

# REVIEW OF THE EU FINANCIAL REGULATION

## CONTRIBUTION OF THE HELMHOLTZ ASSOCIATION OF GERMAN RESEARCH CENTRES TO THE PUBLIC CONSULTATION

### The Helmholtz Association in brief

The Helmholtz Association of German Research Centres contributes to solving major challenges facing society, science, and industry with world-class scientific achievements in six research areas (Energy, Earth and Environment, Health, Key Technologies, Structure of Matter, Transport and Space). With 28,000 employees in 16 research centres and an annual budget of approximately 2.8 billion euros, the Helmholtz Association is Germany's largest scientific organisation and one of the most active participants in the EU Research Framework Programmes.

### Scope of the Helmholtz contribution

The Helmholtz Association welcomes the opportunity to support the Commission in its second triennial review of the Financial Regulation and its Implementing Rules. Our comments, which are offered within the framework of the public consultation to review the Financial Regulation, refer to the **funding of research and development** by the European Commission, in particular under the **research framework programmes**.

### Core messages

- Essential to the attractiveness and success of European research funding are **efficient and appropriate administrative conditions** for the beneficiaries. We therefore expressly welcome a critical review of the Financial Regulation that takes into account the special circumstances and needs of research.
- An **appropriate balance between risk and control, that includes the** optimal promotion of scientific objectives, should be the first priority. Clearly, **public funds must be**

appropriately used for specific, ear-marked purposes, and adequate oversight must be guaranteed. However, the costs of risk prevention must not be disproportionate to the benefits. In this equation, the enormous additional administrative burden of minimizing risk and its negative impact on both research in general and the attractiveness of the framework programme in particular must also be taken into account.

- In principle, beneficiaries should be permitted to use the **usual accounting and management principles and methods** used by their institutions for purposes of cost reimbursement (as outlined in Art. 172a, paragraph 1d of the Implementing Rules for the Financial Regulation). For whatever reasons, these principles and methods are frequently not accepted by the European Commission in practice. In such cases, the accounting principles and methods accepted for nationally funded projects must then be specially adapted to EU projects, which causes considerable additional administrative burden and costs. If the reasons for refusing to accept usual, nationally accepted accounting principles and methods can be attributed to the Financial Regulation and its Implementing Rules, the latter should be revised accordingly to allow for the use of usual accounting principles and methods that are accepted nationally.
- Valid legal regulations are only part of the problem. To achieve a substantial, long-term reduction in the administrative burden, it is also important to critically review the interpretation and implementation of legal norms by the Commission in actual practice. This can be done within the framework of the review of the Financial Regulation. As a rule, legal provisions are formulated in general terms and contain a certain latitude for discretionary judgement in order to allow for appropriate solutions to different specific situations as they arise in practice. The Commission should make full and consistent use of its discretionary powers to arrive at appropriate solutions that will avoid unnecessary additional administrative costs.

**We urge all parties involved (European Parliament, Council, European Commission, the European Court of Auditors, and last but not least, the beneficiaries) to make use of the current debate on the revision of the Financial Regulation to critically review the valid legal regulations as well as their application in practice in order to support research, development, and innovation in the best way possible.**

## **1. Introductory remarks**

European research funding, in particular the EU research framework programme with collaborative research as its key element, contributes substantially towards ensuring the long-term competitiveness of Europe in the global economy. Moreover, research funded by the EU makes essential contributions towards guaranteeing our quality of life over the long term and finding solutions for the grand challenges currently facing our society, such as climate change, energy, food supply, or health.

Both the attractiveness and the success of European research funding in reaching its specific objectives depend to a significant degree on an efficient and appropriate administrative framework. This is the general consensus of all stakeholders. In spite of all efforts taken in the past, however, the administrative burden is still disproportionately great. Many excellent scientists are discouraged by the heavy additional administrative costs associated with European research projects, which ultimately diminish the overall resources for research because the funds required for the administrative management of scientific projects are then no longer available for research and technology development.

In view of the paramount importance of research, development, and innovation to Europe, all stakeholders (Parliament, Council, Commission, and Court of Auditors as well as the beneficiaries) should make use of the upcoming review of the Financial Regulation to bring about substantial improvements in the administrative and regulatory framework for research, development, and innovation.

## **2. Review of the rules of the Financial Regulation**

It is difficult for the Helmholtz Association as a research organisation to estimate the extent to which the Financial Regulation and its Implementing Rules are ultimately responsible for the substantial administrative burdens or to determine which specific regulations might have to be revised to bring about improvements.

