personnel costs by the beneficiary should be based on the actual personnel costs as registered in its statutory accounts, which gives reasonable assurance on the absence of deviations with regard to the actual cost at the level of the legal entity.
- (10) This Decision provides for revised criteria for the acceptance of average personnel costs as eligible costs in the framework of the Seventh Framework Programmes. In addition, the obligation established in Article II.14.1 of the model Grant Agreements to submit a certified methodology on average personnel costs to be approved by the Commission should be removed. It should however remain an option for the beneficiary.
- (11) Article 30(1) of Regulation (EC) No 1906/2006 and Article 29 of Regulation (Euratom) No 1908/2006 provides that the European Union financial contribution may take the form of flat rate financing.
- (12) Where SME owners and other natural persons have worked in a project as beneficiaries and have performed tasks in accordance with the grant agreement, they should be remunerated for their work, even if the value of their work is not registered as a cost in their accounts. That remuneration should be based on the principles of fair retribution and on the legitimate expectations of the beneficiary. Currently, the value of this work can be reimbursed only if those entities ask for an ex-ante certification of an average cost methodology that has to be approved by the Commission. The certification of the methodology is a burdensome and costly procedure both for the entities concerned and the Commission, and only a very low number of certificates have actually been issued. This leads to the situation where SME owners or other natural persons work for the Seventh Framework Programmes projects, complete work packages and produce research results as agreed in the grant agreements but where the

⁹ OJ C 303, 9.11.2010, p. 1.

¹⁰ Council Conclusions of 12 October 2010 on raising the attractiveness of EU research and innovation programmes: the challenge of simplification.

¹¹ COM(2010) 700 final.

value of their work cannot be reimbursed because it is not registered as a cost item in their accounts.

- (13) Council Decision No 2006/973/EC of 19 December 2006 concerning the specific programme People implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)¹² sets out a system of flat rates per category, to be used for Marie Curie fellowships with full social security coverage. Those flat rates are specified in the annual Work Programme of the year of the publication of the call to which the proposal has been submitted. Those flat rates are aimed at researchers and are already in use within the Framework Programme for Research. Consequently, it is appropriate to apply them also to SME owners who do not receive a salary and other natural persons who do not receive a salary.
- (14) The flat rates which are of general use in the specific programme People, were determined in accordance with Article 165 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹³, on the basis of the costs or the category of costs to which they relate, established by statistical data and similar objective means, in such a way as to exclude a priori a profit.
- (15) The Commission is committed to ensuring that its organisational set up provides for uniform interpretation and application of the rules and procedures relating to projects financed by Decisions No 1982/2006/EC and No 970/2006/Euratom.
- (16) In order to enhance legal certainty and equal treatment of beneficiaries and their reliance on legitimate expectations, it is therefore appropriate to set up a Research Clearing Committee composed of the Directorates-General responsible for the implementation of indirect actions under the Seventh Framework Programmes with the mandate to take final positions on horizontal matters related to the implementation of the whole project cycle as well as to all management matters for which the usual working modalities between the services did not allow to reach a consensus.
- (17) Member States have been consulted on this Decision and have expressed a favourable opinion.
- (18) Decision C(2009) 4705 should be repealed.
- (19) Decisions C(2007) 1509 and C(2007) 1625 should be amended accordingly.

HAS DECIDED AS FOLLOWS:

CHAPTER 1

AVERAGE PERSONNEL COSTS

¹² OJ L 400, 30.12.2006, p. 272.

¹³ OJ L 357, 31.12.2002, p. 1.

Article 1

The following cumulative criteria for the acceptance of average personnel cost methodologies shall apply:

- (1) The average personnel cost methodology shall be the one declared by the beneficiary as its usual cost accounting practice; as such it shall be consistently applied to all indirect actions of the beneficiary under the Framework Programmes;
- (2) The methodology shall be based on the actual personnel costs of the beneficiary as registered in its statutory accounts, without estimated or budgeted elements;
- (3) The methodology shall exclude from the average personnel rates any ineligible cost item as defined in Regulations (EC) No 1906/2006 and (Euratom) No 1908/2006 and the model Grant Agreements established by Decisions C(2007) 1509 and C(2007) 1625 (hereinafter "the model Grant Agreements") and any costs claimed under other costs categories in order to avoid double funding of the same costs;
- (4) The number of productive hours used to calculate the average hourly rates shall correspond to the usual management practice of the beneficiary provided that it reflects the actual working standards of the beneficiary, in compliance with applicable national legislation, collective labour agreements and contracts and that it is based on auditable data.

Article 2

The criteria referred to in Article 1 shall apply without prejudice to the other eligibility criteria set out in the model Grant Agreements.

Article 3

The criteria referred to in Article 1 shall serve as the reference for the acceptance of average personnel costs charged under the grant agreement. In particular, those criteria shall be applied to the following:

- (1) The assessment of certificates on the methodology on the use of average personnel costs;
- (2) Financial audits carried out on beneficiaries charging average personnel costs, including under grant agreements signed before the adoption of this Decision.

Article 4

Personnel costs charged on the basis of methodologies which comply with the criteria referred to in Article 1 shall be deemed not to differ significantly from actual costs.

Article 5

Beneficiaries may opt to submit a certified methodology for approval by the Commission on the basis of the criteria referred to in Article 1. Such approval shall remain valid for the entire

duration of the Seventh Framework Programmes unless the methodology is altered by the beneficiary, or the Commission services notice weaknesses in the methodology during audits either as a result of inaccuracy, improper use or any other circumstance invalidating the basis on which the approval was granted.

CHAPTER 2

FLAT-RATE FINANCING OF SME OWNERS AND OTHER NATURAL PERSONS NOT RECEIVING A SALARY

Article 6

In all grants for indirect actions signed under the Seventh Framework Programmes, the European Union financial contribution related to the own personal work of owners of small and medium-sized enterprises (SMEs) who do not receive a salary and other natural persons who do not receive a salary shall take the form of flat-rate financing.

Article 7

1. The value of the personal work of SME owners who do not receive a salary and other natural persons who do not receive a salary shall be based on a flat rate to be determined by multiplying the hours worked in the project by the hourly rate to be calculated as follows:

{Annual living allowance for researchers with full social security coverage corresponding to the appropriate research category published in the 'People' Work Programme of the year of the publication of the call to which the proposal has been submitted / standard number of annual productive hours} multiplied by {country correction coefficient published in the 'People' Work programme of the year of the publication of the call¹⁴ / 100}

The standard number of productive hours is equal to 1 575. The total number of hours claimed for European Union projects in a year cannot be higher than the standard number of productive hours per SME owner/natural person.

2. The value of the personal work shall be considered as a direct eligible cost of the project.

Article 8

Upper funding limits set out in Article 33 of Regulation (EC) No 1906/2006 and Article 32 of Regulation (Euratom) No 1908/2006 shall apply to the amount calculated as set out in Article 7 in order to determine the European Union financial contribution.

¹⁴ For calls published in 2006 the flat rates to be applied shall be those of the People Work Programme 2007.

Article 9

1. Flat-rate financing shall also apply to SME owners who do not receive a salary and other natural persons who do not receive a salary under the Seventh Framework Programmes grant agreements already signed.
2. Where the Commission has accepted a certified methodology for average personnel costs submitted by the beneficiaries referred to in paragraph 1, those beneficiaries may continue to apply that certified methodology.

CHAPTER 3

RESEARCH CLEARING COMMITTEE

Article 10

1. A Research Clearing Committee is set up between the Directorates-General responsible for the implementation of indirect actions under the Seventh Framework Programmes.
2. The Research Clearing Committee shall take final and uniform positions on any horizontal matter related to the implementation of the whole project cycle as well as to all management matters on which the services concerned did not reach a consensus.

Article 11

The Research Clearing Committee shall be composed of the Directors-General of the Directorates-General for Research and Innovation, for Education and Culture, for Enterprise and Industry, for Information Society and Media, for Mobility and Transport, and for Energy, or one of their duly empowered representatives.

Article 12

1. The Research Clearing Committee shall be chaired by the Director-General of the Directorate-General for Research and Innovation or his or her representative.
2. The Research Clearing Committee may request the opinion of other Commission services, in particular the Legal Service, DG Budget and the Secretariat-General.
3. Decisions shall be taken by consensus and shall be binding on the Directorates-General referred to in Article 11, subject to the prerogatives of the Commission.
4. The final and uniform positions taken shall also be binding on the Executive Agencies which implement parts of the European Union Seventh Framework Programme.
5. A dedicated sector within the Directorate-General for Research and Innovation shall provide secretarial support to the Research Clearing Committee.

6. The Research Clearing Committee shall adopt its rules of procedure.

Article 13

Decisions C(2007) 1509 and C(2007) 1625 are amended as set out in the Annex to this Decision.

Article 14

Decision C(2009) 4705 is repealed.

Beneficiaries having obtained the approval of their average personnel costs methodology under the conditions defined in Decision C(2009) 4705 may continue to apply the approved methodology for the rest of the Seventh Framework Programmes or revert to their usual accounting practice if it complies with the criteria set out in this Decision.

Done at Brussels, 24 January 2011.

For the Commission
Máire GEORGEHAN-QUINN
Member of the Commission