The provisions implementing the EU research framework programme, and in particular the rules for participation and the model grant agreement, are based on the EU Financial Regulation. A review of the valid Financial Regulation and its Implementing Rules must ensure that the special

significance of research and innovation for Europe is adequately taken into account. The Financial Regulation and the Implementing Rules derived from them must make it possible for the Commission as the funding institution and the participating project partners as beneficiaries to arrive at efficient and appropriate procedures for research. This is a major prerequisite for realising the objectives specified in the Lisbon agenda.

All stakeholders should accept that the efficient administration of funds for research inevitably entails the acceptance of a certain amount of risk. On one hand, the appropriate use of public funds earmarked for the purpose of carrying out specific research activities must be guaranteed, along with appropriate provisions for oversight and control. On the other hand, the costs of seeking to avoid risk must not be allowed to exceed the potential benefit. Potential or alleged misconduct by a limited number of individuals must not lead to a paralysis of the entire system!

One reason for the current administrative burden lies in the fact that beneficiaries' **usual accounting and management principles and methods** are frequently not accepted as a basis for cost reimbursement by the Commission. If this lack of acceptance is due to the Financial Regulation and its Implementing Rules, these should be corrected accordingly.

We also refer to our replies to the consultation questions and our remarks concerning the Financial Regulation under Sect. 5 and 6.

### **3. Review of the application of rules**

The second part of the consultation is entitled "The Commission's Handling of Financial Files". The specific questions in the consultation paper refer to the relevant rules applying to the Financial Regulation and its Implementing Rules. In this connection, we would like to emphasise a crucial aspect which in our opinion is not given adequate consideration in the ongoing discussion on optimising the administrative and regulatory framework for research. Typically, the rationale for the substantial administrative burden is attributed to prevailing legal rules, without any further reflection. This rationale does not however examine the important question of how the interpretation and application of the prevailing rules contribute to the administrative burden.

**Often, avoidable administrative costs result from the inappropriately narrow interpretation and application of rules.**

Clear, unambiguous, and consistent rules are essential to prevent legal uncertainty for the beneficiaries. At the same time, the rules must be couched in sufficiently general terms in order to allow for adequate and efficient solutions in specific cases. This applies to the Financial Regulation and the Implementing Rules as well as to the legal rules based on them. Detailed control at the level of legal rules should be avoided because at this level it is impossible to take adequate account in advance of the different legal and accounting frameworks of the individual beneficiaries and their national accounting rules. This further implies that clear **principles for the application** of norms must be formulated.

In principle, the Commission should try to respect the **usual accounting and management principles and methods** of the beneficiaries (Art. 172a, paragraph 1d of the Implementing Rules of the Financial Regulation) and not disallow them as a consequence of detailed control at the level of rules. Here, it should be expressly recalled that usual accounting and management principles are in compliance with the respective national standards and controls! If usual accounting and management principles and practices are disallowed, beneficiaries are faced with a considerable additional administrative burden.

One example of this is the **use of average personnel costs, which** is expressly permitted as an option in the rules for participation, if it corresponds to the usual national practice of the beneficiaries. As a consequence of the detailed rules and margins imposed by the Commission for charging average personnel costs, which correspond neither to the actual situations of most beneficiaries nor to their usual accounting principles, it is impossible for many beneficiaries to obtain a corresponding method certificate. This leads to a considerable additional administrative burden, as the accounting methods accepted for national research projects must be modified specifically for EU projects. For the same reasons, **the indirect costs** of the beneficiaries which are in compliance with national requirements should be accepted by the Commission.

### **Basic principles underlying the application of norms**

The interpretation and application of norms should be guided by the following principles:

- **Partnership:** It is the paramount objective of both the Commission and the beneficiaries to implement successfully and effectively the agreed-upon scientific objectives.

- **Communication and dialogue:** Partnership is characterised by trust and continuous dialogue.
- **Reliability and transparency of Commission decisions:** The basis for decisions made by the Commission is clear and transparent, and the project partners can consistently rely on joint agreements.
- **Avoidance of inefficient administration:** Efficient funding of research and development is the paramount objective of all parties involved. This includes avoiding as much as possible the imposition of unnecessary administrative burdens, in accordance with valid regulations.
- **Applicability of usual accounting and management principles and methods:** The beneficiaries use their usual, nationally recognised accounting and management principles and methods.
- **Appropriate consideration of specific cases:** Efficient funding of research also means finding efficient and practicable solutions to meet the respective needs of the parties involved. The existing discretionary power is consistently utilised to arrive at appropriate solutions to avoid unnecessary additional administrative costs.
- **Clear, reliable guidelines:** Explanations as to how certain norms are interpreted and applied may be very helpful to eliminate potential legal uncertainties for both the beneficiaries and the Commission staff. It must be noted however that these guidelines should leave sufficient scope for adequate consideration of the specific situation of the beneficiaries. The latter must be able to rely consistently on the statements made by the Commission and not be subjected unexpectedly to stricter, narrower interpretations over the course of the framework programme.

Consistently upholding these basic implementation principles of legal regulations could significantly reduce unnecessary administrative costs.

## Illustrations

One example in which the adequate application of existing legal rules could be discussed is the reimbursement of **costs incurred for ex post audits** (e.g. recalculation of project costs in the event of extrapolation). According to Art. 172 a of the Implementing Rules, only those costs incurred during the duration of the action or of the work programme may be reimbursed, with the exception of costs relating to final reports and audit certificates. The wording does not lead to an unambiguous answer because the term “costs relating to audit certificates” is not further specified. The spirit and purpose of this norm is obvious: Costs for certificates that are incurred after the end of the project may be reimbursed. This includes ex post audits, even though they are not performed for every project. The lack of specification here suggests two possibilities: Either the legislators did not think specifically to include this special kind of audit, or they assumed ex post audits to be covered by the wording of this rule. If, however, the legislative intent had been specifically to exclude reimbursement of costs for ex post audits, this would have been explicitly mentioned.

If extrapolation is not justified on the basis of a deliberate deception on the part of the beneficiary, but rather because of the alleged flawed interpretation of rules – which in any case are often complicated and subject to divergent interpretations – the Commission should therefore be required to reimburse the costs to the beneficiaries. This does not however correspond to the Commission’s current practice.

Another interesting question in this connection is **whether the Commission is required to reimburse the beneficiary if an ex post audit finds errors made by the beneficiaries that benefit the Commission**. In our opinion, this would be desirable and acceptable. Our understanding of a mutual contractual relation among partners is that errors discovered through audits have to be corrected in both ways. Not to reimburse the beneficiary in such cases on the grounds that there is no budget for this is not justifiable, at least as long as the amounts reclaimed by ex-post audits exceed claims made by beneficiaries.

## 4. Proposals to optimise the application of the rules

### 4.1 Proposal directed at the Commission

**We urge the Commission to consistently use its discretionary powers to arrive at appropriate solutions in order to reduce administrative burdens.** The Commission should create a climate in which the officers of the Commission observe the basic implementation principles mentioned above at all levels. In this respect, the practices of regular job rotations or holding individual officers personally financially liable are counterproductive. Uncertainties arising in the assessment of specific situations and fear of personal liability may cause Commission officers to choose to interpret and apply existing rules in the narrowest way possible for their own protection, even though such solutions might be contrary to the best interests and needs of the individual scientific projects and other, more efficient solutions might appear possible and acceptable in principle.

### 4.2 Proposal directed at the Council, Parliament, and Court of Auditors

**The Commission cannot be held solely responsible for current practices. We encourage the European Parliament, the Council, and the European Court of Auditors to support the Commission in finding an adequate balance between risk and control.** The Council, Parliament, and Court of Auditors should expressly request the Commission to consistently use the existing discretionary powers in the best interests of research. There should be a consensus by all parties that the efficient administration of funds inevitably entails a certain degree of risk. The potential misconduct of a limited number of individuals must not lead to a paralysis of the entire system!



## 5. Replies to the consultation questionnaire

**Question 3:** Should the use of lump sums, flat rates become the norm rather than the exception? Should the rules allow for costs to be covered on the basis of expected outputs? If yes, can you provide concrete examples?

### Lump sums

The implications of a wider use of lump sums should be examined very carefully. The use of standard lump sums for all Member States of the EU was once under consideration, but this idea has rightly been abandoned in the meantime. If introduced, it is essential to base funding by means of lump sums on the total cost (both direct and indirect costs) of research actions carried out by the beneficiaries. As a general rule, standard lump sums that do not appropriately consider the varying costs of different projects or the different contexts in which projects are carried out and should therefore be rejected.

Furthermore, an evaluation of the benefit of lump sums should not neglect to take into account the administrative cost of calculating the lump sums!

**The ban on generating profits from financial support** (Art. 109, paragraph 2, Financial Regulation) . To avoid the possibility of generating profits, lump sums are thus calculated on the basis of the minimum possible real costs, meaning that for the percentage of actual costs that could be financed would be lower than is currently the case. Consequently, the attractiveness of the framework programme would further decrease for many beneficiaries. Lump sums **are only a viable option if they allow for an adequate reimbursement of the actual costs of the beneficiaries**. Art. 109, paragraph 2, of the Financial Regulation should therefore be modified accordingly to accommodate the needs of research.

### Cost reimbursement based on the scientific work accomplished

In principle, a funding model based on monitoring the scientific work carried out instead of the detailed certificate of eligible costs might be a feasible option, provided that only the proper completion of research activities is required, rather than the achievement of the expected scientific goals. This could result in significant administrative simplification.

Without more specific information on the specific model proposed, however, this question cannot

be answered precisely.

Whatever cost model is implemented, the following aspects should be considered:

- Scientific success cannot be agreed upon in advance. Whoever funds risky research must be prepared to accept failure or unforeseen results. This unpredictability is immanent to research. (The “failure” to accomplish certain scientific objectives can nevertheless result in important unforeseen findings, such as in the development of penicillin and Viagra.) **Consequently, the only admissible required “result” is the performance of research activities as agreed by the project partners, not the achievement of certain postulated scientific objectives!**
- The amount of funding should be in line with the presumed total costs of the project. This could mean that a detailed budget calculation is submitted for the project, as has been the case in the past. On this basis, the amount claimed can be specified. It should be based on the total actual costs of the project (direct and indirect costs).
- Art, 109, paragraph 2, of the Financial Regulation should be modified accordingly. Otherwise the agreed funding could result in funding levels far below those required to cover costs adequately in order to reliably exclude any possibility of generating profits (even if though this may be highly improbable).

**Question 4:** Should the rules strictly adhere to the non-profit principle or should there be room for some flexibility in this matter? Do you have examples of good practices from other public authorities?

Wider use of lump sums or cost reimbursement based on “outcomes” would in our view require modification of Art. 109, paragraph 2, of the Financial Regulation and its principle of absolutely prohibiting the generation of profit for the reasons stated under Question 3. Strict exclusion of profits that are theoretically possible may result in insufficient lump sums that are calculated so narrowly that they are financially unattractive for many beneficiaries.

**Question 8:** From your experience, what alternative solutions could be proposed for prefinancing payments while safeguarding tax payers' money?

The current practice of placing prefinancing payments in interest-bearing accounts and reimbursing the interest yielded to the EU creates considerable problems for the beneficiaries in most cases and results in enormous additional administrative costs. Because the interest rates granted for such accounts are often marginal, the current practice frequently violates Art. 27 of the Financial Regulation (principle of sound financial management). and is not in accordance with the principle of economic efficiency. The principle of efficiency is concerned with the best relationship between resources employed and results achieved. The resources used for the establishment, administration, and settlement of the accounts exceed the interest earned.

We therefore recommend amending the Financial Regulation and the implementing rules such that reimbursement to the EU of interest accrued by prefinancing payments is not required. If this is not possible, we recommend applying the norm in a more appropriate way in actual practice. Beneficiaries who can prove to the Commission that the effort involved in creating interest-bearing accounts according to their usual accounting principles would entail undue additional administrative costs that would probably exceed any interest accrued should be exempted from the obligation to generate interest from prefinancing payments.

We have no comments on the other questions in the consultation paper.

## **6. Other suggestions for the revision of the Financial Regulation**

### **6.1 Reimbursement of value added tax**

According to Art. 172a, paragraph 2 c) of the Implementing Rules, value added tax paid which cannot be refunded to the beneficiary according to the applicable national legislation may be considered as eligible by the authorising officer responsible.

This option to reimburse value added tax paid should be the general rule for research and development projects. It would serve the interests of efficient research funding, as otherwise the beneficiaries would not be able to claim incurred costs that are frequently substantial. In addition, this would mean a considerable administrative simplification.

### **Reimbursement of costs for ex post audits**

Costs incurred by beneficiaries for ex post audits (e.g. for the recalculation of project costs in the event of extrapolation) should be reimbursed by the Commission, in accordance with our understanding of Art. 172a of the rules Implementing Rules (see Sect. 3 of this comment).

If the Council, Parliament, and Commission do not agree with our interpretation of the current wording, we recommend emending Art. 172a of the implementing rules so that the costs of ex post audits are explicitly included (see Sect. 3 of this comment).